

Project Report

**Civil Society's Submissions on Competition and
Consumer Welfare Policy in Zambia**

Submitted to

MINISTRY OF COMMERCE TRADE AND INDUSTRY (MCTI)

CAPACITY BUILDING FOR PRIVATE SECTOR DEVELOPMENT (PSDP)

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FOREWORD

It is important that any effort to formulate, review, generate and implement strategies for promoting Competition and Consumer Policy in Zambia includes active participation of the Civil Society Organisations (CSOs) in order to have a sound and effective Competition and Consumer Welfare Policy which encompasses views and aspirations of the stakeholders. In the Zambian context, the introduction of a viable competition law and policy is a key element for market regulations and means for fostering economic growth and balancing the interests of the business community and consumers.

The role of CSOs in contributing to policy discussions in relation to Competition and Consumer Welfare policy is well accepted. CSOs do have a particular interest to make sure that markets operate in favour of both producers and consumers. There are mechanisms that will protect the disadvantages consumers, weaker and smaller producers from unfair trade, abuse of dominance and market power by firms.

Zambia does not have a Competition and Consumer Welfare Policy although the country has a competition law and Authority for over a decade. It is worth mentioning that although the Competition and Fair Trading Act is in place, it does not have a guiding policy framework which can be used in the enforcement of the provisions of the Act and also protection of the consumers.

However, to have a dynamic Policy and an effective regulator at the end of the day will best be realized if Civil Society views are incorporated in the formulation of the Zambian Competition Policy. It is for this reason that CUTS–ARC with support from Capacity Building for Private Sector Development (CBPSD) spearheaded the process of gathering and compiling submissions in partnership with various CSOs in Zambia on what should be included in the new Competition and Consumer Welfare Policy for the benefit of the consumers. The process included interviews, focus group discussions, sector specific submissions, literature review and a consultative workshop attended by various organizations.

This initiative has been a mutually beneficial exercise for the government represented by the Zambia Competition Commission (ZCC) and the stakeholders in the CSO circles. The stakeholders from CSOs have had their interests taken into consideration in the policy formulation and at the same time been able to assist government in getting an informed position on required regulatory reforms. Another critical element that this process has addressed relates to capacity building requirements of CSOs which have been done through focus group discussions on Competition and Consumer Welfare Policy. It is therefore, important to acknowledge that this effort to compile submissions and gather critical proposals on strategies for promoting competition laws in Zambia includes an active effort to involve the CSOs.

CUTS therefore, proposes or intends to continue strengthening CSO engagement in the competition and consumer welfare issues, as well as constant liaison between the

competition authority (ZCC) and all its stakeholders for an effective implementation of the policy in Zambia.

Lusaka, January, 2009

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Civil Society Organizations

- Zambia Consumer Association
- Zambia Consumer Alliance
- Zambia Land Alliance
- Civil Society Trade Network of Zambia
- International Body Action Network
- Zambian Women in Agriculture
- Transport and Passengers Association
- Aids Alliance
- Economic Association of Zambia
- E-Brain Zambia
- Jesuit Centre for Theological Reflection
- One world Africa
- Evangelical Fellowship of Zambia
- Farmer Organisation Support Project
- Commuters Rights Association of Zambia
- Zambia Competition Association
- Society for Family Health
- Zambia Federation for Employers

Terms of Reference of the Project

- A Review of Current Literature on Zambian Competition and Consumer Welfare
- Review of the Current Competition Act, identifying gaps and or sections that need to be revised or deleted
- Identification of competition related constraints that adversely affect segments of the economy
- Gather the views of civil society on Competition Policy and Consumer Welfare through appropriate means
- Hold a workshop in which a wide range of informed and interested participants develop a consensus on competition and consumer welfare policy
- Present this consensus in a document to the Ministry of Commerce, Trade and Industry and the Zambia Competition Commission.

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Chapter 1.

CUTS work on Competition Policy and Consumer Welfare in Zambia

1. Introduction

The main objective of competition policy and law is to preserve and promote competition as a means to ensure the efficient allocation of resources in an economy. This should result in growth, equitable distribution, and lower prices and adequate supplies to consumers. For a developing economy handicapped by resource constraints, efficient allocation of resources is absolutely essential to enable optimum utilisation of limited resources.¹

There are complex inter-relationships between competition policy and other economic policies. This factor has a direct bearing on the extent to which competition policy objectives can be pursued without being constrained by or conflict with other public policy objectives. Although a competition law may be quite narrow in its scope, competition policy is much more broad and comprehensive in its scope. Its purpose is to bring harmony in all the Government policies that may encourage or adversely affect competition, consumer welfare and development.

Competition law and regulatory regimes are used mainly to take care of firm behaviour and market failures. And governments do make interventions in a situation of market failure. Indeed it is inconceivable to find a country where there is no market regulation. But in the absence of clearly defined competition policy and regulatory mechanisms, the intervention can be arbitrary and eventually serve the vested interests and not the people at large.

At present most of the developing countries are going through a spate of regulatory reforms, which include privatization and deregulation. Many of the state-owned enterprises enjoy monopoly power in the market. In such a situation privatization without competition policy with adequate regulatory mechanism will mean transfer of monopoly

¹ * The authors are Secretary General and Policy Analyst respectively at CUTS International, CUTS Centre for Competition, Investment & Economic Regulation, Jaipur, India.

power from the public sector to the private sector. This can harm the interests of consumers, especially the poor.

Without an effective competition policy and law, international anti-competitive practices can restrict trade in small and developing countries. The available evidence suggests that international cartels and other restrictive practices by private firms operating in international markets – designed to limit competition in international trade do exist. These arrangements can be quite durable and detrimental to economic development².

Since its inception in Zambia, CUTS has established itself as an objective research and advocacy based organization on trade and development related issues. It has had an input into various key developments including the development of Zambia's investment policy in which it worked closely with government and international bodies especially the United Nations Conference on Trade and Development (UNCTAD). CUTS has carried out pioneer research work in the area of competition law in Zambia during 2000-2002 period. It has also worked closely with the Zambia Competition Commission in organising various capacity building programmes, advocacy and sensitisation work on competition and consumer welfare issues.

The organisation has also been working in the area of competition policy and consumer protection issues for almost a decade, whereas at international level since its inception in 1984. The involvement was mainly by way of litigation in the initial stages but the work developed very soon. Similarly, CUTS started its work on investment and economic regulation since 1992 when the international community was debating the draft UN Code of Conduct for transnational corporations. Several consultative meetings were organized on these issues both nationally and internationally, quite a few research and advocacy projects were taken up and CUTS became well known in the developing world.

2. Distinction between Competition Policy and Consumer Protection

The ultimate objectives of both competition and consumer welfare policies are essentially the same and are often mutually complementary. The main objective of competition policy and law is to preserve and promote competition as a means to ensure the efficient allocation of resources in an economy.

Competition policy has been considered by researchers as a proactive policy that attempts to promote economic efficiency along with consumer interest in the marketplace, whereas consumer protection policy puts forward mainly a regulatory and pre-emptive mechanism to protect the interests of the consumers, and offer remedies against abuses, whenever or wherever the market distortions take place. In this regard there are strong complementarities between the two policies.

While competition can result in the provision of quality goods at lower prices, there can be considerable difference in the results for economies, depending on the market

² World Bank & OECD, "A Framework for the Design and Implementation of Competition Law and Policy," Washington D.C., 1999.

structure, level of development geographical position, etc. When competition is isolated within a local economy, then the demise of weaker firms results in gains to the stronger, more efficient firms within that economy. Consumers benefit from better quality and price for goods and services and social policy can buffer the losers and re-direct them into more efficient investment. When, however, the winners are foreign firms, the gains are extracted out of the economy and there are welfare enhancing effects in the producer economy.

It is important to note that consumer welfare goes beyond the ability to access better quality goods at reasonable prices and of more choice. Consumers are also producers and if excessive market entry results in closure of business and unemployment, then consumers would lose purchasing power. Even the definition of what is better quality is dynamic and culturally based factor.

Chapter 2

Review of Literature on Zambia's Competition and Consumer Welfare Situation

The Competition and Fair Trading Act (CFTA) of Zambia was enacted in 1994. The basic Institutional arrangement for the administration of the Competition Act became operational in 1997 with the setting up of the Zambia Competition Commission (ZCC). The Act has two broad objectives.

- 1) To prevent anti-competitive conduct by encouraging competition and efficiency in order to provide for greater choice for consumers in terms of price, quality and service.
- 2) The law aims to ensure that the interests and welfare of consumers are adequately protected in their dealings with producers and sellers³. This law seeks to control or eliminate restrictive agreements or mergers and acquisitions or abuse of dominant positions on the market, which may limit access to markets or otherwise unduly restrain competition and regulates mergers and acquisitions by entities that are likely to create a dominant market position.

This chapter is devoted to review the relevant and current literature available on competition law and consumer welfare situation in Zambia with a view to learn lessons from the studies and stakeholder assessments for proposing an update and functional competition and consumer welfare policy.

There are three broad categories of documents and literature where various aspects of competition law and consumer protection and welfare issues have been studied. They comprise of documents on:

- Competition Law and Policy Issues
- Consumer Protection and Welfare

³ Preamble to the Competition and Fair Trading Act, Chapter 417 of the Laws of Zambia

- Sector Regulatory framework

2.1 Literature on Competition Law and Policy Issues

2. 1.1 Enforcing Competition Law in Zambia

One of the pioneer studies on the subject is titled **Enforcing Competition Law in Zambia**⁴, a research based study published in 2002. The study analyses the context and background of the introduction of competition law in Zambia, its specific features and as well as administration of the law with examples of case studies. This study also has made contributions providing analysis on the market structure and nature of concentration in some of the major sectors of the economy, public policies which have a bearing on competition, scope of competition law in Zambia, the institutional structure, resource endowment and capabilities of Zambia Competition Commission (ZCC). The study has recorded the findings of a series of stake holder consultation meetings, called National Reference Group as well as findings of a survey on implementation of competition law.

The study brings out the following assessment and findings with regard to the Competition and Fair Trading Act as well as its administration issues:

- Introduction of regulatory reform in Zambia is a crucial component of domestic economic restructuring. The formulation of liberal economic policies and setting up of regulatory institutions since 1991 is a clear indication that Zambia is committed to enhancing a competition regime in order to reduce import prices, expand exports and reduce country's vulnerability to cross border anti-competitive behaviour. (p.26)
- There is no comprehensive consumer protection law in Zambia. Legal provisions for consumer protection are contained in various pieces of legislation relating to safety and standards. The Competition and Fair Trading Act, however provides for the protection of consumer interests and welfare by ensuring that they have greater choice in terms of price, quality and service. (p.28)
- The existence of other sector regulatory bodies somewhat restricts the purview of the competition law in Zambia. There is need for boundary definitions between sector regulators and the competition regulator. There is also a strong case for harmonising the regulation of technical and market behaviour of economic agents between sector regulators and the competition commission. This is particularly striking in the banking and non-banking financial services sector where anti-competitive market behaviour continues to be unchecked by the sector regulator. The relationship between the ZCC and sector regulators requires strengthening at policy and operational levels. (p.29 and p.30)
- Public Policy has had contradictory effect in competition. There is therefore a need for refinement of the public policy mix to enhance competitiveness and level the playing

⁴ Consumer Unity and Trust Society, Enforcing Competition Law in Zambia, Jaipur, 2002

field for competition among economic agents. The lack of concern for the market structure in the privatisation of the agricultural and manufacturing sectors has increased the role of the ZCC in redressing structural imbalances and possible abuses of dominance by privatised enterprises. We have seen a good example of the benefits of ZCC intervention in the cotton sub sector. (p.38)

- The scope of application of Competition and Fair Trading Act of Zambia is restricted by a number of exemptions. There are two classes of exemptions, explicit and implicit exemptions, to the law. Explicit exemptions refer to bargaining activities of employees, trade unions, use of license regarding Intellectual property protection, activities of professional associations and more importantly activities arising from provisions of an agreement to which the Republic of Zambia is a party or any directives as the Minister may say by Statutory Instrument. Prominent among them is the exemptions given under Section 3 on of the Act, government transactions are given exemptions and this could affect restrict post privatisation competition situation in certain sectors of the economy. (p. 19 and p.41).
- Whistle blower provisions as well as legal protection provided for whistle blowers as applied in competition legislation of many countries are not being incorporated in the Competition Act of Zambia. (p.42)
- The definition of “dominant position” in the Act should be revisited to make appropriate changes to take care of the concerns of the small business sector in Zambia. Further, as per the result of stake holder survey, many felt that the existing law was inadequate in dealing with cross border competition issues. The Zambian Law only considers the domestic effects of trans-boundary abuse. According to the finds of stakeholder survey analysis, most respondents felt that the existing law was not ably being enforced. (p. 28 and 42)
- The study also brings out the institutional weaknesses that ZCC faces in dealing with a multitude challenges in implementing the existing competition law, due to inadequate budget, insufficient number of trained staff, lack of sufficient information and communication resources, documentation, equipment and accessories. (p.36)

One of the highlights of the competition law in Zambia is that provides the leverage and flexibility to challenge foreign mergers and acquisitions that may have influence within its territory. The assessment of mergers or takeovers by the commission focuses on the question of whether a proposed transaction is likely to prevent, distort or lessen competition. It is an offence under the act to effect a merger between two or more independent enterprises engaged in the manufacture or distribution of similar goods or services without authorisation.

The Act has set two thresholds for the assessment of mergers and takeovers. One is to deal with situations of unilateral market power or single firm dominance. This threshold is set at where the merged firm has more than 50 percent of the relevant market. The other is to deal with the situation of concentrated markets, such as an oligopoly. This threshold is set at where not more than two undertakings share in excess of 50 percent of the market. Although

thresholds are set for the purpose of screening market concentrations, there are people in Zambia who want them lowered⁵.

In the case where a take-over is completed abroad, the law in Zambia considers it to have taken place in the country, as long as there are domestic subsidiaries in operation in the country. Such a merger is said to have domestic effects if the merger affects the structural conditions of the enterprise concerned. This is more likely if both enterprises were operating in Zambia prior to the merger, whether directly or through subsidiaries or affiliates, but there may also be domestic effects, even if only one company previously operated in Zambia.

