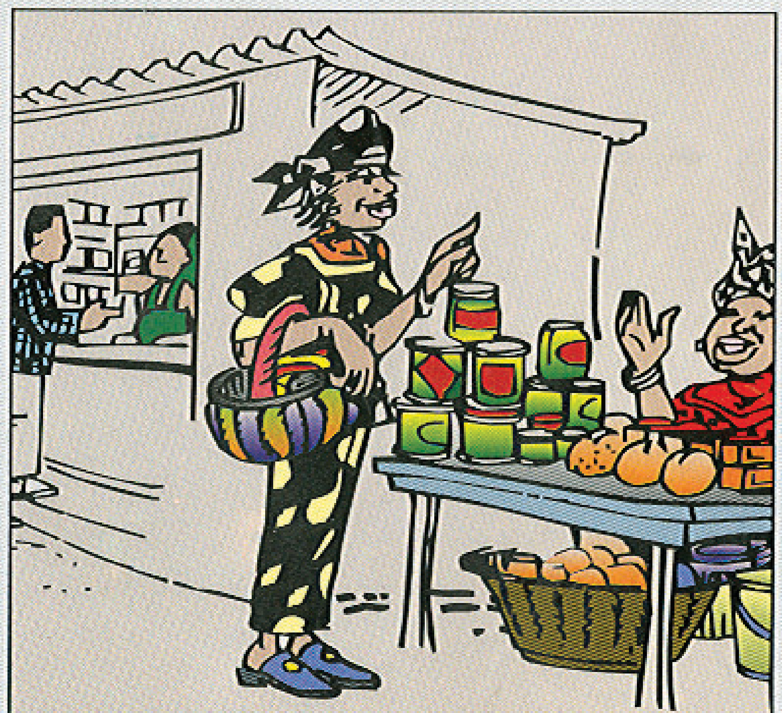
MARKET PRACTICES IN ZAMBIA

– Where do the consumers stand?



ZACA
Zambia Consumers Association

#0310

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Twenty Years of Social Change
1984 to 2003

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– Where do the consumers stand?

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CUTS Centre for Competition,
Investment & Economic Regulation

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Introduction

Zambia is approximately 75,000 square kilometres in land extent. Landlocked, the country has eight neighbours, which include Angola, Botswana, Namibia, Zimbabwe, Mozambique, Malawi, Tanzania and the Democratic Republic of Congo. The country is linked to Burundi and Rwanda through Lake Tanganyika.

Zambia attained her independence in 1964 from Britain. After independence, the economy grew steadily until the 1970s when things started to go wrong. Escalated prices in the world oil products, low copper prices and dependence on copper greatly contributed to the start of this economic slump whose effects are still being felt and currently the country manifests every reason to be classified as a very poor country. It is highly indebted with balance-of-payments problems.

In 1999, Zambia's GDP was estimated at US$3.1 bn and the population then was 10.2 million.[1]

Taking after the fashionable socialistic model of governance of the early decades, Zambia nationalised all the major private entities that had earlier driven the federal economy. State dominance in the ownership of companies prevailed until the early 1990s. However, with a change in government, this changed too. The new government brought in a policy of privatisation and liberalisation. To facilitate the process, two important institutions were set up, i.e. the Zambia Privatisation Agency (ZPA) and the Zambia Investment Centre (ZIC). These measures injected the spirit of independence into the bloodstream of the economy.

In order to enhance fairness and monitor, control and prohibit anti-competitive practices by enterprises that may arise in the market from this freedom, the Zambian Parliament enacted the Competition and Fair Trading Act in 1994. A statutory body corporate, Zambia Competition Commission (ZCC), was set up in May 1997 to administer the Act. ZCC has been operational since then and has achieved success in its efforts to enhance fairness in trade and industry in the country as well as in the region.

Economic Liberalisation

Economic liberalization entails an economic system that allocates resources in the economy through market forces and not through central planning or any other control system. Supply and demand determine market prices.

In Zambia, for instance, the Structural Adjustment Programme (SAP) is one of the measures that have been taken in the market-oriented reforms. Price deregulation and elimination of subsidies, privatisation of public entities and liberalisation of the trade and investment regimes have been major changes brought about in the economy during this time. The basic rationale is that this step would create entrepreneurial freedom which would stimulate their activity, efficiency and productivity and thereby enhance growth in the economy and improve consumer welfare on account of improved quality and increased quantity of goods and services at competitive prices.

Professor Oliver Saasa (2002) observes that government has also recognised that the benefits of market-oriented reforms are likely to be fully realised only if enterprises operate in a competitive environment, so that consumer preferences are reflected in the market responses[2] . Further, he observes, "It is recognized that a country, that has undertaken liberalisation measures, has every interest in ensuring that the welfare and efficiency arising from such measures are not lost due to anti-competitive practices of firms."

With the growth in the number of financial institutions, both bank and non-bank financial intermediation (e.g. insurance companies, pension funds etc) and investment security became imperative. This led to the establishment of the Lusaka Stock Exchange (LuSE) and the Securities and Exchange Commission (SEC).

Foreign direct investment policies tended to be slack and potential foreign investors did not have a level-playing field vis-à-vis domestic investors. With a liberalised foreign exchange market, there has been substantial improvement in the country's external trade. Professor Saasa notes that the economic dividends derived from competition enhancement in Zambia are perhaps best revealed in the non-traditional (i.e. non-copper) exports sector. As a matter of fact, Zambia has been trying to diversify its economy away from the copper-driven economy.

Competition Policy, Economy and Industry

Zambia's economy is small and, therefore, it is possible that one big enterprise may dominate one or several sectors of the economy in a number of ways. The

Competition Policy is relatively new and formative and it has to evolve more in the light of the recent implementation experience. Traditionally, Zambia has been highly dependent on imports. It has little market power to determine import or export prices. Some people correctly describe the country as a "price taker". Therefore, an open-trade policy is the easiest of all competition instruments available to the government. This, it is hoped, would help stabilise prices and thereby contribute to trade competition and economic progress.

There is little industrial activity in Zambia. Therefore, it imports most of its requirements. Most capital goods, finished products and intermediate goods are imported. There has been a high incidence of dumping of goods in recent years as a result of the open trade policy. This policy has, however, helped in diluting most of the monopolies that existed during the Second Republic under the reign of Dr Kenneth Kaunda. But, now, it has been reported, several cartels have emerged[3] .

Lately, a ban has been imposed on the import of a number of Zimbabwean goods. This measure has been taken especially in order to protect the local producers of certain goods and also on account of non-compliance with the required standards. The effect on consumers has been adverse and they have not welcomed this development as most of these imported goods actually prove to be cheaper than similar goods produced locally.

2

Anti-competitive Tendencies in Zambia

There are some reports of anti-competitive behaviour and unfair play in trade. The Competition and Fair Trading Act, 1994, sets out provisions to deal with such practices. The Act prohibits anti-competitive practices, mergers and takeovers, trade agreements and provides criteria for controlling monopolies and concentration of economic power. It also addresses issues relating to unfair trading and consumer welfare and protection.

2.1 Market Structure in the Zambian Economy

During the second republic, Zambia was largely a monopolistic economy with most of the enterprises wholly owned by the state. This was mainly due to its socialistic inclinations where the central planning system was envisaged to be the best forum for allocating national resources. Current trends, however, show an exactly opposite scenario after the introduction of a very ambitious national privatisation and liberalisation policy. The table below provides the changes in market structure from 1991 to 2001.

PRODUCT	SERVICE	NATURE OF MARKET	
	Year	1991	2001
Petroleum	Imports/wholesale	Monopolistic	Oligopolisitc
Fertilizer	Imports/wholesale	Monopolistic	Competitive
Copper	Export Marketing	Monopolistic	Competitive
Production Activities	Maize milling	Monopolistic	Competitive
	Vegetable Oil	Monopolistic	Competitive
	Cement	Oligopolistic	Monopolistic
	Textile	NA	Oligopolisitc
Services	Banking	Oligopolistic	Oligopolistic
	Broadcasting	Monopolistic	Oligopolistic
	Insurance	Monopolistic	Oligopolistic
	Telecommunications	Monopolistic	Oligopolistic

Source: CUTS (2002), Enforcing Competition Law In Zambia

2.2 Restrictive Business Practices (RBPs)

Earlier, there was a high incidence of restrictive business practices. However, there has been a reported decrease in the number of cases. For instance, in 2000, there were 29 cases of RBPs, whereas in 2001, only 11 cases were reported. This represents a decrease of 69%[4] ascribable mainly to three factors.

Firstly, awareness of the provisions of the Competition and Fair Trading Act has increased in the business community.

Secondly, it has been observed that business entities have been keen to seek advice from the Commission on various marketplace conducts that would breach the Act.

Thirdly, this decrease may also have arisen on account of inadequate staff in the Commission to detect and promptly respond to the reported anti-competitive practices.

In case of vertical restraints or restrictions, the law adopts a rule-of-reason (case-by-case) approach. Good examples of vertical restraints are exclusive dealings, exclusive territory, tying arrangements, e.g., in supply and resale price maintenance by downstream firms.