To sum up, the above study has made pioneer contributions in bringing out some of the glaring inadequacies in the Competition and Fair Trading Act, the lopsided focus on consumer protection provisions in this hybrid legislation, the institutional constraints at ZCC level as well as the perceived shortfalls in the enforcement or administration of competition law in Zambia.

2.1.2 Pulling up our Socks-A study of Competition Regimes of Seven Developing Countries of Africa and Asia under the 7-Up Project⁶

This is a synthesis report for the study carried out in seven countries including Zambia, South Africa, Kenya, Tanzania, India, Pakistan and Sri Lanka in a comparative perspective on competition regimes. In this context, the document compares the scope and coverage of the competition law, institutional arrangements and operational aspects of competition administration, and analysis of specific cases to substantiate points, in these seven countries.

- The study brings out the fact that adoption of competition policy and law is often a response to existing market realities; and as a result apart from price control, several other developmental needs get reflected in the objectives of competition laws in various developing countries. The Zambian competition law, for example, hopes to encourage innovation, ensure fair distribution of income and reduce unemployment through the competition law. (p. 15)
- In dealing with restrictive trade practices, Competition Act-1994 of Zambia prohibits any category of agreements, decisions or concerted practices, which have their **object**, the prevention, restriction or distortion of competition to an appreciable extent to any substantial part of the market. A particular feature of the Zambian Competition law (in comparison with other 6 study countries) is that it prohibits practices that have their **“object”** the prevention, restriction, or distortion of competition. (p. 19)
- The Zambian Competition law does not provide for a specific definition of a dominant undertaking, but in general an undertaking is considered to be dominant if it has a level of market power that allows behaving independently of competitive pressures. Depending on the circumstances of the case, the ZCC uses as a guideline, that a firm is

⁵ Participants of the second 7-Up national reference group meeting expressed this view

⁶ Consumer Unity and Trust Society- Centre for Competition Investment and Economic Regulation, Jaipur, 2003

unlikely to be dominant if the market share is less than 40%. The South African law prescribes that a 45 % market share is evidence enough for a dominant position. (p. 22).

- The working of competition authorities in the project countries, including Zambia is based on the “structural” understanding of competition, efficiency, market power, etc; the behavioural aspects of firms, though considered are not accorded primacy. While in the focus of developed countries is “conduct of firms in the market” as indications of market position. (p. 26)
- As competition policy and law are part of a country’s overall public policy, and thus a tool for serving the public interest, it is clear that a competition law should not be too rigid. A competition law must thus be able to aptly deal with (and support) a country’s varying public needs. (p.32)
- Competition laws of many countries provide for exemptions from the law based on various reasons. The exemptions fall in the category of practice specific (certain practices), enterprise specific or sector specific. Among the seven countries studied under the project Zambia had a maximum of **seven exemptions** given, that include arrangement or agreements relating to the exercise of Intellectual property rights, activities expressly approved or required under a treaty to which Government of the Republic of Zambia is a party. The other prominent by a vague exemption incorporated in the Act is **“such business or activity as the minister may, by statutory instrument. (p.29-30)**
- On powers and capabilities of competition authority, ZCC has no power to issue legally binding final orders to parties who found to have violated the law. They are required to take all the cases to a court of law for final adjudication. ZCC does have powers to take interim measures ordering discontinuation of an illegal conduct or persuade offending parties to reach negotiated agreements leading to discontinuation of violating agreements. This is somewhat similar to the Australian arrangements on the adjudication of competition cases.
- On competition and regulatory interface, Bank of Zambia has statutory powers to ensure that competition in the provision of financial services should not be restricted. There is clear overlap between the tasks of ZCC and Security and Exchange Commission (SEC). The conflict between sector specific regulators and competition authorities are more common in the seven countries under review. The South African Competition Act provides for consultation to avoid situations of conflict between competition and regulatory authorities. (p. 45-47)
- The Zambian Competition Act has been empowered to deal with unfair trade practices that includes misleading conduct, exclude liability of defective goods, supply of goods that do not conform to standards, etc. (p. 90)

2.2 Literature on Consumer Welfare Issues

2.2.1 Market Practices in Zambia-Where Do the Consumers Stand?⁷

This publication examines anti-competitive practices and tendencies in Zambia, as well as providing an overview of sectors from the perspective of consumer welfare. It has also included an analysis of the views of stakeholders.

- **Unfair Trading/Consumer Welfare and Protection:** The Competition and Fair Trading Act (1994) defines a consumer as a person (a) who purchases or offers to purchase goods otherwise than for use in production and manufacture of any other goods or articles for sale and; (b) to whom the service is rendered. Section 12 of the Act further provides for the mitigation of;
 1. Misleading or deceptive conduct;
 2. False or misleading representations
 3. Misleading the public as to the nature or characteristics of the goods and services
 4. Excluding liability for defective goods, and
 5. Withholding the production of goods and services on the market or destroying the means of production and distribution of such goods with the aim of bringing about a price increase.

As a consequence of the Commission's operations since its inception, more and more consumers have increasingly become aware of their rights. (p.9)

- **Monopoly Undertaking:** In the CFTA, a "monopoly undertaking" is defined as a dominant undertaking or an undertaking which together with not more than two undertakings, control half of the products in that category in terms of production, supply, distribute or otherwise control in whole of Zambia or any part of the country. It also included provider or otherwise control of services with 50% market in whole or part of Zambia. (p.8)

On the sector specific analysis, the document has briefly covered, banking, agriculture, transport, energy, water and sanitation, mining and Quarrying and pharmaceutical services.

Observations on the status of consumer protection

- It has been observed that despite introduction of regulatory mechanism consumers do not have a choice to change their water connection from one to another as there is only one provider in the area. Therefore the strength of competition provisions needs to be assessed using the effectiveness of regulatory mechanism. (p.15)

⁷ Consumer Unity and Trust Society and Zambia Consumers Association, Market Practices in Zambia-Where do the Consumers Stand, Jaipur, 2003

- On the experience of consumers with Energy Regulation Board (ERB), it was observed that ERB showed double standards when handling consumer issues as the Board had retracted several of decisions taken in favour of consumers in their dispute with the service providers. (p.19)
- On mobile telecom, the consumers have bemoaned the exorbitant telecom tariffs that the providers have been charging in Zambia. (p.22)
 - Banking and Financial Services Sector has reasonable amount of competition with no major barriers to entry. (p.13)
 - In certain segments of the agricultural sector, where some monopolistic companies through out grower schemes engage in unfair practices. (p.12)
 - On the sale of food items, consumer have complained that some food items do not have proper labelling indicating the date of expiry, make of goods, etc. The document bring out the fact some of the trade measures of the Government such as temporary ban of certain products imported from neighbouring countries are affecting competition in the local market as consumers could not avail the benefit of low prices. (24).

2.3 Sector Regulation and Regulatory Policies

2.3.1 Creating Regulators is not the End-Key is Regulatory Process- A research report⁸

This comparative study report on regulation in developing countries has a detailed chapter on regulatory environment in Zambia, which also deals with certain elements of competition and consumer protection issues. The report highlights the following points.

- Zambia does not follow a common approach towards establishing sector regulators. However, regulatory institutions in Zambia can be broadly classified into three categories. First category belongs to sector regulatory agencies that are established as autonomous specialised agencies outside of the governmental department structure. Examples are telecom, energy, water, banking, etc. The second category is specialised regulatory agencies established as non autonomous entities but they function under the line ministry, e.g. Pensions and Insurance Authority. The third category of sectors is regulated by the line ministry itself, e.g. Railway, water transport, etc (p. 119).
- Among the key rationales for the setting up of regulatory bodies are to separate policy making and regulation functions. Another features that emerge is that none of the sectors has the government established appellate authority to appeal against the decisions of a regulatory body in Zambia. (p. 119)

⁸ CUTS-Centre for Competition, Investment and economic regulation (CUTS-C-CIER) , *Creating Regulators is not the End-key is regulatory process- A research report, Jaipur, 2006*

- On review of consumer protection role of sector regulators, it has been observed that the Energy Regulation Board (ERB) with the involvement of various stakeholders has prepared an electricity consumer charter aimed at protecting consumers, and ensuring the obligations of energy utilities and consumer are rightly stated. The ERB also receives, investigates and resolves consumer complaints using the complaint procedures developed by the ERB. (p.116)
- In the water utility sector, the sector regulator National Water and Sanitation Council (NWASCO) has established water watch groups, which encourages consumers to resolve their complaints directly with service providers. The water watch groups (WWG) are composed of volunteers from consumers responsible to deal with unsolved disputes between consumers and service providers before the regulator is engaged. (p.117)
- On the progress towards better regulation, Zambia has come a long way from the times when same agency performed policy making, regulatory and service provision functions. Most sector regulatory laws in Zambia seek to follow the principle of separation of policy making, regulatory and operational functions in a sector. The sector regulators seek to ensure orderly and stable development of a sector by promoting investment as well as ensuring fair competition and fair treatment of consumers. (p.121)
- What emerges is that Government of Zambia has sought to establish sector regulators in a half-hearted manner. There is a need to develop a coherent approach towards establishing sector regulators and provide them with required power and resources to implement their mandate. At the same time, Government needs to strengthen mechanisms to make regulatory bodies accountable. (p.122)

2.3.2 Competition and Sectoral Regulation in Telecommunications⁹

This paper brings out fact that “although Zambia had only a short history of the regulatory regime, it has become necessary to address the need for coherence and integration in the Zambia’s regulatory framework, which remained fragmented and often contradictory. Both the Competition Commission and Sector regulators despite having concurrent jurisdiction in certain sectors need to develop approaches and strategies in dealing with broad issues affecting regulation in the country. There is need to establish a balance between other public policy objectives alongside with competition objectives. (p. 3).

2. 4 Competition Regimes of Zambia, Australia and South Africa-A Comparison

This section analyses the key similarities and dissimilarities exist in the competition and consumer law and institutions in the above three countries. The purpose of this comparison is to identify the merits and demerits of the legal respective statute, learn from the experiences of administering competition and consumer protection law and also delineate best practices for possible improvements in the system.

⁹ George K. Lipimile, Competition and Sectoral Regulation in Telecommunications, paper presented at International Competition network (ICN) Workshop, Germany, 7 June, 2005

On the similarities-

In all the three countries have adopted hybrid laws combining both competition law and consumer protection under a common umbrella and institutional arrangement. The names of authorities also have similarities, in Australia, it is the Competition and Consumer Commission (ACCC) and in South Africa, it is called Competition Commission (SACC).

Further, all the three countries have set up hybrid authority where by the competition authority has the powers to investigate matters on competition and consumer welfare issues. On prosecution of the violation of the law and final adjudication matters under the Act, both Australian and Zambian Act, provides that the commission need to take the matter to the high court for a final legal interpretation and settling disputes.

In South Africa, the competition administration has a three tier system, with competition commission with primary responsibility of determining and investigating cases under the Act¹⁰, the Competition Tribunal is entrusted with the task of ruling on most cases referred by the Competition Commission as well as cases directly brought under its ambit. The third institution in South Africa is the competition appeal court, which decides on the appeal against the decisions of both the Competition Commission and Competition Tribunal.

On the coverage of competition and consumer protection matters, the Australian law is quite comprehensive and it places a lot of emphasis on both competition and consumer welfare matters. In both South African and Zambian Act, competition related market regulation seems to have predominance in terms of coverage of issues and remedies, Consumer Protection matters have not received sufficient attention.

In terms of the focus and coverage of the law, the South African competition law gives a lot of importance to public interest matters, (SME development, empowerment international trade, etc) in the statute and administration of n law. This means that there are other considerations in the law apart from economic efficiency and promotion of competition in the market place.

2.5 Consumer Protection

The coverage and focus of consumer protection and welfare measures in the existing Competition and Fair Trading Act is quite inadequate in several respects. Hence, there is a need for looking at specific gaps for making suitable additions/amendments.

The notable gaps in the existing Act with regard to consumer welfare are the following:

- The Act has not clearly defined the consumer rights which it is expected to be protecting-hence there is a need for clear definitions and coverage of the Act.
- The Act has not clearly indicated the penalties for violation of various categories of consumer rights

¹⁰ CUTS, Competition Policy and law in South Africa, Jaipur, 2002, p.11

- The Act has not defined the redress mechanism or specific remedies in dealing with consumer complaints considering that violation of consumer rights can be occurring in all the regions of the country. There is need for a decentralized redress mechanism for consumer complaints. This aspect has not been incorporated carefully in the existing Act.
- Consumer protection and consumer grievances issues spread across several sectors of the economy. There was no effort to compile harmonized the scattered consumer protection mechanism spread across other statutes such as Sale of Goods Act, Food and drugs Act, Standards Act, Weights and Measures act, and also the new addition of sector regulatory acts.
- The existing gaps in the CFTA could be incorporating a comprehensive section covering “Unfair Trade Practices, Consumer Rights, and Consumer Remedies”. The section should clearly define the consumer rights, responsibilities and various unfair practices which are forbidden under the Act. The revised section should retain the elements and items in the existing act viz. withholding of goods and services, exclude liability for defective goods, false or misleading conduct, wrong representation of material facts and deception, violation of health and safety of consumers through non compliance of standards.
- Apart from the above, the comprehensive law should also include unconscionable conduct in consumer and business transactions,
- Unsafe Goods, services and violation of standards, product information and labeling requirements, deceptive conduct with an objective to cause loss or damage to the consumers, product recall, and remedies to consumers.
- Commercial/small claims court has been established in Zambia recently. There is need to establish clear legal and institutional links between the Competition and Consumer Protection Act with the small claims court. The Competition and Consumer Commission, after investigation should be able to refer the violators of competition/consumer laws to the small claims/commercial court for the disposal of the case.

Perhaps, it would be worthwhile to consider the setting up of Competition and Consumer Tribunal system, may be drawn by judges of High Court as a body responsible for interpretation of competition law, similar South African system, which has the adjudicative powers brought before by Competition Authority, regulatory bodies, etc.