Several examples of cases handled by the Commission can be cited like Crosstalk Agencies Ltd against Global Logistics Ltd and also the case involving Game Stores.[5]

2.3 Abuse of Dominant Position of Market Power

An undertaking is unlikely to be dominant if it has less that 40% market share.[6] In Zambia, the Law requires dominant firms not to engage in acts that will pre-empt challenges from existing or potential competitors. In the current deregulation and privatisation policy, the place of abuse of dominance has been central, especially during the transition period.

2.4 Mergers and Takeovers

Under Section B of the Competition and Fair Trading Act, 1994, all mergers in the economy are subject to regulation. This includes mergers involving acquisition or establishment of control over a significant interest in the whole or part of the business of a competitor, supplier, customer or other person. Elements of distortion, prevention or choking of competition are what the Commission looks for. While horizontal mergers tend to raise serious competition concerns in Zambia, most vertical and conglomerate mergers or acquisitions tend, on an average, to find favour with the authorities.

2.4.1 Transitional Mergers

- Section 7(1) of the Competition and Fair Trading Act (1994) provides for the mergers or takeovers e.g. acquisition of assets or the shares of a domestic enterprise, formation of a joint venture within Zambia even where the acquirers or the founders are foreign enterprises. In case of domestic firms or the subsidiaries of participating enterprises, a merger effected abroad is held to be a merger completed in the Republic of Zambia. Mergers completed abroad have domestic effects if the merger affects the structural conditions of the domestic enterprises (inclusive of subsidiaries and other affiliate companies) which are party to the merger.

- As for mergers effected abroad between two directly participating enterprises:
  - There are domestic effects, if both enterprises were already operating in Zambia before the merger either directly or through subsidiaries or branches.
  - There may be domestic effects, if only one of the enterprises was operating in Zambia before the merger.

The approval process for mergers calls for considerable co-operation and input from the business. It is a taxing process and may take as long as three months before the actual authorisation or rejection.

Merger cases have been encountered most significantly in the operations of ZCC as reported both in the 2000 and 2001 ZCC annual reports. For instance in 1999, ZCC considered very complex cases such as the takeover of Northern Breweries Limited by Zambia Breweries Plc, the takeover of National Breweries Limited by South African Breweries Plc and the takeover of Cadbury Schweppes by The Coca-Cola Company. In all, over 13 cases were considered in 2001 alone. Cases such as the takeover of Zambia Sugar by Illovo Sugar, the takeover of Chilanga Cement Plc by Lafarge of France, the takeover of Agip Zambia by Total Zambia, the takeover of Toyota Zambia by Toyota Tsusho of Japan etc were prominent. It is envisaged that takeover cases are likely to continue to characterise the Zambian market because of the weak financial position of local firms.

2.5 Trade Agreements

Horizontal agreements are dealt with in section nine of the Competition and Fair Trading Act, 1994. These arrangements may arise expressly or implicitly between firms competing in identical or similar product categories within the same market.

These arrangements shift surplus from consumers to producers at the cost of dead-weight losses, organisational inefficiencies and rent seeking. They may include practices such as price fixing, collusive tendering, market or customer allocation, sales quotas, refusal to supply and collective denials of access to arrangement or association which is crucial to competition. These are prohibited outright whether the agreement is formal or informal, written or unwritten.

A number of cases have been considered and decided in this category. Following are a few cases considered in 1999: the alleged unfair trade practices by Zambia

Oxygen Plc (ZAMOX) now British Oxygen Company (BOC) in the selling of electrodes; alleged price fixing by Central Breweries Limited; and price maintenance allegations against Zamtel Limited.

2.6 Monopolies and Concentration of Economic Power

Under the Competition and Fair Trading Act, 1994, a "Monopoly Undertaking" is defined as a dominant undertaking or an undertaking which together with not more that two undertakings;

- produces, supplies, distributes or otherwise controls not less than one-half of the total goods of any description that are produced, supplied or distributed throughout Zambia or any part of it; or
- provides or otherwise controls not less than one-half of the services that are rendered throughout Zambia or any other substantial part of it.

Under special circumstances, the Commission could authorise a dominant undertaking to acquire a failing competitor, with particular conditions attached, if it is in the best interests of the public.

A compliance programme requires considerable input from business, and should make provisions to:

- review the impact of any agreements or practices with other competitors, customers and consumers in the market, or any vertical agreement such as supply and distribution agreements.
- review the possibility of the enterprise being dominant in the relevant market, and, if it is dominant, pricing and distribution policies should be assessed for possible infringement under Section 7(2) of the Act.