Chapter 3

Identification of Competition and Consumer Welfare Related Constraints that Adversely Affect Segments of the Economy

This chapter makes an effort to identify and assess competition and consumer welfare related constraints that adversely affect segments of the economy. The purpose of the section is to understand the structure of the industry, nature of competition, behaviour of firms operating in the sector and to relate to competition and consumer welfare concerns. For this purpose, the section analyses segments chosen from utility/services sector, manufacturing sector and agriculture sector.

The chapter contains the following details: a brief profile of the sector, regulatory framework, competition and consumer welfare concerns of the segments. Apart from that efforts have been made to incorporate the findings of a civil society consultative meetings and focus group discussion.

2.4 Profile of Selected Services Sector/Utilities in Zambia

The privatisation programme introduced since 1990s allowed entry and participation of private sector entities in the provision of various goods and services in Zambia. There are exceptions in certain sectors where the government is yet to carry out privatisation of public sector entities dealing with broadcasting, telecom and energy. However, it allowed participation of private sector in a limited way in broadcasting and telecom and energy.

3.1 Civil Society's Analysis of selected segments from utility/service sector

3.1.1 Energy

This section examines the electricity and fuel marketing sector from the perspective of competition and consumer welfare.

3.1.1.1 Electricity & Fuel

The electricity sector in Zambia is largely state owned. Power generation, transmission and distribution are undertaken by the main service provider, the public owned Zambia Electricity Supply Company (ZESCO) through its subsidiaries operating at divisional levels. All together, ZESCO has three large hydro-generations plants and a number of small hydropower stations around the country.

There is potential for multiple players in this sector, through diversification of ownership throughout the generation, transmission and distribution structure. In terms of power generation potential so far less than one third has been utilised. Many observers feel that

ZESCO is ill placed to promote large-scale projects for the stabilisation of power supply and improvement of rural electrification. There are suggestions that private participation of this sector is appropriate.

Some time ago, Government had taken key interest in power sector restructuring proposals drawn up by the Energy Regulation Board (ERB) with involvement of stakeholders. According to the proposals, the sector will be broken up and wherever feasible, components sold out especially in generation and private sector participation will be done in distribution and supply. In order to expand the provision of electricity to rural areas a rural electrification fund is being set up by charging levy on the existing consumers. There are many who feel that bringing an environment conducive to competition in the sector will remain unrealised if the sector is not disbanded into specialised units.

One of the key concerns in the electricity sector is the power system losses, which is considered to be high at 11 percent of output and contribute greatly to the 65% financial losses¹¹. Coupled with high operational losses and a disproportionate salary and emolument bill, ZESCO has been increasing the electricity tariff periodically, which many consumers find abnormal in several instances. Consumers also feel that the sector regulator, ERB has not given due appreciation to consumer concerns on periodic energy tariff hike. It is however relevant to note that ERB has been engaged in gathering consumer views on the electricity sector from time to time.

3.1.1.2 Fuel Distribution

Unlike the electricity sector, the fuel distribution sector has been privatised. This has increased private investment in the storage and distribution sector in general. The ERB has developed standards across the sub-sectors electricity, petroleum and other forms of energy. When the ERB came into existence there were five oil marketing companies (OMCs) operating in Zambia namely BP, Agip, Caltex, Mobil and Total. The number of OMCs has grown from 5 to over 20 by 2008. The only refinery in Zambia –INDENI is yet to be fully privatised as Government has retained shares in it along with its strategic partner TOTAL despite the persistent operational losses of the joint sector firm. IN 2007 the crude oil procurement system in Zambia was brought under competitive framework through the introduction of international tender process.

The key consumer concerns in the sector include high cost of fuel in Zambia, the large disparity in pump prices in rural areas compares to towns and resultant high the cost of public transportation.

3.1.2 Telecommunications Segment

In broadcasting, internet and mobile phone communications, the government has allowed the entry of private sector subject to stringent licensing regulations. For instance, private broadcasters are allowed to operate only limited news time. The growth of the free press and other media bodies has been slow due to several factors. Despite these drawbacks, there is considerable growth of competition in print-media.

¹¹ World Bank, Global Competitiveness Indicators, Washington, DC. 2002

The telecommunication sector has been opened up for private participation in the provision of mobile telephony. Even though the sector has been opened to private cellular phone providers, the main fixed line provider and also the controlling entity for international gateway, the state owned Zambia Telecommunications Company (ZAMTEL) has yet to be privatised. Despite the available infrastructure, indicators of fixed telephone connections have not shown high demand. There has been significant increase in internet hosts due to growing consumer demand for internet services. However, the relatively high cost of internet services in Zambia making the accessibility and affordability a key barrier to the majority.

It is evident that a high degree of market concentration exists in fixed and mobile telecom sector in Zambia. In the mobile telephony, roughly the market share for Zain is 78% and the remaining 22% is shared by MTN and Cel Z respectively. Competitive behaviour among operators in this sector in comparison to other countries has yet to be seen. The sector regulator, the Communications Authority of Zambia (CAZ) has made some efforts in the recent past to enhance quality of services and also address consumer concerns in the sector.

In the fixed telephone sector, the main consumer concerns are high cost of service, billing discrepancies, and periodic disruption of services. In the case of mobile telephony, the consumer concerns include frequent congestion, problems of inter connectivity, periodic disruption of service, non availability of network in outlying areas and also in between two towns and high tariff for the services.

According to the Telecommunications Regulators of Southern Africa (TRASA) and the United Nations principles for Consumer Protection, the rights that are supposed to be enshrined in a Consumer Bill of Rights for telecommunications including the right to choose or select services and vendors, the right to personal privacy which means protection against unauthorized use of their records and personal information, and to reject intrusive communications and technology.

Another important consumer right is on the disclosure of clear and complete information about rates, terms and conditions for available products and services, and to be charged only according to the rates, terms and conditions agreed to. Protection of these rights starts with a well informed consumers which means introduction of term educational programme. If introduced, these activities add to the visibility, accessibility, accountability, capability and credibility of the CAZ.

On the billing matters, consumers have the right to receive accurate and understandable bill for products and services they have authorized, and to fair, prompt and courteous redress for problems they encounter, and more importantly the right to safety and security of their persons and property.

The CAZ also has also initiated corporate social responsibility programmes for providing basic services to rural areas and economically depressed urban areas. For this purpose the

CAZ initiated the concept of a National Telecommunications Development Fund (NTDF) that will be used to provide some funding for development projects in these areas. The NTDF will be financed in part from operating fees imposed on service providers.

Perhaps, the Communications and Consumer Affairs department of CAZ to promote consumers' understanding and awareness of their rights in a competitive market is the need of the hour. This is where operational coordination between the Zambia Competition Commission (ZCC) and the Communications Authority becomes a necessity for enhancing the protection of the rights of Consumers.

3.1.3 Banking and Financial Sector

The effort to reform the banking sector in Zambia began during the 1990s. There are roughly 20 commercial banks in Zambia. A few of these are local, but the sector is dominated by a handful of multinational banking institutions viz. Standard Chartered, Barclays, and Stanbic Bank. The Zambia National Commercial Bank (ZANACO) used to be a state owned entity with branches in many rural areas. After a long period of discussion and delay Government recently allowed private equity participation in the management of ZANACO.

3.1.3.1 Insurance and Financial Services/share market

Zambia allows private sector participation in the insurance sector but in a limited way. There are a few private firms functioning in the sector, some of which are service providers hailing from other countries. The Lusaka Stock Exchange (LuSE) was established with preparatory technical assistance from the International Finance Corporation (IFC) and the World Bank in 1993. The LuSE and Securities and Exchange Commission (SEC) were established under the multi component private sector development programme. The stock exchange sector has grown considerably with public listing of shares by several large and medium business sized entities.

During the early 1990s, a number of small-scale commercial banks emerged and set up branches in several parts of Zambia. Many of them could not withstand competition and collapsed due to their own inadequacies. As a result, Zambia has made considerable improvements in enhancing bank supervision and regulation of commercial banks by the Bank of Zambia (the country's central bank). The Banking and Financial Services Act of 1996 has been amended to bring it into line with best practice and internationally accepted standards for licensing, prudential regulation and supervision. These measures have raised standards of responsibility, accountability, and professional competence and integrity among directors and senior bank personnel. In 2001, the Banking Act was amended to accommodate for the regulation of micro-finance institutions.

Improvements in the bank and non-bank financial regulatory framework have not brought about the much desired changes in the nature of competition. Anti-competitive behaviour is common in the sector and abuses of dominant behaviour are implied in many of the services provided. The interest rate and service charges of the banking institutions are quite high which makes it difficult for the common people to access these services. The main consumer concerns in the sector comprises of

- Exorbitant service charges for by most banking in keeping an account
- High interest rates and unregulated behaviour of non banking lending institutions in the rural areas

3.1.4 Water and Sanitation Segment

In 2000, the population that had access to safe water was estimated at 58 percent¹². Access to safe water and sanitation services was greater in urban areas at 93 percent than in rural areas, which had only 38 percent. To increase the service delivery in this sector, Government established the National Water and Sanitation Council (NAWASCO) to regulate the commercialisation of water supply and promote private sector participation in this sector. Towards this end, seven water companies were established between 1999 and 2000 and Asset Holding Company was established to provide water and sewerage services to mining townships on the Copperbelt province of Zambia.

It is not easy to judge the growth of competition and its effect on consumer welfare in this sector and the performance of the new regulatory body. Despite the privatisation, no areas except in the Copperbelt have more than one provider hence, there is no choice for the consumers to switch connection. What is clear is that the NAWASCO will have to put competitive pressures on the utilities and municipal companies for improving service delivery. The introduction of water watch groups provided a forum for the consumers to bring up their complaints about the service delivery in the sector.

3.1.5 Public Transport Sector

The public road transportation sector has undergone drastic liberalisation measures since the early 1990s. The four main categories in the sector are road, railway, air and water transport. Zambia formulated a national transport policy in 2002 to provide the framework for the development of the sector.

In the roads sector, the public provider has almost disappeared in the passenger bus services segment and private providers filled in the vacuum by introducing public transport arrangements in the towns and semi -urban areas, inter city and also inter-state routes.

In the railway sector, government found a strategic partner to manage the Railway Systems of Zambia (RSZ). The sector has not equipped itself to attract commuters but mainly used for goods transportation. The airline sector has been privatised and many players are operating in the national and regional routes.

The key consumer concerns in the transport sector is concerning to road traffic segment, where the Road Transport and Safety Agency (RTSA) is the sector regulator. They are the following:

¹² Government of the Republic of Zambia, Economic Report 2000, Ministry of Finance and Economic Development, Lusaka.

Safety of passengers: Due to weak regulation and inadequate attention given on fitness and roadworthiness of public passenger vehicles, accidents are quite common and this weakness infringes a basic consumer right to safety. There is also inadequate attention given on ensuring that speed limiters are being fitted properly to check over speeding.

High fares and periodic fare hikes: The bus fares are unreasonably high in Zambia, partly due to high fuel charges. Another reason is that fares are not set by the regulator but decided and agreed by the operators, who then communicate to RTSA. Whenever the fuel price goes up, the passenger fares are increased, but when the fuel price drops, the bus fares do not go down.

Poor maintenance of time schedules bus operators: Another serious consumer concern pertains to the absence of any regulation to maintain any time schedules in the operation of buses.

3.2 Civil Society's Analysis of selected segments from manufacturing and trading/retail sector

Agro-processing comprise of a significant part of manufacturing activities carried out in the country. Zambia's manufacturing base is small and it is predominantly geared towards the production of goods for domestic market. Both domestic and foreign companies play an important role in the production of a wide range of agro-based products, including maize meal, wheat flour, stock feed, brewery, dairy products, canned fruits and fruit-based drinks. Many of the large investments are not green field but they are primarily acquisitions of the parastatals through the privatisation process. In some cases, they are targeted at low-income domestic market and, therefore, the quality may not be based on export standards. This section looks at some of the consumer concerns in the sector.

3.2.1. Sugar

The Zambian sugar industry has an oligopolistic market structure with only three players namely Zambia Sugar Plc, Kalungwishi estates limited and Consolidated Farming Limited. The market is highly concentrated, with Zambia Sugar plc is the dominant firm with a monopoly market share of 93.54%, Kalungwishi and Consolidated with a market share of 0.35% and 6.11% respectively¹³. The market share of Consolidated is estimated to have gone up to 10% recently with expansion of the plant. Obviously, Zambia Sugar Plc is the dominant players as well as the price leader on the market.

The consumer concerns pertaining to the sector comprising the following:

- Exorbitant prices of sugar branded as refined household white sugar and household brown sugar
- Periodic shortages of sugar and frequent variations of prices

¹³ Zambia Competition Commission, Draft report on the Zambian Sugar Industry regarding the pricing of Industrial sugar on the market, Lusaka, 2006. p.5.

- Government restrictions on importation of household sugar with the introduction of vitamin A fortification provisions and special import licensing requirements
- Unreasonable differences in the price levels of domestic and export sugar
- Lack of choice in terms of whether to use vitamin A fortified sugar or not

In the case of sugar pricing, Zambia Competition Commission did conduct an investigation into the anti-competitive conduct such as excessive and discriminatory pricing by Zambia Sugar Plc in 2006. However the commission could not take any action due to unknown reasons. This incident seem to have tainted the public image of the Commission as it could not to ensure that large and multinational companies in Zambia comply with the competition regulations.

3.2.2 Cement

Cement sector is also characterised by the predominance of Lafarge Zambia (previously Chilanga Cement Plc) with over 80% market share. The other minor players are Ndola cement and Oriental Quarries and some imports is certain provinces. Like the market structure of sugar sector, Lafarge got the dominant position in the Zambian market through the privatisation deal between Government of Zambia and Commonwealth Development Corporation (CDC) of a parastatal company and the subsequent take over of the privatised firm by Lafarge in 2001.

Chilanga Cement Company (CCC) is the only cement-manufacturing firm in Zambia and it has near total monopoly share in Zambian market. At the time of the bid to take-over Chilanga Cement by Lafarge in 2001 through a regional acquisition, the cement market share in Zambia was 82 percent to Chilanga cement, 15 percent to PPC of South Africa and 3 percent to Unicem of Zimbabwe.

On the basis of the competitive and public interest assessment of the transaction, it was recommended by ZCC secretariat that the Board of ZCC should not authorize the Lafarge takeover of the Chilanga Cement PLC. This advice was based on the premise that the authorization of the transaction would lead to serious adverse effects on the then existing and future tempo of competition in Zambia and the Eastern and Southern Africa region. As a result the ZCC board rejected the take over notification.

However, the parties subsequently appealed to a specially constituted ZCC Board to review this decision on the basis that they further provided assurances that specifically addressed the concerns raised by the Commission when it refused to accept the notification. As a follow up ZCC authorised the take over with a few undertakings by Lafarge.

The key competition and consumer concern pertaining to the sector is high prices of cement and constant shortages. Another concern is the unreasonable differences in retail prices in the southern and northern parts of the country, which does not correspond to distance or transportation costs. This gave the doubt that there is possibility of differential pricing policy applied by the company, especially in provinces where there is import competition. During 2006-2008 period, in response to complaints from consumers ZCC had to introduce a sort of retail price maintenance by authorised dealers to deal with price variations and artificial shortage of cement. Unfortunately this intervention by ZCC did

not benefit the actual consumers as middlemen rushed to buy the cement meant for reserve and reselling at a higher price to consumers.

3.2.3 Maize Meal

Maize meal (mealie meal) is the staple food of Zambia. Since the privatisation of the parastatal maize procurement, milling and marketing companies during the 1990s, a handful private sector milling companies have emerged as the key players in the segment. One of the dominant firms in the segment is the National Milling Corporation (NMC). The maize mill owners have also formed a loose network and association called Millers Association of Zambia (MAZ), which has been observed as an influential association in influencing the prices of maize meal on the market. During the later half of 2008, when there was public concern on the high prices of maize meal the Association came out justifying the reasons for the high price and later jointly but voluntarily decided to reduce the prices.

Consumer groups are concerned about the growth of Millers Association of Zambia with similarities to a price cartel in the segment. There are many who feel that MAZ, not just an association of like minded business but a forum to influence the supply and price of the commodity. Hence, it is important that ZCC to take note and investigate the activities of the Association of see whether there is any restrictive practices by the millers in Zambia.

3.2.4 Bakery and Confectionery Segment

Bakery segment is another important contributor to the food sector of Zambia. The bakers in Zambia also formed an association called “Bakers Association of Zambia” with the idea of promoting the common interest of the members. Consumer groups have noticed a pattern in the recent times that whenever there is a price hike of bread by one or two large players, all the bakers increase the prices within a short span of time, citing the reason as high prices of wheat and other inputs. It has also noticed that once the price has gone up at a particular season, there is hardly downward movement of prices for this basic commodity. Stakeholders suspect the possibility certain subtle anti-competitive practices promoted through the association. Therefore, there is need for timely intervention by ZCC to study the situation and ensure consumer welfare in the segment.

3.2.5 Retail Trading

The retail trading sector is characterised by a handful of large supermarkets and chain stores in the urban areas and thousands of medium and small firms located throughout the country. This section looks at some of the practices in the large super markets. Among the South African owned super markets in the grocery, fruit and vegetable segments, a key consumer right, the right to choice has been frequently violated the following factors:

- Despite the shop is large enough with a many varieties of goods, for certain items like potatoes, bananas, tomatoes, etc the only choice available is imported South African products, and local brands are invariably not found or sold at all in the shop.

- For certain packed food items such as corn flakes, oats, cereal meals, fruit juices etc. the common pattern one could observe in these stores is that of choice. For certain period the consumers find promotion of certain well known brands of products but other brands disappear from the shelves and this pattern continues for some other products. This may not a real shortage but the deliberate decision to limit choice and appease all the major suppliers at the expense of consumer choice and welfare.

If the purpose of the competition law is to promote fair trading and consumer welfare, it is important to ensure that consumers should be allowed to enjoy the right to choice at least in large supermarket, where abundant and quality local products should be displayed side by side with imported products.

Civil Society Views on Competition Law and Consumer Welfare

As part of the process of gathering inputs and views from stakeholders under the research, the study team has been able to interact with several individuals and experts on the subject. It has been observed that the level of awareness of competition and consumer protection concerns has been quite low among a lot of civil society activists. There were only a few, who attended the consultative meeting aware of the existence of a competition and fair trading law in Zambia. Incidentally, many of those who were aware thought the law was inadequate to address present challenges. Further, many stakeholders from the civil society did not know that consumer protection provisions actually exists in the competition law of Zambia. Considering the fact that, many civil society activists could not provide serious and detailed inputs on the gaps in the existing legal and institutional system for administering competition law, the research team also carried out focus group discussions with subject experts and practitioners in the area of competition policy and consumer welfare.

In this context it is pivotal that ZCC should intensify awareness rising activities regarding the provisions of the law on competition so that everyone concerned should know about it and how its application protects the consumers. It is however important that the best advertisement for enhancing awareness is not seminars or advertisement on the television screens but tangible actions taken to protect the vulnerable consumers from serious abuses by unscrupulous business elements.

However, the study provided a forum to reach consensus among businesses and consumers alike that Zambia needs a competition law. In general, civil society's awareness of anti-competitive practices was much less than desired. There were a few who could list out anti competitive practices in various sectors of the economy.

The consultative meeting organised under the project provided a platform for discussion on competition issues. The participants comprises of representatives from various groups like consumer organisations, civil society organisations with a demonstrated interest in economic issues, interested persons from academia, competition and regulatory authorities, trade unionists, women's right activist, media, etc.

During the meeting it was observed that there are serious challenges faced by the Competition Authority (ZCC) in terms of their practical ability to deal with a host of basic but important complaints of disadvantaged consumers. The meeting discussed that according to Sec. 3 of the Act, Government parastatals are given exceptions from anti-competitive practices. Many felt that this may have a negative effect on competition in certain sectors where privatised parastatal firms emerged as private monopolies.

Moreover, the most activities of small business entities in the country are not being covered by ZCC as a result of the limitations of the Act, which restricts the observance to businesses, which have significant impact on the economy.

Consumer protection is a key concern, which has not been tackled efficiently by ZCC during its decade long existence. Political will is one of the important factors in tackling some of the issues concerning competition and consumer welfare in Zambia.

It is not the sheer number of players on the market, which will determine low prices but the fear of long hand the law should be able to influence the behaviour of even monopoly firms. Whistle blowers provisions and legal protection of whistle blowers as applied in USA should be replicated in Zambia with the ultimate objective of protecting consumers.

The two nominees in the ZCC Board who are appointed by the Minister to represent consumer interests, should ideally be drawn from persons who have first hand experience in dealing with consumer issues. It has been observed in the past that consumer representatives in the ZCC Board could not make an tangible contribution in fulfilling their responsibility by serving consumer interest in this institution.

Conclusions

Economic liberalisation, deregulation and commercialisation of public services are some of the key features of economic reform in Zambia. Private Sector Reform programme is the latest variant of practical changes that are introduced in the economy through public private dialogue. There is renewed interest in promoting consumer welfare through better regulation and competition. It is believed that economic regulation and competition policy should encourage decentralised decision-making in business, ensure efficiency, productivity and growth.

All the sectors and segments which we examined in the chapter have considerable limitations in complying with competition and consumer welfare issues. The regulatory bodies established after the formation of Zambia Competition Commission (ZCC) do have some elements competition and consumer protection provisions unlike older ones such as the Road Traffic Commission for instance, which entertains anti-competitive associations and practices within the sector.

While the sector regulatory bodies in Zambia is found to be well equipped in dealing with service delivery from a more technical level, the ZCC is well placed in regulating market behaviour and ensuring consumer welfare. There is a very strong case for harmonising regulation of technical and market behaviour of economic agents among the

sector regulators. This is more so in the manufacturing and banking and non-bank financial services sector where anti-competitive market behaviour still goes unchecked.

It is argued that regulatory reform in Zambia is a component of domestic economic restructuring. Further, coherent competition and consumer welfare policy enhance the realisation of benefits of other public policies. Therefore, full benefits of economic reform policy are more easily realised when there is complementary interface between competition and regulatory bodies. It is therefore necessary to prepare comprehensive competition and consumer welfare policy guideline for smooth implementation of the law and institutional liaison among sector regulators.

Chapter 4

The Competition and Consumer Welfare Policy & Strategies: A Submission

On the basis of the reviews of literature on current Competition and Fair Trading Act, analysis of civil society submissions and consultative research carried out under the project “**Civil Society’s Proposals for Zambia’s Competition and Consumer Welfare Policy**”, we have compiled the following submission for the consideration of the Ministry of Commerce, Trade and Industry. The chapter comprises of two broad thematic sections. The section one elaborates the proposals for vision, mission, goals, guiding principles, objectives and implementation strategies of the competition and consumer welfare policy. The section two covers the proposals for institutional arrangements and implementation mechanism.

4.1 Competition and Consumer Welfare Policy

4.1.1 Vision and Mission

It is proposed that the new policy framework ought to have the vision of guiding the implementation of the Competition and Fair Trading Act and principles for fostering/enhancing economic growth and development of Zambia by not only regulating and controlling anti-competitive business practices of economic agents in the market but also achieving competitive outcomes, such as economic efficiency, better choice, health, safety and ensure consumer welfare, accessible and cost effective consumer redress system and value for money to consumers.

The Mission of the policy framework must provide a functional, competitive and congenial business environment to private sector and public sector of various sizes to operate and grow within the framework of fair competition, economic justice, good corporate governance, consumer protection and public welfare.

4.1.2 Goals and Objectives

The proposed policy framework should have the objective of enabling Zambia to realize the benefits of a modern Competition Policy and Law, which includes economic efficiency, diversification of the economy, checking monopolies, limiting concentration of economic power, more choice, provision of quality products, safety and lower prices to the consumers. The policy therefore must have the objective of attaining improved competitive and consumer welfare outcomes in the country.

4.1.3 Guiding Principles

It is proposed that the following must be the guiding principles of the policy:

- Competitive market environment reinforced by a functional competition and consumer policy and law is part of sound public policies that appears to positively contribute to economic growth, and thereby poverty reduction. If functioned within the right regulatory framework, competitive market is a powerful mechanism that works to enhance public welfare.
- There are strong links between competition policy and numerous basic pillars of economic development. There are evidences from several countries in the world suggesting that implementation of a functional competition and consumer protection regime have contributed to increased economic growth, productivity improvement, investment and better living standards to the people. Markets are powerful mechanisms that, within the right framework, work to society's advantage.
- However, markets sometimes fail and one of the causes of market failure is anti-competitive practices, inappropriate regulatory system and the misuse of market power by vested interests. Competition law is an important complementary tool of competition policy. When used appropriately, it provides the tool for identifying anti-competitive practices, analysis to the effects and sufficient teeth for applying corrective measures.
- The existence of competitive markets can reduce the scope for corruption, because impersonal market forces replace other types of decision-making. Having a competition law extends this benefit, because of the increased transparency that is provided for investigating prohibited business practices.
- Competition and Consumer Welfare Policy is to ensure fair play, promote public welfare, economic efficiency in production and distribution in all sectors of the economy.

4.2 CUTS' ANALYSIS OF CIVIL SOCIETY SUBMISSIONS

As part of the stake holder consultation under the project, the study team has been able to interact with several institutions, individuals and subject experts on the subject. It has been observed that in general the level of awareness among the civil society representatives on how to deal with competition and consumer protection matters has been low. For instance, some of civil society members, who attended the consultative meeting were not aware of the existence of a Competition and Fair Trading Act in Zambia. Further, many stakeholders from the civil society did not know that certain aspects of consumer protection provisions actually exists in the Competition and Fair Trading of Zambia. Incidentally, many of those who were aware of the law, felt that the existing legislation was inadequate to address present day competition and consumer welfare challenges in Zambia.

Considering the fact that, many civil society representatives could not provide substantial technical inputs on existing gaps in the legal and institutional system for administering competition law, the research team also carried out focus group discussions with subject experts and practitioners in the area of competition policy and consumer welfare. The detailed submissions received from civil society stakeholders contained a lot valuable information on types of anti-competitive and unfair trading practices that prevail in various sectors of the economy. The following section contained a brief analysis of the civil society submissions, which covers not only the types of anti-competitive practices but also perceptions on the performance and effectiveness of the Competition Authority.

A quick analysis of the sector focus of submissions of the stakeholders found that most them were pertaining to the following sectors viz. Retail Trading , Agriculture, Financial Services, Energy, Health and Transport.

Retail Trading

The key proposals of civil society with regard to the retail sector in Zambia is that there should be closer monitoring to ensure that dominant firms in the sector do not abuse their market power to strangle their competitors or compromise quality which might harm consumers. There are many retail outlets currently replace “no receipts, no refunds” notices, thereby depriving buyers the right to return defective goods, and there are also firms engage in deceptive advertisements. Stakeholders also feel that there is need to enforce public health and safety standards for all goods supplied and sold to consumers.

With regard to the policy, the CSO proposal is to review and harmonize different pieces of legislations that seek to protect consumers and/or promote consumer welfare, and consolidate those aspects into the competition policy and law. On the institutional mechanism CSO has proposed to establish a competition and consumer complaints tribunal to expedite response, mediate, and resolve complaints and disagreement on matters of consumer rights. It could be observed that the key concerns of the civil society pertaining to the sector is the inadequate legal framework as well as institutional mechanism in monitoring and enforcement of consumer rights.

Agriculture

CSOs observed that there are several competition and consumer welfare related concerns in the agriculture sector, which required to be brought under the ambit of the competition policy and law. For instance, small scale farmers find it difficult to compete with large mechanised firms in terms of crops prices. The prices of products from large farms in an area are considered by buyers as indicative prices of the products.

Out grower schemes or contract farming is another area where unfair trading seems to take root in the agricultural sector. In some of the out grower schemes, the providers of inputs and technical expertise reach an agreement with the farmers to supply outputs on prices not based on prevailing market value but a price agreed much before the season. These prior agreed prices would normally be much lower than the market price under this tied sale arrangement. The prices offered by abattoirs for the livestock sales from rural

areas often involve exploitative and unfair prices, due to low levels of market information and similar factors.