Employees at all levels should be made aware of the basic requirements of the Act and the consequences of breaching these requirements. ZCC urges that all compliance programmes should contain at least 4 features vis-à-vis:

- Support of senior management;
- Appreciation of policy and procedure;
- Training of relevant staff; and
- Ongoing evaluation.

2.7 Anti-competitive Trade Practices by Associations

A trade association is a body of persons formed for the purpose of furthering the trade interests of its members or of the persons in that membership. The anti-competitive practices in such associations are:

a) Unjustified exclusion from a trade association; and
b) Recommendation to trade association members on prices to be charged or terms of sale.

2.8 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 a service is rendered.

Section 12 of the Act further provides for the mitigation of;

- Misleading or deceptive conduct;
- False or misleading representations
- Misleading the public as to the nature or characteristics of the goods and services;
- Excluding liability for defective goods; and
- 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. Examples of such cases under this category are allegations of refusal to accept liability for defective goods by Telecel Limited and Chitoshi Enterprises and the false representation of products by Rumspect Marketing Limited.

3
Sector Overview

3.1 The Public Sector

At the time of Independence, the public sector in Zambia only constituted 14% of the economy. Within eight years, the sector grew to 80% being controlled by the Zambia Industry and Mining Corporation (ZIMCO). This was an abnormal growth and certainly this development choked the spirit of competition in the economy. Inevitably, it affected the economy which started to dwindle at an abnormal rate in the 1980s.

Today, the sector has undergone major reforms by allowing the private sector to compete with it. The government's role has been reduced to providing a suitable environment for competition. Measures such as decentralisation, restructuring of ministries and commercialisation of some departments in line with the current policies have been carried out, though the process of implementation has been rather slow. Every year this sector suffers a huge amount of brain drain due to endemically low salaries paid to its employees.

3.2 Banking and Financial Services

There are 16 commercial banks operating in Zambia today, a few local, one state owned and others multinational. Barclays Bank, Standard Chartered Bank and Stanbic Bank are multinational, whereas the Zambia National Commercial Bank (ZANACO) is the only state-owned banking institution. The remainder is a number of local commercial banks. ZANACO is currently an object of controversy between the general public and the government over its proposed sale. The donor community is insisting that the country should sell the institution as it is seen to be not running profitably on own account of wasteful spending and swallowing government funds. ZANACO is the only commercial bank currently offering services to the far-flung rural areas in the country.

There are many non-banking financial institutions operating in the country. Bank of Zambia, which is the Central Bank, regulates banks and other financial service providers through the Banking and Financial Services Act, 1996, which was amended in 2000 to bring the banking practices in the countries in line with the internationally accepted standards and also to provide for the regulation of micro-finance institutions. In the same year, the Money Laundering Bill was made a law. The Banker's Association of Zambia also has a code of banking practices which the members must adhere to.

There has been a reasonable amount of competition in this sector with no major barriers to entry as evidenced in the 1990s when the sector witnessed a proliferation of small-scale local commercial banks. Most of these commercial banks have folded up owing to their inability to cope with competition. The collapse of these banks revealed weaknesses in the regulatory framework and inadequate supervision. Instances of under-capitalisation, insider borrowing and unqualified banking practices were reported and anti-competitive behaviour and abuse of dominance were common.[7] This called for strengthening banking laws.

3.3 Agriculture

This sector remains the most underdeveloped sector in Zambia on account of a host of factors, e.g. unfavourable policies and lack of implementation of policies. It probably suffered its worst apathy from the government in the first ten years of the Third Republic. It should, however, be noted that this sector has got the potential to positively contribute to national development. In 1999 and 2000 the sector contributed 1.1% and 0.3% respectively to GDP.[8]

Poor rural infrastructure, inadequate and late delivery of inputs, difficulties in accessing credit facilities and poor marketing facilities are some other major hindrances. Despite the presence of many banks in the country today, small-scale farmers are unable to access credit owing to lack of collateral or other forms of security.

Fertiliser distribution is facilitated by the government through various agents. Crop marketing has entirely been left to the private sector. This system has not operated effectively because private entities do not find it profitable enough to operate in the remote parts of the country to buy agricultural produce from farmers.

There are some reports of unfair practices in certain areas where certain monopolistic companies through out-grower's schemes left their clients (farmers) in the lurch with regard to the acquisition of seeds and other inputs and the marketing of produce.

A bill to establish the Crop Marketing Authority was presented in Parliament last December, but the opposition did not favour it. The proposed institution could help bring fairness and competition to this sector where there are very few private market players owing to risk factors. In the Second Republic, such an institution existed but it failed to pursue the objectives of fairness and competition.