The main recommendations of Civil Society is that Competition Agency should be able to periodically monitor the business conduct of inputs, seed and fertiliser suppliers, crop procurement agencies and rural input credit agencies, to ensure that the players comply with the Competition and Fair Trading Act in letter and spirit. It is to be observed that some of the issues which were raised by the CSOs representing the sector include land ownership rights to rural women, inability of small farmers to compete with large commercial farmers, may not fully fall under competition and consumer welfare policy, but more to do with policies in equity and distribution of wealth.

Financial services sector

Although the level of competition in the financial sector in Zambia seems to have improved in the last two decades, there is public concern regarding unfair trade practices in the micro-credit services markets. Micro-credit institutions provide short-term credit facilities to households at interest rates several-folds higher than the commercial bank interest rates and on less favourable terms, which are not clearly explained to customers. Civil Society Organisations feel that there is need to regulate and enforce consumer protection laws in the industry. The suggestions are that the proposed Competition and Consumer Policy should ensure that measures and strategies to increase competition and reduce cost of micro-credit availed by enterprises and households. At implementation level Competition Commission should be working with the Bank of Zambia to conduct periodic reviews and to monitor the terms and conditions under which micro-credit is provided to households and ensure fair play in the sector. The proposals fall well within the mandate of any comprehensive competition and consumer welfare policy.

Energy sector

The CSO view is that, in the electricity segment competition in generation and distribution can be justified and opened to participation of the private sector, while the transmission sector, by virtue of the nature of the investment, should be encouraged to remain as a state monopoly.

There are public concerns that ZESCO has high operational cost, inefficient and offers poor services with high electricity tariffs. There are currently difficulties in regulating prices and competition in those industries where sector regulators seem to have overriding powers to even sideline the Competition and Fair Trading Act. There is a general feeling that consumer interests are not taken care of by the electricity regulator. This is due to lack of representation from its board by ZCC or indeed consumer protection bodies.

An assessment of the CSO submission draws the following points. The Competition Commission should have the mandate oversee competition issues in the energy sector, and that the commission should be formally consulted by the sector regulator(s) on actions perceived to affect competition and consumer welfare in the sector. The proposed competition policy should provide for regular review by the sector regulator and the

Zambia Competition Commission of the tariffs as well as the conduct and performance of the utility companies.

The competition policy should require the ZCC to oversee and enforce consumer protection and welfare provisions utility sector, which looks like a fair assessment to improve the delivery by the utility companies. The submission of CSO's is derived from the fact that there is inadequate co-ordination among the sector regulators and Competition Authority due to lack of legal framework in this regard. The suggestion is that bringing the utility sector under the broad ambit of competition and consumer welfare policy would be helpful for the consumers.

Health and Pharmaceutical Sector

CSO submissions on the sector highlights that consumers of health services have difficulty in demanding for quality services and seeking redress in case of injury and even death due to negligence on the part of the health practitioners. Therefore, it appears that consumer protection and welfare provisions of the Act are not adequately enforced in this industry, prices of health services are high and not much space exists to enable the customer claim damages or refunds for defective or substandard health service.

The responsibility to protect the consumers lies in the government and the key is in improving enforcement of consumer protection laws. The government has delegated this task of inspection and enforcement of consumer protection laws under the Public health Act Cap 295 and the Food and Drugs Act Cap 303 to the local authorities; City, Municipal and District Councils. However there has been no supervisory and enforcement capabilities are very weak and no formal institutional framework exist to ensure that these provisions are adequately enforced by the Ministry of Local government and housing.

Promoting competition in the pharmaceutical industry; regulating licensing; and improving transparency in listing of drugs on the governments list of essential drugs can help to promote competitiveness of the industry subsequently reducing escalating prices of essential drugs. If prices of essential drugs are not monitored, retail and drug companies can inflate prices passing the cost on to consumers. The competition policy should provide for effective collaboration between the Pharmaceutical Regulatory Authority and other sector regulators, and the Zambia Competition Commission to ensure effective monitoring and enforcing of anti-competitive regulation and consumer protection policies in the pharmaceutical industry.

Public Transport Sector

The key concerns of CSOs in the sector is mainly pertaining to fares, passenger rights and public safety. The competition policy should provide for bringing the sector under the consumer protection framework. The Competition Commission along with the sector regulator should establish mechanisms to monitor adherence to established services standards. The policy should provide for enhanced representation of consumer protection organizations and especially the transport and passenger associations in the Board of the sector regulatory and Competition Authority.

To sum up, the analysis of the CSO submissions on various sectors highlight the fact that there is a clear need to draft a comprehensive policy and legal framework covering both competition and consumer welfare elements. The proposed new policy should provide for harmonization of roles, functions and mandates of sector regulators and the proposed Competition and Consumer Protection Authority and devise an appropriate institutional and legal framework for effective collaboration among the regulatory institutions, which is lacking at present.

It is observed that sector regulatory bodies in Zambia are found to be well equipped in monitoring of service delivery from a technical level, the Competition Authority is well placed in regulating market behaviour and ensuring consumer welfare. There is a very strong case for harmonising regulation of technical and market behaviour of economic agents among the sector regulators including, utilities, health, agriculture, manufacturing and banking and non-bank financial services.

4.2.1 Policy Prescriptions

The proposed competition and consumer welfare policy must be designed to attract and to meet the needs and concerns of both business sector and consumers by providing a level playing field for fostering, each others interest in the best possible manner.

- (i) The policy must provides for effective partnerships in achieving fair trading in the economy and also to encourage dialogue between government, regulatory bodies, private sector, and civil society.
- (ii) The policy should guide to make appropriate amendment to the existing Competition and Fair Trading Act, to address the gaps identified in the chapter 3 of this document such as the provision of exemptions given to various entities, the criteria applied to determine dominant position, etc

It is envisaged that further disinvestments or privatisation of parastatal companies in the utility sector will be carried out only by complying with competition and consumer welfare principles and allowing the learning period necessary for the Government and consumers to adjust and prepare themselves for an open and private sector driven market environment.

- (iii) The policy must promote the growth and development of manufacturing and service sector in the small and medium enterprise sector through providing a competitive and level playing business environment in engaging in upstream and downstream business and value added activities.

The consumer protection is an interdisciplinary area; therefore activities in this area must fall under various ministries, and institutions. Consequently, it is of essential importance that all consumer protection bodies, including those in governmental departments and

well as autonomous regulatory framework, be in line with the national policy framework and directed towards reaching synergies within the general objectives:

- reaching a higher level of consumer protection that is a common denominator of all objectives pursued by this policy;
- To ensure right to choice, information, health and safety of consumers.

It is recommended that this national policy on competition and consumer welfare must have the following mutually complimentary and reinforcing objectives:

- integration of competition and consumer protection provisions in all policies, having impact on the situation and interest of consumers in the market;
- effective implementation of the consumer protection legislation;
- effective market control of the product safety and protection of economic interest of consumers;
- strengthening cooperation with regulatory bodies, inter-governmental and non-governmental organizations
- efficient, speedy and low cost settlement of consumer disputes by creating appropriate mechanism
- harmonising competition and consumer welfare activities of sector regulators in line with the Competition and Fair Trading Act by addressing policy coherence issues in a systematic manner

The primary focus of consumer welfare provisions in this policy must be to safeguard the rights, interests and safety of consumers. It is recognised that consumer policy is a cross-cutting subject encompassing matters that fall within the spheres of a variety of ministries and affiliated agencies.

The Ministry of Commerce Trade and Industry must be entrusted with the task of developing and ensuring the cohesive implementation of competition and consumer welfare policy within the government administration. Civil Society and consumer protection institutions and agencies should be actively involved to play a complimentary role in sensitisation and the overall implementation of the competition and consumer welfare policy.

Efforts to check the production of and marketing of unsafe and unhealthy goods should be given high priority in this policy as well as raising awareness among consumers to enhance their ability to cope with misleading advertisements and other unfair trade practices. Other priority areas of focus include good institutional systems for dispute resolution/consumer remedies and measures designed to reduce the risks and costs to consumers in connection with goods that do not comply with standards. This policy must equip the public to make the right choices as consumers and deals with complaints between consumers and suppliers of goods and services.

This policy document should encourage the Government, parastatal, public-private partnership ventures, business sector to improve opportunities for redress of grievances of

consumers in their respective spheres of activity. It also encourages the stakeholders to carryout information dissemination activities to enable people to deal with consumer protection and welfare issues themselves and plays an important role in educating public opinion.

The policy must encourage research on competition regulations, consumer welfare, market distortions, various unfair trade practices for providing a basis for achieving consumer-policy objectives, safeguarding the needs of consumers, and producing knowledge that is essential to innovation and the development of new goods and services.

4.2.2 Consumer Rights and Responsibilities

In accordance with the United Nations Guidelines on Consumer Protection, the following are consumer rights, which the policy identifies as cardinal for consumer welfare.

- The protection of consumers from hazards to their health and safety;
- The promotion and protection of the economic interests of consumers;
- Access of consumers to adequate information to enable them to make informed choices
 - according to individual wishes and needs;
- Consumer education, including education on the environmental, social and economic impacts of consumer choice;
- Availability of effective consumer redress;
- Freedom to form consumer and other relevant groups or organizations and the opportunity of
 - such organizations to present their views in decision-making processes affecting them;
- The promotion of sustainable consumption patterns.

The proposed policy document must address consumer welfare issues in a comprehensive manner. Legal provisions for consumer protection are contained in various pieces of legislation relating to sales of goods Act, public health Act, Standards Act, Weights and Measures and the Competition and Fair Trading Act. All these laws at present certain aspects of consumer welfare. In the event that there is no competition, the intervention of a competent regulatory body would be required. But, if there was no competent regulator, it would still be up to the Government to apply measures that would compel such a firm to conduct as if it were in a competitive market.

4.2.3 The Competition and Consumer Welfare Strategy

This “competition and consumer welfare strategy” therefore must go beyond preparing a competition and consumer protection policy framework. This policy strategy should include the following:

- a clear vision of the linkage between competition, economic efficiency and consumer welfare, including its potential role in poverty reduction in country;

- identify the potential intervention areas, sectors, segments and devise appropriate intervention strategies;
- to create coherence and consistency among the diverse sectoral and regulatory policies that have a bearing on competition and consumer welfare decisions;
- Introduce measures necessary for improving the quality of goods and services through introducing appropriate standard and labelling requirements for domestically produced goods and imported items, whenever appropriate.
- work to create a hospitable and coherent competition and sector regulatory environment; and provide a level playing field for large, medium and small enterprises in the country;
- Create appropriate support structure and institutions necessary for promoting institutional linkages between competition authority and sector regulatory institutions.
- Promote research and product testing activities that help to lay the foundation for suitable actions on key consumer issues as well as the ramifications of public measures and products available on the market

This policy must provide for a comprehensive approach in implementing Zambia's competition and consumer welfare policy and strategy by giving adequate importance in sound regulatory coherence and co-ordination. Keeping these factors in mind, long term, medium term and short term focus of Zambia's competition and consumer welfare strategy shall include the following:

- Fostering economic growth and thereby reduction of poverty through economic efficiency and competitive business environment;
- Strengthening the growth and dynamism of the small and medium sector enterprises by improving competitiveness, product diversification and innovation;
- Capitalizing institutional capacity building opportunities available through bilateral, regional, and multilateral arrangements
- Creating a fair competitive market environment in priority sectors of the economy as identified by the Commercial, Trade and Industrial Policy with a view to increase employment and reduce poverty.
- Improving the quality of various goods and services produced or sold in the country through enhancing standards related requirements and ensuring lower costs to the consumers

4.2.4 Strategies and Plan of Action

- Establishing an integrated institution called "Zambia Competition and Consumer Commission (ZCCC)" by making appropriate changes in the ZCC.

- strengthening public, private and civil society and partnerships and co-operation in the implementation of competition and consumer welfare law
- Restructuring the Board of the ZCC to make it more representative to address consumer protection issues as well as enhancing the technical competence through performance based Board selection process and training.
- Enhancing institutional co-operation of the proposed ZCCC with the Zambian Bureau of Standards (ZABS), a statutory body responsible for certification and implementing regulations, and the Zambia Weights and Measures Agency and other relevant bodies
- The policy encourages cooperation between Government of Zambia and other countries, with regional bodies such as Common Market for Eastern and Southern Africa (COMESA) and Southern African Development Community (SADC) on Competition and Consumer Welfare Policy harmonization, capacity building through regional competition policy and consumer welfare facilitation arrangements. Under this, it is the policy of the government to promote cooperation with United Nations Conference on Trade and Development (UNCTAD). Efforts must be made to ensure that the policy is in conformity with the requirements of various trade and development agreements which Zambia is a party such as the World Trade Organization (WTO) agreements and other relevant agreements.

4.3 Rationalized Institutional Framework: CSO's Submission

4.3.1 The Institutional Arrangements

The policy must provide for necessary structural changes in the Zambia Competition Commission including the board of commissioners, secretariat and other relevant agencies handling competition and consumer protection issues with the objective of providing efficient and cost effective consumer redress and remedies.

4.3.2 The Regulatory Coordination

This policy must provide for necessary steps towards bringing effective coordination arrangements among relevant regulatory and standards agencies including the Zambia Competition Commission, Zambia Bureau of Standards, Zambia Weights and Measures Agency, Communication Authority, Energy Regulation Board, NAWASCO and others. This is based on the need to achieve consistency in the formulation, implementation and coordination to achieve the desired and the best regulatory practices commensurate with needs of promoting competition and consumer welfare.

4.3.3 The Role of Line Ministries

The key roles played by the line ministries in the facilitation, implementation and promotion of Competition and Consumer Welfare in Zambia are recognized in this policy document. In view of the government's commitment to reduce administrative barriers and also provide a congenial business and investment environment in Zambia, this policy must provide for developing an effective inter ministerial coordination and planning

arrangements on Competition and Consumer Welfare. Nevertheless, the line ministries shall have their respective jurisdiction retain the overall policy and implementation oversight.

4.2.4 Advisory Council on Competition and Consumer Protection

In order to promote structured and meaningful dialogue with stakeholders in policy formulation, periodic review and also evolve national consensus on critical competition and consumer issues, it is proposed to establish an Advisory Committee on competition and consumer welfare by involving the government, regulators, private sector and the civil society. The establishment and running of the council should be facilitated by the Ministry of Commerce, Trade and Industry.

Chapter 5

CIVIL SOCIETY SECTOR SUBMISSIONS¹⁴

5.1 Retail Trading Sector

The retail sector is one of the important sectors where promotion of competition can yield visible and immediate results for consumers. The retail sector in Zambia has evolved through two significant phases. From dominance of state owned retail outlets, namely the Zambia Consumer Buying Corporation (ZCBC), National Import and Export Corporation (NIEC) to one that is now private sector driven and dominated by foreign retail chain stores (Game, Shoprite, Spar) coexisting with small locally owned retail shops. This shift has led to development of the retail sector and its contribution to the Gross Domestic Product (GDP) has increased substantially. Consumers now enjoy greater product range and better retail services including enforceable warranties and guarantees in some shops.

However, the retail sector needs to be closely monitored and competition laws enforced to ensure that the dominant firms in the sector do not abuse their market power to undercut their competitors or increase prices or compromise quality to harm consumers. Some retail outlets currently replace “no receipts, no refunds” notices, thereby depriving buyers the right to return defective goods, or goods whose quality is different from what was portrayed in the advertisement. And more importantly, there is need to enforce public health and safety for all goods supplied and sold to consumers. Further, there is need to strongly enforce display of prices on all goods sold by retailers and wholesalers to ensure that consumers can make informed choices. The future objective would be to implement unit pricing scheme, so that wherever possible, all retail prices are displayed by unit of measurement along side the full product price.

With regard to the competition in the retail sector, civil society wishes to make the following submissions for consideration:

The competition policy should review and harmonize different pieces of legislations that seek to protect consumers and/or promote consumer welfare, and consolidate those aspects into the competition law and policy.

Establish a consumer complaints tribunal to expedite response, mediate, and resolve complaints and disagreement on matters of consumer rights.

Promote effective collaboration between the Zambia Competition Commission (ZCC), other government agencies and civil society in monitoring and enforcement of consumer rights.

¹⁴ The Compilation of the Sector Submission in this section was done by Dr. Samuel Bwalya, Consultant

Mainstream gender issues in the competition policy and consumer rights, and prohibit abusive use of promotional advertising that may be interpreted or construed as demeaning of either gender or children, or generally regarded as offence by the general public. Ensure that all consumer goods and services are properly labelled and contents clearly described to enable the consumer discriminate between competing brands and make effective choices.

5.2 Agriculture

The agriculture sector has the potential for growth and poverty reduction in the country. Competition in the agriculture sector is expected to enhance efficiency, increase investments and productivity, generate decent employment and ensure national food security. It is however important to note that there are significant imbalances and sensitivities in the agricultural sector that requires policy attention. These imbalances are persistent and have made agricultural liberalization; especially liberalization of maize marketing politically contentious. Small scale farmers face great difficulty in competing with large commercial farmers both in local and foreign markets and need to be shielded from competition to allow them to grow and compete favourably in the market. Subsistent and small scale farmers contribute significantly to food security, albeit their weak production technologies and lack of access to credit, markets and agricultural inputs.

Agriculture is a strategic area for Zambia's economic diversification programme. Attaining this objective will require a growing and competitive domestic agriculture sector that could ensure food security, provide employment and ensure consumer welfare. If properly exploited, agriculture could help Zambia to reduce the level of poverty, diversify the economy and promote economic growth. In recent years, the Government introduced a series of agricultural policy reforms aimed at increasing food production, removing barriers to private sector entry into agricultural activities and attracting foreign direct investment in the sector.

The policy measures cover a wide range of areas, such as access to credit and inputs, fertilizers, technology, marketing system, infrastructure development, the facilitation of extension services and supporting the development of supplier networks within the sector.¹⁵ Among its main objectives are to encourage market linkages and commercialization of surplus products by small-scale farmers. The horticulture and floriculture is considered as a strategic area of high growth potential.

There are several competition and consumer welfare related concerns in the sector, which might require the intervention of the competition law and authority. There are several large scale firms and many medium and small scale firms operate in the sector. The small farmers find it difficult to compete with large mechanised firms in terms of crops prices. The prices of products from large farms in an area are considered by buyers as indicative prices of the products. Therefore the sector requires some degree of level playing field.

¹⁵ Ministry of Finance and National Planning (2002), Zambia: Poverty Reduction Strategy Paper – 2002-2004, Lusaka, Zambia.

Out grower schemes or contract farming is another area where unfair trading seems to take root in the agricultural sector. In some of the out grower schemes, the providers of inputs and technical expertise reach an agreement with the farmers to supply outputs on prices not based on present market value but a price agreed much before the season. These prior agreed prices would normally be much lower than the market price under this tied sale arrangement. The prices offered by abattoirs for the livestock sales from rural areas often involve exploitative and unfair prices, due to low levels of market information and similar factors.

This sector, hence need to be brought under the ambit of competition and consumer protection law. The Competition Agency should be able to periodically monitor the business conduct of inputs, seed and fertiliser suppliers, crop procurement agencies and rural input credit agencies, to ensure that the players comply with the Competition and Fair Trading Act in letter and spirit.

In order to stimulate growth and productivity of small-scale farmers into large and competitive entrepreneurs, they need to be exempted from certain competition provisions. Civil society therefore submits that:-

Provide for periodic review of government intervention in agricultural marketing to minimize or eliminate adverse impact of such interventions on competition in the sector, unless justified under public interest argument.

Should provide for the development of the regulatory framework that would ensure that land markets operate efficiently whilst promoting and protecting land acquisition rights by women especially rural women.

5.3 Financial services sector

The financial services sector is regulated under the Banking and Financial Services Act and operations in the market is closely monitored by the Central Bank-the Bank of Zambia. The Financial Services Act also provides for close collaboration between the Bank of Zambia and the Zambia Competition Commission on issues of competition in the financial sector.

Although the financial sector competition seems to have improved in the last two decades, there is public concern regarding competition and consumer protection policies in the micro-credit services markets. Micro-credit institutions provide short-term credit facilities to households at interest rates several-folds higher than the commercial bank interest rates and on less favourable terms, which are not clearly explained to customers. We, as civil society organizations feel that there is need to regulate and enforce consumer protection regulations in the industry and help to reduce the high interests charged in micro-credits as these impose enormous burden on micro-enterprises and households who have little or no access to other sources of credits.

This leads to the following policy proposals:

The Competition and Consumer Policy should ensure that measures and strategies are developed and implemented to monitor and enforce competition regulations to increase

competition and reduce cost of micro-credit to micro-enterprises and households. There is need for the competition commission, working with the Bank of Zambia to conduct periodic reviews and to monitor the terms and conditions under which micro-credit is provided to households and ensure that consumers are not being exploited by the lending institutions.

5.4 Energy sector

The energy sector in Zambia, and in particular the electricity sector has special and interesting attributes that characterizes its structure, conduct and performance. Firstly, the electricity sector is dominated by a single state monopoly, the Zambia Electricity Supply Corporation Limited (ZESCO) which owns generation, transmission and distribution of electricity in the country. Copperbelt energy is perhaps the only company that is currently engaged in electricity marketing to mining companies. Control of generation capacity and transmission infrastructure is a typical feature of the industry with huge set-up cost and hence largely undertaken by the government. Nonetheless, competition in generation and distribution can be justified and opened to participation of the private sector, while the transmission sector, by virtue of the nature of the investment, is encouraged to remain as a state monopoly.

A look at competition in the electricity sector is motivated by the fact that the existing public monopoly firm faces little incentives to induce efficiency, contain costs and pass efficiency benefits to consumer in terms of low prices and a more efficient and predictable service. At present, there are public concerns that the ZESCO has high cost, inefficient and offers poor services with high electricity tariffs. Others however felt that ZESCO's tariffs are too low and need to be raised to enable the utility company cover its operational costs, and invest additional generation capacity. And that private investment in generation and distribution can not be attracted into the sector at the prevailing tariffs rates. Tariff setting is authorized by the Energy regulation Board, which is the sector regulator. There are currently difficulties in regulating prices and competition in those industries where sector regulators seem to have overriding powers to even sideline the Competition and Fair Trading Act.

There is a general feeling that consumer interests are not taken care of by the electricity regulator. This is due to lack of representation from its board by ZCC or indeed consumer protection bodies. In 2007, electricity production increased while rehabilitation of electricity infrastructure and generation is still on going. ZESCO requested 60% tariff increase in 2008, however, Energy Regulation Board (ERB) approved tariff increases of 26.8% for residential consumers and 1.3% for commercial consumers. In 2009 and 2010, further increases have already been approve by ERB although they are on conditions ZESCO meets the performance benchmarks, which include reducing its wage bill from 49% to 30% of the total budget by 2010.

In the electricity industry, the extent to which competition can improve service delivery is not clearly established, but this depends on how competition affects each segment of the electricity market—generation, transmission, and distribution. We therefore feel that unbundling of ZESCO will improve efficiency and bring new investment into the

industry. The establishment of new independent power plants will enhance competition and improve efficiency and help to meet the rapidly growing demand for electricity in the economy.

The justification is that in some segments of the electricity industry (generation and distribution), economic and technical characteristics make it possible to introduce competition; in other segments (transmission) they do not. For example, electricity generation if separated (unbundled) from transmission and distribution, can attract a number of independent and competing providers in this market segment thereby making the sector more competitive. Transmission networks in contrast are a classic example of a natural monopoly, as it is not economical to build parallel networks to transmit the same energy. At the end of the supply chain electricity, the distribution segment needs to be made competitive by attracting more players in the market.

Given the foregoing, civil society submits that:

The competition commission should be strengthened to oversee competition issues in the energy sector, and that the commission should be formally consulted by the sector regulator(s) on actions perceived to affect competition and consumer welfare in the sector. The competition policy should provide for regular review by the sector regulator and the Zambia Competition Commission of the tariffs as well as the conduct and performance of the utility company quarterly and disseminate findings to all stakeholders.

The competition policy should require the ZCC to enforce consumer protection and welfare provisions in the Competition and Fair Trading Act particularly to ensure damage compensation consumers resulting from negligence or suboptimal service delivery by the utility company.

Competition reforms and other sector reforms should improve the operation of the electricity market by partly improving the effectiveness and efficiency of consumer protection policies.

The government needs to consider unbundling of ZESCO into three different companies, each responsible for generation, transmission, and distribution, and further to open up the industry to new entrants in the generation and distribution market segments. Government through the competition policy should place safeguards on anti-competitive behaviour in the electricity market and prohibit consolidation of monopoly power through cross-ownership of assets in different segments of the electricity industry.

Telecommunication sector

The telecommunication sector is yet another sector where the competition policy would be useful in stimulating competition and protecting consumer rights. It is also a sector where enforcement of competition legislation may be complicated by the presence of a sector regulator, the Communication Authority (CA). The telecommunication sector encompasses, among others, mobile and landline telephone services as well as broadcasting and internet services. The telecommunication infrastructure is owned by government through the Zambia Telecommunication Company Limited (ZAMTEL), which had been sole provider of telephone services until in the late 1990s when other mobile telephone services providers were licensed, but ZAMTEL still remains the sole provider of landline telephone services in the country. Just like the case of ZESCO, most

people are concerned about the inefficiencies of ZAMTEL and argue for greater improvement in the operations of ZAMTEL.

Others still feel that the utility company needs to be restructured and unbundled so that landline telephone services and mobile telephone services are separately managed. They also feel that all major fixed telecommunication infrastructure should be managed separately by the a state-owned company and all telecommunication services providers should have full access and utilize this infrastructure to provide services to their clients. This will enable all service providers to effectively compete, improve services to their clients, and improve consumer welfare through reduced tariffs for telecommunication services. The current model where each mobile telephone service provider sets up its own exclusive distribution infrastructure or network is inefficient and increases cost of service to consumers.

In addition, while there are three major mobile service providers, it is very difficult to tell whether this is the optimal number of companies that can be supported by industry, and further lingers around the mechanism and process for issuing spectral licenses and whether indeed there is free entry into the industry. It is difficult to ascertain that there is adequate competition in the industry, that consumers are not exploited by increasing price of service, that there is no (tacit) collusive behaviour among the three providers, and by principle that promotional expenses are not excess.

Therefore, we believe that consumers can benefit more if entry is not restricted and dominance by large players is regulated. The Government can not assume that competition will occur automatically as a consequence of opening up the markets, it needs to play a more proactive role in regulating market conduct and performance by putting in place an appropriate competition law and policies as well as institutional and regulatory framework for the sector.

Entrants such as the multinationals in the industry have contributed significantly to enhancing the industrial performance of the telecommunications industry as measured by out put growth, network expansion and productivity improvements. However, civil society is concerned about the high cost of making local mobile calls within and across networks, which at present are than twice more expensive than making an international call from the USA to Zambia. There is need to regulate this market as the number of plays in the market limits competition and generates conditions for collusive behaviour and incentives to fix prices.

Civil society is concerned that consumers are being exploited and need to be protected by the competition policy and by expeditiously enforcing consumer protection and welfare provisions of the Act. We as civil society wish to submit that:-

The competition commission needs to be strengthened both in terms of legal powers and resources to monitor, regulate and enforce competition and consumer protection and welfare provisions of the Act in the sector. Tariffs charged by mobile telephone services providers are reviewed periodically and any increases are justified and approved by the

competition commission in conjunction with the sector regulator(s) to protect consumers from unjustifiable price increases

The competition policy should provide for a review of the market structure of the telecommunication industry, and in particular, the mobile telephone services sub-sector, and the spectral licensing system and other regulations that impede competition and raise the cost of service provision

The competition policy should seek to harmonize competition policies with policies crafted and implemented by sector regulators with a view to streamlining monitoring and enforcement of the competition law and policy in the industry.

The competition policy should provide strategies that would promote investment in the telecommunication sector by making the mechanism for allocating spectral licenses more competitive.