3.4 Transport and Telecommunications

The transport and telecommunications sector grew by 10.4% in 2000 compared to 2.8% in 1999. Its contribution to GDP was 0.7% in 2000 as against 0.4% in 1999. This growth was attributed to the well-performing road-transport sub-sector, which grew by 20.4% in the same year i.e. 2000. Growth in railway transport, which failed to cope with stiff competition from the road-transport sub-sector, fell by 15% in 2000 and 12.2% in 1999. Cargo freight fell by 9.6% to 1,457,247 tonnes in 2000 from 1,611,898 tonnes in 1999.

The telecommunications sub-sector remained stable at 1.1%.[9] This sub-sector remains dominated by the state-owned Zambia Telecommunications Company (ZAMTEL), though two private companies, namely Celtel Zambia Limited and Telecel Zambia Limited, have entered the market recently.

The Copperbelt Energy Company, a power utility, is diversifying into telecommunications through fibre optics, a project on the completion of which it envisages providing telephone services to the public.

For Internet services provision, private companies such as Zamnet, Coppernet and Microlink have emerged in the market recently.

Broadcasting is a sensitive issue among opposition members of parliament owing to the state control of the Zambia National Broadcasting Corporation (ZNBC), which provides both radio and television broadcasting services to the general public. For a long time, the government has delayed discussion of the issue of free media, but now (December, 2002) a bill to amend the Zambia National Broadcasting Corporation Act has passed a second reading with overwhelming support from both the opposition and the ruling party.

The new Act would empower ZNBC to operate independently of government interference. In the private sector, a number of radio stations (e.g. Radio Phoenix, Radio Christian Voice, Radio Ichengelo on the Copperbelt, and a few others in different towns) and one Christian television station, Trinity Broadcasting Network, have entered the market, though their coverage is limited.

The Communications Authority carries out regulation and licensing of broadcasting and communications activities while the Road Traffic Commission regulates the transport sub-sector.

3.5 The Energy Sector

The energy sector in Zambia comprises undertakings in electricity, petroleum, coal, wood fuel and other sources of energy such as solar. A step towards the liberalisation of the energy sector was first taken in 1991 when a ministry responsible for energy was created. In 1994, the National Energy Policy was developed.

Mindful of the proneness of a liberalised market to many abuses if it stood free of regulation, the Zambian Parliament enacted a law in 1995 (The Energy Regulation Act), which established the Energy Regulation Board (ERB) in 1997. Among others, the Board was given the mandate to promote competition and private sector investment and also to safeguard energy consumers' interests.

The largest player in the electricity sub-sector is Zambia Electricity Supply Corporation (ZESCO) which generates, transmits and supplies power to industries and household consumers.

The total installed capacity is 1,623 MW.[10] There has been a lot of speculation about the sale of this state-owned power giant giving rise to a lot of public concern and unrest (e.g. through peaceful demonstrations).

Other players are Lunsemfwa that generates power and Copperbelt Energy Company (CEC) which distributes power to the copper mines. They are currently working on the Interconnector project between Congo D R and Zambia. Lunsemfwa, which was formerly owned by ZESCO, and CEC are new on the scene.

On the whole, there is potential for multiple players in this sub-sector. However, there are major barrier to power production, transmission and distribution. Besdies, any investment require huge capital outlays. Thus, although the generation potential is estimated at 6,000 MW, so far only 28% has been utilised.[11] ZESCO also owns diesel power-generating stations that supply small towns situated off the national grid.

In the Petroleum sub-sector, the Indeni Refinery, which is state owned, is the only oil refinery in the country. Crude oil is imported into the country through Dar-es-Salaam port in Tanzania to feed the refinery via an oil pipeline. Operations at the refinery just resumed late this year (2002) after being grounded for over a year following a fire that gutted it down.

Other oil products come in already refined and are distributed by a cross-section of names, e.g. BP Zambia, Castro-Spectra, Mobil, Total and a number of other distributors. Apparently, this sector is quite competitive.

3.6 Water and Sanitation

For a long time in Zambia, probably due to the earlier socialistic inclinations of the state, urban dwellers never thought of water as an economic good. It was highly subsidised and more or less free. So much so that it was viewed as "God's free gift" just like air. The cost of production seemed not to be a major factor, as, up to the mid-1980s, water consumption was not at market prices.

After 1991, with the introduction of the market economy, water, like many other public goods and services, was subjected to the dictates of the market. Inevitably, consumer protection had to come in, since now most utilities were profit driven and abuses of consumer rights were imminent.