5.5 Health and pharmaceutical sector

The market for health services is more complicated and operates differently from other physical goods markets. In Zambia, the health services sector is liberalized, with government clinics and hospitals co-existing with privately owned health facilities. A full price is paid for health services provided in private health facilities but despite professional and ethical conducts being regulated by the Medical professional body, anti-competitive behaviour is not effectively monitored and enforced in the sector.

Moreover, consumers of health services have difficulty demanding for quality services and seeking redress in case of injury and even death due to negligence on the part of the health practitioner. Therefore, it appears that consumer protection and welfare provisions of the Act are not adequately enforced in this industry, prices of health services are high and not much space exists to enable the customer claim damages or refunds for defective or substandard health service.

The responsibility to protect the consumers lies in the government and the key is in improving enforcement of consumer protection laws. The government has delegated this task of inspection and enforcement of consumer protection laws under the Public health Act Cap 295 and the Food and Drugs Act Cap 303 to the local authorities; City, Municipal and District Councils. However there has been no supervisory and enforcement capabilities are very weak and no formal institutional framework exist to ensure that these provisions are adequately enforced by the Ministry of Local government and housing.

We acknowledge the difficulties enforcing certain aspects of consumer rights, but the conduct and performance in the private health sector can be monitored and enforced by the competition commission to promote competition, reduce collusive behavior and promote efficiency and cost-effectiveness, access to quality health services and promote fair pricing of health services and products such drugs. Promoting competition in the pharmaceutical industry; regulating licensing; and improving transparency in listing of drugs on the governments list of essential drugs can help to promote competitiveness of the industry subsequently reducing escalating prices of essential drugs. If prices of

essential drugs are not monitored retail and drug companies can inflate prices passing the cost on to consumers.

In the same vein, the private education schools, colleges and universities need to regulate to protect consumers of these services. It appears that the competition commission has not been effective in monitoring and enforcing consumer rights in social services sector, and it's the submission of civil society that these sectors should also be closely monitored by the competition commission in conjunction with education sector regulators.

Civil society organizations submit that:-

Competition and Consumer Policy should provide for mechanisms to monitor and enforce anti-competitive behaviour of the private health services market and prevent escalation of costs paid by consumers (patients) of health services

The competition policy should provide for effective collaboration between the Pharmaceutical Regulatory Authority and other sector regulators, and the Zambia Competition Commission to ensure effective monitoring and enforcing of anti-competitive regulation and consumer protection policies in the pharmaceutical industry

Competition commission also needs to monitor and enforce anti-competitive behaviour of the private education services market and prevent escalation of costs paid by consumers of education services

Competition policy should build on the "Hippocratic Oath" that requires all physicians to keep patients from harm and any form of injustice, and further to ensure that the medicines they administer to patients are safe and approved by the Pharmaceutical Regulatory Authority.

Ensure that advertising of pharmaceutical products (drugs and medicines) are informative and not misleading, offensive, exploitative and gender insensitive, and promote the broader "public interest".

The competition policy should provide for the development of an effective institutional framework for monitoring and enforcing consumer protection laws in all sectors.

Public Transport Services

The public transport sector is one of the sectors that have received considerable attention by policy government. Following the liberalization of the sector and liquidation of the United Bus Company of Zambia (UBZ) and reduction of taxes on importation of buses in the early 1990s, investments in the sector significantly increased, and the number of operation have increased several-fold over the last decade. The sector provides employment and contributes to government revenue through payment of presumptive taxes on mini-buses. Competition in the public sector has significantly increased since the liberalization of the sector in 1992/3.

However, despite the phenomenon growth in the public transport sector over the last decade, several strategies and measures need to be developed to improve service, guarantee comfort and public safety of passengers, other motorists and indeed pedestrians. However protection of passenger rights and public safety is the major challenge facing the sector.

As civil society, we are concerned about the rights and welfare of passengers and we would like our submission to be considered in the formulation of the competition policy and strategies that would help to guarantee public safety to all passengers and also improve the public transportation system and service in the country.

We therefore submit that:-

The competition policy should provide for the establishment of an effective regulatory body or institutional framework for regulating pricing of public transport services (bus fares, luggage charges) and establish and monitor adherence to established services standards.

Provide for enhanced representation of consumer protection organizations and especially the transport and passenger associations to ensure effective advocacy for protection of passenger rights.

Water supply and sewage services

Like most utilities, water supply and sanitation services are characteristically monopolistic and hence need to be closely regulated to promote efficient service delivery and protect consumers. The National Water and Sanitation Council (NWASCO) were established by government to regulate commercial water supply and sanitation services provided by water utilities. NWASCO monitors water quality, services hours, and most importantly the overall performance of water utility companies. On the basis of the overall performance of the utility company, which is determined using quite elaborate performance indicators and parameters, NWASCO regulates water tariffs that can be charged by the utility company.

It is envisaged that by monitoring performance and turnover of utility companies and regulating tariffs by providing tariff guidelines, NWASCO is able to monitor excessive use of monopoly power to exploit consumers. In addition, NWASCO is mandated to undertake consumer awareness programs regarding consumer rights and especially on matters relating to illegal disconnections of service, consumer right to information on services provision and service disruption procedures. Through consumer awareness programs, NWASCO should provide information on the performance of utility companies to consumers, and indeed on its own programs.

Given the role and mandate of NWASCO as a sector regulator, it is important that the role of NWASCO and the ZCC are harmonized to ensure effective implementation of the competition law and policies, including issues of consumer protection and welfare in this sector.

We therefore submit that:-

The competition policy should provide for the harmonization of roles, functions and mandates of the ZCC and the NWASCO and provide for an appropriate institutional framework for effective collaboration.

To harmonise competition law and policy with water sector legislations and policies to ensure consistency in policy implementation.

5.6 Submissions on Implementation Issues

The competition policy should be developed to support and complement the existing competition law of the country, and implemented by the Zambia Competition Commission, in collaboration with all relevant government agencies and civil society organizations. We recommend civil society, and in particular those with expertise and experience in consumer protection and advocacy to be adequately consulted and represented on the Governing Board of the ZCC, and further on the proposed Consumer Protection Tribunal.

Policy submissions:

The proposed Competition Policy should provide for an effective implementation framework and also introduce mechanisms for meaningful consultation and participation of civil society in the monitoring of the policy implementation process, advocacy and evaluation of policy outcome.

5.7 Summary of Stakeholder Submissions

This section summarizes policy submission that may be considered by the Ministry of Commerce Trade and Industry. Civil society submits that the competition policy:-

- Should review and harmonize different pieces of legislations that seek to protect consumers and/or promote consumer welfare, and consolidate those aspects into the competition law and policy.
- Should establish a competition and consumer complaints tribunal to receive, response, mediate, and resolve all complaints and disagreement on matters of competition and consumer rights.
- Should promote effective collaboration between the Zambia Competition Commission (ZCC), sector regulators, other government agencies and civil society in monitoring and enforcement of consumer rights.
- Mainstream gender issues in the competition policy and consumer rights
- Ensure that all consumer goods and services are properly labelled and contents clearly described to enable the consumers to discriminate between competing brands and make informed choices.
- Should provide for periodic review of government intervention in agricultural marketing to minimize or eliminate adverse impact of such interventions on competition in the sector, unless justified under public interest argument.
- Should ensure that measures and strategies are developed and implemented to monitor and enforce competition regulations to increase competition and reduce cost of micro-credit to micro-enterprises and households. There is need for the competition commission, working with the Bank of Zambia, to conduct periodic reviews and to monitor the terms and conditions under which micro-credit is provided to households and ensure that consumers are not being exploited by the lending institutions.

- Should ensure that the ZCC is strengthened to oversee competition and consumer issues in the energy sector, and that the commission should be formally consulted by the sector regulator(s) on actions perceived to affect competition and consumer welfare in the sector.
- Should provide for regular review by the sector regulator and the Zambia Competition Commission of the tariffs as well as the conduct and performance of the utility company quarterly and disseminate findings to all stakeholders.
- Should require the ZCC to enforce consumer protection and welfare provisions in the Competition and Fair Trading Act particularly to ensure damages/compensation to consumers resulting from negligence or suboptimal service delivery by service providers
- Tariffs charged by mobile telephone services providers shall be reviewed periodically and any increases be justified and approved by the Competition Commission in conjunction with the sector regulator(s) to protect consumers from unjustifiable price increases.
- The competition policy should provide for a review of the market structure of the telecommunication industry, and in particular, the mobile telephone services sub-sector, and the spectral licensing system and other regulations that impede competition and raise the cost of service provisions.
- Competition Commission needs to monitor and enforce anti-competitive behaviour of the private health services market and prevent escalation of costs paid by consumers (patients) of health services.
- The competition policy should provide for effective collaboration between the Pharmaceutical Regulatory Authority and other sector regulators, and the Zambia Competition Commission to ensure effective monitoring and enforcing of anti-competitive regulation and consumer protection policies in the pharmaceutical industry.
- The Zambia Competition Commission also needs to monitor and enforce anti-competitive behaviour of the private education services market and prevent escalation of costs paid by consumers of education services
- The competition policy should mainstream all rights as stated in the Zambian constitution Article II part 3, CEDAW on gender and African Charter on Human Rights to recognize the right.
- The policy should ensure broader representation of civil society organization especially consumer organizations on the Governing Boards of the ZCC and other regulatory bodies in sectors where protection of consumer welfare and public interest is most critical.
- The competition policy should provide for the establishment of an effective regulatory body or institutional framework for regulating pricing of public transport services (bus fares, luggage charges) and establish and monitor adherence to established services standards. It should also provide for enhanced representation of consumer protection organizations and especially the transport

and passenger associations to ensure effective advocacy for protection of passenger rights.

5.8 Consultation Process and Methodology

Competition and consumer welfare policy covers a wide spectrum of issues that cut across major sectors of the economy hence represents broad range of stakeholder interests. Competition and consumer welfare policy issues are complex hence requires adequate knowledge and information to be able to fully and effectively debate and engage in policy dialogue.

The process of gathering, compiling and developing civil society policy submissions contained in this document evolved through three stages.

The first stage involved a review of the relevant literature on competition law and policy in Zambia and also in other countries. The purpose was to enable the researcher to identify the key competition issues that would be of great importance and relevance to civil society.

The second stage involved was holding a one-day sensitization workshop for civil society organizations, where civil society organizations were invited to participate and debate on competition issues as they relate to the Zambian economy. At this workshop, there presentations by subject experts on the key concepts and issues surrounding competition law and policy. Stakeholder institutions such as the Zambia Competition Commission made elaborate and informative presentation on the competition issues broadly, exposing the challenges both in terms of legislation and policy design in the context of Zambia. The workshop encouraged debate on the competition law and policy issues and established consensus on how the civil society consultation process on the development of this document had to be conducted. It was agreed that a draft civil society position document be drafted by CUTS and circulated to civil society organization for their inputs and comments, and in the process establish consensus on issues to be presented to government. Comments from civil society organization on the draft policy submissions and additions were therefore compiled and consolidated in this document, which is prepared in accordance with the terms of reference of the study for submitting policy submissions. This process, we believe, was participatory, consultative and efficient.

The third stage comprised of carrying out focus group discussions with subject experts with the help of a structured questionnaire. The objective was to gather technical and expert information, from persons, who are well acquainted with competition and consumer policy and law.

Annexure

Consultation Process Report

1. Key Elements of the Project Consultation

This section outlines the consultation process and field research carried out under the project to gather relevant information and views of stakeholders for the purpose of drafting the report.

The key elements of the civil society consultation comprise of the following:

- Specific and detailed comments and proposals received from sector stakeholders and representative organizations.
- Focus group discussions carried out with subject experts with the help of a structured questionnaire.
- Hosting a consultative workshop to clarify the existing competition legislation and administrative mechanism and gather the views of stakeholders belonging to diverse sectors on the expected changes and improvement in the system.

Civil Society Organizations (CSOs) have been considered as an important stakeholder in the social and economic policy debate as well as opinion making process in Zambia. There has been a renewed interest among CSO in Zambia on key policy issues such as poverty reduction, economic regulation, competition and consumer welfare. Civil Society Groups in Zambia have been quite vocal in advocating that the liberalized economic model that Zambia has been pursuing would require better regulatory system to promote broad-based economic growth and public welfare. There is a broad consensus among CSOs in Zambia that in a liberalized economic order, the market outcomes should be fair, equitable, and ensure that small producers are not unduly disadvantaged by dominant firms through abuse their market power. It is believed that through effective representation of consumer interests and advocacy, civil society organizations can play an active role in providing inputs to policy formulation, and monitor unfair trade and anti-competitive business practices of economic entities.

In this way, CSOs in Zambia are not only the key dialogue partners in policy formulation, but also active stakeholders with the capacity to gather and articulate critical views from the public. Therefore, it is imperative that Government should engage civil society organizations as key stakeholders and continue to ensure their participation in competition and consumer welfare policy formulation and implementation.

It is commendable that, through this project, Government has engaged CSOs in gathering inputs for developing a comprehensive competition and consumer welfare policy. The report mostly comprises of consolidation and analysis of views gathered through focused interviews, literature review, written submissions and views expressed at a consultative workshop on the subject. The consultation process was carried out by Consumer Unity and Trust Society (CUTS), who have got several years of research and advocacy experience in the area of competition law, policy, and consumer protection.

The Civil Society organizations being consulted under the project were able to provide detailed and specific inputs on the following segments of the economy.

Retails Trading

Agriculture

Banking and Financial Services

Energy

Telecommunications

Health and Pharmaceuticals

Public Transport

Water and Sewerage Services

2. List of Civil Society Organizations Being Consulted

- Zambia Consumers Association
- Zambia Consumer Alliance
- Civil Society Trade Network of Zambia
- International Body Action Network
- Zambian Women in Agriculture
- Transport and Passengers Association
- Aids Alliance
- Economic Association of Zambia
- E-Brain Zambia
- Jesuit Centre for Theological Reflection
- One world Africa
- Evangelical Fellowship of Zambia
- Farmer Organisation Support Project
- Commuters Rights Association of Zambia
- Zambia Competition Association
- Society for Family Health
- Zambia Federation for Employers

The submissions are organized as follows: Each of the sections has a brief situation analysis to explain the context of submissions.