Before 1999, local authorities provided all water supplies in Zambia and then came the commercialisation of the services spurred by the failure by the local authorities to competently manage their many responsibilities and also by the privatisation policy that the Movement for Multi-Party Democracy (MMD) initiated soon after assuming leadership. Subsequently, the country saw the emergence of commercial utilities.

By the year 2000, seven companies providing water and sewerage services had been set up. On the Copperbelt Province, an asset-holding company was established to provide similar services to all mining towns in the province. Today, a total of 47 water utilities have been established across the country.

In its true sense, the strength of competition in such companies is more on the effectiveness of the regulatory mechanism than on the conduct of the firms. In fact, there are no two providers of these services to one household or consumer because of the cumbersomeness of infrastructure development. This means that it is not easy for a consumer to switch from one supplier to another. Further, there is only one company providing such services in each town with the exception of mining towns which have a history of dual municipals. Thus, we see that consumers have little choice.

The rural areas are said to have only 38% safe water. In the urban areas, however, about 93% have access to safe water. On the whole, only about 58% of the population in 2000 had access to safe water.

To regulate the conduct of the firms, a regulatory body called the National Water Supply and Sanitation Council (NWASCO) has been put in place under Section 3 of the Water Supply and Sanitation Act, 1997.

3.7 Mining and Quarrying

Mining and quarrying is the most developed sector in Zambia. It started as far back as 1920s after the British South-African Company (BSA) explored the Copperbelt province and started to mine copper. Copper-mining is the largest activity, though there has been a decline in the production and the increasingly decreasing world copper prices have partly affected the performance of the sector despite the ambitious privatisation programme that was embarked on beginning in the early 1990s.

The various units of Zambia Consolidated Copper Mines (ZCCM), a state-owned mining conglomerate that earlier experienced myriad operational problems, have been unbundled and sold to private companies with the government retaining only minority shares. However, privatisation does not seem to have borne the desired effect as evident in the recent case of Anglo-American Corporation when it decided to pull out of a Zambian mine on account of serious operational difficulties and persistent losses. Besides, raising finances for exploring and exploiting copper reserves is going to get progressively difficult in the event of multinationals like Anglo American losing interest in the sector.

Cobalt, a by-product of copper, is also a major product. Coal is mined at Mamba, while gemstones are mined on the Copperbelt province and a few other provinces.

Performance regarding quarrying was also below expectations with most activity being carried out by small-scale informal operators.

In a nutshell, the mining sector in Zambia does not have a promising future anymore. The private players are facing their own special problems and this fact is a clear signal to Zambia to seriously take the issue of economic diversification.

3.8 Pharmaceutical Services

The government of Zambia adopted a National Health Policy in 1991 and devised the National Strategic Healthy Plan (NSHP) to achieve the goals of the policy. Its main objective was to make the most effective use of the limited resources available. In 1995, the issue of drugs became central to these reforms and was thus incorporated into the National Healthy Policy.

In October 1996, the Zambian Government adopted the National Drug Policy where the issue of equity in access to good quality, safe, efficacious and affordable drugs (medicines) to families became vital.

Since the economic reforms of 1992, the health sector has not been spared. For instance, user fees have been introduced in government hospitals/clinics labelled "cost sharing/recovery system".

Health insurance schemes, drug-import levy, drug stamps and the creation of a revolving fund for drug procurement have been the central features of the health policy.

Good procurement practices at all levels shall be carried out while the government owned departments and medical stores would be restructured and commercialised to promote production of medical drugs.

Regulation in terms of drug registration, marketing controls and prescriptions and dispensing controls will be undertaken. Pharmaceutical manufacturers and importers are required to register the products they trade in or manufacture. Besides, their business must be restricted to those products.

4

Views of Various Stakeholders

4.1 Energy Sector

4.1.1 Electricity

ZESCO is the largest stakeholder in the provision of electricity in this sub-sector. However, with the proliferation of the consumer rights awareness programmes by consumer bodies, most people now know what is appropriate for them. For instance, in 1998, there was a public outcry against ZESCO's policy of forcing new tenants to pay bills for services they never bought. This was done by not supplying electricity to new tenants. The trend was arrested eventually by ERB following mass consumer dissent.

In 1999, ERB, under pressure from consumer bodies and the public, rejected ZESCO's proposed hike in tariffs. The reasons advanced by the consumers were that ZESCO had a chaotic billing system, poor revenue collection, huge operational costs which were being passed on to consumers, poor technical performance of supply and other services, the firm's financial imprudence and its in-house problems.

At that time, ERB showed double standards when handling these issues as they retracted several important decisions that had been made against energy bodies in favour of consumers. Zambia National Farmers Union was sceptical about ERB and urged them to uphold their decisions once made/passed.

After two years of protracted negotiations, ZESCO agreed, this year (2002) in July, to set preferential tariff rates in order to help lower production costs in the sector and boost production for the benefit of the national economy. Farmers expressed appreciation for ZESCO's management for this move. ZESCO has been urged to deal with illegal connections and also to guard infrastructure.

4.1.2 Petroleum

In case of petroleum, some motorists have praised service-station operators that have complied with ERB's directive earlier this year (2002) to display properly pump prices by the roadside and not in the forecourt or walls on buildings. They, however, bemoaned the unpredictable economy that has kept forcing fuel prices going up.

ERB notes that the liberalisation of petroleum marketing in the country makes it necessary for the Board and other stakeholders to define standards and regulations that will govern this sub-sector.

Zambia Competition Commission Executive Director, George Lipimile in Business News warned the Oil Marketing Companies (OMCs) of legal action against cartels as the arrangement was in contravention of the Competition and Fair Trading Act. Mr. Lipimile observed that the information exchange on prices that was currently taking place in this sub-sector put at stake the remaining competition in the relatively oligopolistic market.

In a similar development, ERB Chairperson, Chiteta Ching'ambu cautioned the OMCs perpetrating anti-competitive behaviour to desist from doing so as the practice contravened the conditions of the ERB licences and that could lead to suspension or revocation of the licences.

It is now expected that consumers will be properly represented on the ERB because Zambia Consumers Association (ZACA) sits on the ERB Technical Committee. Mr. Muyunda Ililonga, the Executive Secretary of the Zambia Consumers Association has called for an amendment of the Act that established ERB, so that it should provide for the representation of consumers on the ERB.

Last but not least, the general public has called on Zambia Consumers Association (ZACA) to spearhead the consumer cause in the country and protect consumers from being abused by both the private sector and the Government.

They note that oil products and electricity are what drive the economic steam engine and, therefore, need to be competitively priced, given the spiralling effect the energy sector tends to have on the economy.

4.2 Banking and Financial Services

On strong public demand, the Zambia Consumers Association has urged the government not to sell Zambia National Commercial Bank (ZNCB). Citing the way Zambia Standard Chartered Bank raised bank tariffs in the mid of the year 2002, ZACA said this should be a lesson to the Government regarding what the private sector could do to the people.

Bank of Zambia has cautioned that it will not tolerate breach of regulatory instruments, as has been the case with some banks and financial institutions which leave the regulator with no choice but to take over, seize the licence of or close the institution.

ZACA has urged Bank of Zambia and the Ministry of Commerce, Trade and Industry to be firm on those business entities that ignore the directive of quoting prices in the Zambian Kwacha and not the US dollar.

4.3 Manufacturing

In manufacturing, ZACA and a number of consumers have observed that manufacturers are in the habit of destroying evidence when clients take complaints to them. Victims are being advised never to entrust manufacturers with samples of impurities found in food or drink complained about.

4.4 Water and Sanitation

ZACA has said that, even though in the Ministry of Finance and Economic Development Policy Framework Paper, 1999–2001, the Government aims to ensure that 50% of the rural population and 100% of the urban population should be supplied with water by 2004, only about 70% of urban population has access to clean and safe water and 43% to adequate sanitation facilities. ZACA has observed that this policy still remains a distant dream as the Government admits in the National Water Policy that it only contributes 10% to all investments in water sanitation schemes. Further, it has advised the Government to clear promptly its bills to the water utilities to ensure their viability.

Zambia Consumers Association has urged NWASCO, the water and sanitation regulatory body, to put in place effective regulatory measures to protect consumers from exploitative water tariffs by the commercial water utilities. ZACA's concern is that schools and hospitals will not be able to afford these charges, which may threaten public health in these institutions

Libala Consumers Association (LCA) has cautioned water utilities not to take advantage of the poor people who may not take them to task for disconnecting supply of services on small arrears when they leave rich and influential people with huge arrears scot-free.

The Ministry of Energy and Water Development has directed NWASCO to work closely with water utilities and ensure that they deliver bills to households who consume their services. Citing cases where someone received a water bill and yet never had water supply, the Ministry hoped that now consumers would have an advocate in NWASCO. Water utilities have also been warned not to transfer the costs of their inefficiencies to consumers.

About the outstanding bills inherited by new water utilities, ZACA has urged them to write off the debts so as to enable consumers to have a fresh and clean start with the new providers. ZACA has also pledged support to the water utilities.