3. List of Persons Responded to Questionnaire Survey/Focus Group Discussion

Mr. Muyunda Illilonga, Executive Secretary, Zambia Consumers Association
Mr. James Mwansa Musonda, Competition Policy Expert, COMESA
Prof. V. Seshamani, Faculty of Economics, UNZA
Mr. Frywell Chirwa, Principal, Cavendish University and former Director ZCC
Mr. Muyenga Atanga, Economic Consultant and Former Director, ZCC
Mr. Elita Chita, Acting Asst Director, Bank of Zambia
Mr. Steven Musuku, Senior Economist, Bank of Zambia

4. Summary Report of the Consultative Workshop: Engaging CSOs in the Formulation of Competition Policy in Zambia, 29th October, 2008, Lusaka

As part of the consultative research work and also in conformity with the terms of reference of the project, Consumer Unity and Trust Society (CUTS) organized a one day workshop meant to gather views from Civil Society Organisations (CSOs) and to develop consensus on key issues that would incorporate into the submission and proposals for the formulation of the competition and consumer welfare policy.

Objectives

The objectives of the workshop were to:

- To provide an opportunity to civil society organisations who have information on Competition law in Zambia to share their experiences and propose areas of improvement
- To gather views from CSOs on the role of competition and consumer welfare legislation in contributing to poverty reduction measures in Zambia.
- This information would further feed and provide proposals into the Zambia Competition and consumer Welfare policy currently being formulated by MCTI.
- Encourage CSOs engagement in monitoring and influencing debates on competition and consumer welfare issues in Zambia.

Presentations

1. Introduction to the Competition Law in Zambia by Mr. Thula Kaira, Executive Director, Zambia Competition Commission

In his presentation, The Executive Director (ED) of ZCC gave an overview of the competition law of Zambia as well the operational structure of the Competition of Commission. He provided the background of the Competition and Fair Trading Act which ZCC was using to regulate competition in Zambia. The Act according to the ED fell under the realm of “anti-trust law”, “anti-monopoly” or simply “competition law”. He elaborated in detail the following aspects of Zambia’s Competition Law and its administration.

1. A brief on competition law
2. Exemptions and exceptions in the law

3. Interface with Industry sector regulations
4. Anti- competitive trade agreements
5. Various Sections in the law
6. Mergers and Acquisitions
7. Enforcement of the law

In his conclusion, Mr. Kaira stated that competition law falls in the category of business law. In practical terms and also from the examples of many advanced countries, business laws needed to be enforced in a speedy, efficient and effective manner. It was important not to overburden business with abstract laws that were complicated hence the need to have a more flexibly robust and dynamic law based on sound policy. After this presentation, he officially opened the workshop.

2. An overview of competition policy issues in Zambia – Dr.Samuel Bwalya, Consultant

Dr. Bwalya in his presentation gave the general scenario of the competition law in Zambia and shed more light to the participants on the non- existence of the policy in Zambia, and the important need to formulate one. He also highlighted the fact that civil society engagement in developmental issues and also policy advocacy matters are critical in ensuring better policy decision-making as it promotes collective decision making and effective participation of the people. Since competition and consumer policy is a critical instrument for promoting economic growth and securing public welfare of the people of the country, it is important that CSOs are actively engaged in the process.

The mains points of his presentation were given below:

1. The importance competition issues for civil society
2. Why does competition and consumer policy critical for economic welfare
3. Objectives of competition and consumer policy
4. The link between competition policy and poverty reduction
5. Role for civil society in policy advocacy
6. Challenges of implementation
7. Experiences from other countries and international perspective

In his conclusion, Dr. Bwalya stated that the proposed competition and consumer policy should reflect Zambia's unique development needs and be able to promote competition with a human face to minimize adverse effects. He emphasized the need to have civil society inputs into the competition policy formulation process that would promote welfare.

Plenary

In the afternoon, participants were divided into two (2) groups to look into the following three (3) questions:

- (1) What are the welfare impacts of competition on the Poor?
- (2) How do Anti-Competition Practices affect the poor?
- (3) How can Competition Policy and Law be grafted and implemented to help the Poor?

The first group was asked to look at questions one (1) and two (2), and the group two (2) discussing the question three (3).

GROUP 1

On the basis of group discussion, the group one identified the following aspects as the welfare impacts of Competition on the Poor. They analyzed and identified the impacts in two ways, positive and negative.

The positives effects were that, with competition on the market there would be quality service delivery thereby improving welfare of the poor. Another aspect was that Corporate Social Responsibility (CSR) is enhanced as a result of competition. Competition among firms could increase employment opportunities, as well as graduation of the informal sector into the formal sector. Further, the group suggested that competition promoted integration of SME and improved employee benefits.

On the negative aspect, according to the group is that competition disadvantaged those who are poor and that it created barriers to entry in certain sectors as capital rich dominant firms have several advantages and weak companies were forced to close up.

1. On the aspect of how anti-competitive practices affected the poor, the group listed the following as some of the effects:
 - Bargaining power is reduced
 - Prices of goods and services are inflated
 - People are left with limited or cheaper alternatives
 - Promote free riders
 - Disincentive for Business
 - Restricts the process of development by the private sector
 - Quality of goods and services are compromised
 - Distorts the market

GROUP 2

How can Competition Policy and Law be grafted and implemented to help the Poor?

The group two stated that competition policy and law could be developed and implemented by doing the following:

- By understanding and reviewing the Zambia Competition and Fair Trading Act
- Looking at the SWOT (Strength, Weaknesses, Opportunities and Threats) of the Act
- Critically analyzing the Act so that the policy is in line with the objectives
- Improving the Act through appropriate amendments
- Creating awareness among stakeholders using media and most importantly through tailor-made media programmes on existing Act & need for the policy
- Measures to promote gender equity and preferably advantage the poor
- compel firms to dedicate a portion of their profits to society as part of their corporate social responsibility
- establish a balance between the welfare of both the producers and Consumers in the market
- Include everyone in the market place so that no one should be disadvantaged
- Once a certain turnover has been attained a company should be listed in the stock market exchange for the locals to benefit
- Establishing a competition authority which is appropriate to the type of market economy of Zambia

Way forward and Conclusions

It was evident from the discussions at the workshop that not everyone was conversant with issues of competition and thus, a lot of education especially among the CSOs is still needed. As a way forward, it was agreed that in order to get valuable views and contributions on how best to engage the various CSOs, more information on competition in Zambia and the ZCC Act would be circulated to all the participants and other key stakeholders. This would help generate desired input on the part of CSOs. The workshop was closed with a vote of thanks from both, the lead consultant as well as CUTS who organized the event.

5. Identification of Competition policy and law related constraints affecting consumers in Zambia with a view to propose a functional competition and consumer welfare policy

Questionnaire

Instructions:

1. This survey is part of a stakeholder consultation under a study to provide civil society's proposal for drafting a Comprehensive Competition and Consumer Welfare Policy for Zambia. The main focus of the survey is to understand prevalence of anti competitive practices in sectors of the economy and to propose effective/ functional/practical policy measures to promote consumer welfare in Zambia.
2. The Interviewer should inform the respondent that information provided in this questionnaire will be treated with high confidentiality

3. The interviewees may not readily know about many of the concepts/subjects being asked in the questionnaire. Therefore, the interviewers need to explain, elaborate, and provide real-life example whenever necessary. Please also prompt and probe wherever appropriate.
4. Additional comments by interviewee should be encouraged and carefully noted by the interviewer. The space given in the questionnaire does not limit the length and scope of the answers.

Anti-competitive practices are mainly of the following types:

1. **Price fixing:** Competitors at any levels in the production-distribution process enter a collusive agreement (form a cartel) and fix prices.
2. **Market sharing:** Two or more firms agree to allocate markets among them, i.e., predetermine who shall deal with whom and where to avoid competition.
3. **Bid rigging:** Firms participating in a bid for a tender, secretly arrange among themselves as to which one will make the lowest offer.
4. **Tied selling:** A supplier forces a buyer interested in a desired product to buy another product (tied-product) along with it, even when the buyer is not interested in the tied-product.
5. **Exclusive dealing:** Here the producer forces an agreement with the retailer prohibiting the latter from dealing with competing producers or distributors.
6. **Concerted Refusal to deal:** Firms at different levels of the same production-supply chain agree among themselves not to sell or buy from certain customers or suppliers.
7. **Resale Price Maintenance:** The producer dictates the resale price of the goods that would be charged by the retailers.
8. **Price discrimination:** This refers to a situation when a firm sets prices of its goods/services at will, depending on the circumstances.
9. **Entry barrier:** This refers to certain situations where the entry of new players in the market is hampered either by existing players/government or others.
10. **Predatory pricing:** A situation when a dominant enterprise charges low prices over a long period of time to drive a competitor out of the market, or deter others from entering the market and then raises prices to recoup its losses

Question	Answers	Code	Practical examples, detailed comments, suggestions

			or justification for the answer
1. Name			
2. Designation			
3. Organisation			
4. Address and e-mail			
5. Do you think anti-competitive practices are quite prevalent in Zambia?	Insignificantly (or not at all) Moderately Significantly Hugely No Response	1 2 3 4 0	
6. If yes, how are consumers affected by such practices? Any examples?	Insignificantly Moderately Significantly Hugely No Response	1 2 3 4 0	
7. What are the most prevalent anti-competitive practices in Zambia? (Please note three most prevalent anti-competitive practices from the list in order of importance and their effect on the markets)	(i) (ii) (iii) Collective price fixing Market sharing Bid rigging Tied selling Exclusive dealing Concerted Refusal to deal Resale Price Maintenance Price discrimination Entry barrier for new firms Predatory pricing to finish competitors Any other (specify)	11 11 11 01 02 03 04 05 06 07 08 09 10 11	
8. Which sectors of the	(i)		

country's economy or segments of the production-distribution chain are most affected by such practices? (Please identify three most prevalent sectors in order of importance)	(ii) (iii) Financial sector, transport, telecommunications, Utility sectors (water electricity), retailing, wholesaling etc.		
9. Which anti-competitive practices are prevalent at the local level/provinces/or in some parts of the country?	(i) (ii) (iii) (Use codes in Q7)/name the practice	11 11 11	
10. Which anti-competitive practices occur at the national level or segments of the economy?	(i) (ii) (iii) No Response (Use codes in Q7)/name the practice	11 11 11 0	
11. Do some of such practices originate from outside the country as well (i.e., are MNCs ¹⁶ engaged in such practices)?	Yes No Can't say/don't know No Response	1 2 3 0	
12. Are there rules, regulations, laws and public institutions to check such practices in Zambia?	Yes No Can't say/don't know No Response	1 2 => 3 => 0	
13. If so, what are they?	(i) (ii) (iii) (iv) (v)		

¹⁶ MNC: Multi National Company

	No Response	0	
14. How effective are the existing regulations? Is serious action taken if these rules are violated and reported to authorities?	Yes, always Yes, sometimes No Can't say/don't know No Response	1 2 3 4 0	
15. Which agencies provide justice or redress to consumers in Zambia?	Name of the agency: No Response	 0	
16. Do you think that the existing rules, regulations and laws are sufficient to check anti-competitive practices? If not, please explain why?	Yes No Can't say/don't know No Response	1 2 3 0	
17. Do you think that a comprehensive policy and law should be enacted to check anti-competitive practices in Zambia?	Yes No Can't say/don't know No Response	1 2 => 3 => 0	
18. What should be the objectives and key focus of such a policy framework and law?	Focus on economic efficiency and consumer welfare Consider other socio-economic issues Can't say/don't know Any other No Response	1 2 3 4 0	
19. Should it cover all types of enterprises and persons and all areas of commercial activity?	Yes No Can't say/don't know No Response	1 => 2 3 => 0	
20. If the law should exempt certain business sectors, Who should be exempted?	Small and medium enterprises State owned enterprises Public utilities Import/Export-oriented units Any other (please specify) No Response	1 2 3 4 5 0	

21. What kind of powers should the Competition Authority have?	Both investigative and adjudicative Investigative only with adjudicative power vested with separate authority Investigative only with adjudicative power vested with courts Can't say/don't know Any other (specify) No Response	1 2 3 4 5 0	
22. Should the Competition Authority deal with unfair trade practices/consumer protection issues as well?	Yes No Can't say/don't know Any other (specify) No Response	1 2 3 4 0	
23. Should there be specialised sectoral regulators to handle consumer complaints for energy, water, telecom, drugs, etc., or the Competition Authority should be given power to handle such issues?	<i>Yes for some with Competition Authority having power over them</i> Yes for some with Competition Authority coordinating with them Yes for many of them with Competition Authority having power over them Yes for many of them with CA coordinating with them Any other (specify) No Response	1 2 3 4 5 0	
24. Should the law prescribe criminalisation for violations of the competition and consumer protection law?	Yes in some cases Yes in all cases No Can't say/don't know No Response	1 2 3 4 0	
25. Should there be exemption on sectors on public interest ground (e.g., technological advancement, protecting interest of SMEs or socially disadvantaged groups, employment)?	Yes No Can't say/don't know No Response	1 2 3 0	
26. How would such provision be protected against misuse?	Through well-defined guidelines Judicial scrutiny Can't say/don't know Any other (specify)	1 2 3 4	

	No Response	0	
27. Should the law have provisions to ensure right to private action? or right to approach court system on the matter	Yes No Can't say/don't know Any other (specify) No Response	1 2 3 4 0	
28. Do you think that the Competition Authority (CA) should introduce, decentralised, fast track and cost effective way of addressing consumer complaints?	Yes No Can't say/don't know No Response	1 2 => 3 0=>	
29. Are there state owned monopolies in Zambia?	Yes No Can't Say No Response	1 2 3 0	
30. Do state-owned monopolies (eg: ZAMTEL, ZESCO, etc) indulge in anti-competitive/ consumer practises? If yes, what are those practices?	Yes No Can't Say No Response	1 2 3 0	
31 If you encounter any anti competitive practice, how would you react?	Seek help from legislative or civic bodies Seek help from judiciary Seek help from consumer forums Any other (specify) No Response	1 2 3 4 5 0	

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