4.5 Transport & Telecommunications

4.5.1 Telephones

The two private mobile phone providers operating in the country have been charging clients in dollars instead of the Kwacha. The consumer movement has expressed concern and has urged Bank of Zambia and the Communications Authority to stem the trend.

The Communication Authority feels that there is no adequate legal instrument to prevent the operators from doing so and has urged Bank of Zambia to closely follow the trend and take necessary action within the limits of law.

Consumers have bemoaned telecom tariffs in the country which are too high compared to other countries in the region. International calls, for instance, are unthinkably expensive for the vast majority of the population which is extremely poor. Local-call rates alike are extremely high. This is a violation of consumer rights, as the providers cannot justify the high rates.

ZACA has, however, praised the two private mobile-phone providers for extending their services to towns such as Kapiri-Mposhi, Celtel in Chirundu, and soon in Chipata and urged them to spread their network in rural areas.

About the Vodacom U-turn on investing in the country, ZACA has noted that it was a sad development, as this would deny consumers a wide range of products to choose from.

4.5.2 Internet

In case of Internet services, consumers have called on the providers to extend their services to rural areas at affordable rates so as to develop an effective information exchange system in the country. The users have also called upon the Communications Authority to ensure that services were affordable to a larger section of society.

Zambia Consumers Association (ZACA) has wondered why Telecel Zambia Limited and Zamcel Zambia Limited force consumers to use the airtime of the scratch card within a prescribed time. ZACA has observed that this amounts to dictating to consumers when and how to spend their money.

4.5.3 Bus Transport

The bus transport sector has been urged by Zambia Consumers Association to keep bus fares affordable for commuters. ZACA has called on ERB to ensure that fuel prices were not tampered with at will as this would push bus fares up hurting commuters.

Lusaka bus commuters complained that they travel packed like sardines and the Roads Traffic Commission and the Communications Authority are doing nothing to protect them. They further said that overloading causes accidents on roads and appealed to the authorities to put a stop to these practices being perpetrated by the bus operators.

ZACA has urged the Government to re-introduce public buses for the rural population as the private sector has shunned the rural areas due to the run-down infrastructure. ZACA has challenged the National Roads Board (NRB) to explain where the money from fuel levy goes, as most roads in townships have not been maintained.

Some residents in Kitwe have expressed concern that the road network and infrastructure development in Lusaka are developing at the expense of the Copperbelt towns. They have urged Government to allocate resources fairly to all parts of the country.

4.6 Health

ZACA has dismissed the Commerce Deputy Minister's suggestion that District Administrators should team up with Government departments to conduct regular checks on the food industry. ZACA, on the contrary, has suggested that food inspections should be left to professionals and the Government should finance the inspections.

4.7 Corruption

The fight against corruption in the nation has been the top headline in the newspapers this year (2002). Most people in the country are in support of President Mwanawasa's championing of the cause to bring to book all the people involved in the plunder of national resources. University students, college students, trade unions, non-governmental organisations (NGOs), all have stood steadfastly in support of the programme.

4.8 Pharmaceuticals

The Ministry of Health has urged the pharmaceutical companies in the country to price their drugs competitively and said the Ministry was looking forward to reviewing the pharmacy and medicines legislation to address the shortcomings thereof.

4.9 Community Services

Lusaka residents have threatened never to pay to the Council as they do not benefit from the services. They complain of potholed roads, poor security, and lack of public transport in some areas. Buses have shunned the areas due to bad roads and poor security. ZACA has called on Councils in the country to improve their services to the public as they step up collection of rates arrears.

4.10 Trade and Industry

Traders have condemned Government for banning the imports of some goods from Zimbabwe and say that the Government is stripping them of their livelihood.

ZACA has expressed support for the traders and holds the view that the Government is denying consumers access to a variety of cheap products.

Earlier in the year, the CUTS Africa Resource Centre urged ZACA to strengthen its lobbying to promote consumer protection in the country. CUTS has noted that the absence of adequate local industry contributed to less competition for the foreign goods imported into the country.

In the mining sector, the Government has been urged by some citizens to monitor closely the privatised mines, as they still remain the largest sector of the nation's economy. The Government has been urged to ensure that investors fulfil and implement fully their investment pledges.

4.10.1 Food

Consumers have noticed that some products in food stores do not have expiry dates and there have been many reports in this regard. Some unsuspecting shoppers buy and consume expired goods, which are mainly imported from South Africa.

Locally produced coffee which was labelled Mpongwe Coffee and an imported coffee brand in a pink packet called Ciro have been found to show neither the expiry date nor the date of manufacturing.

ZACA has asserted that the Government should adequately fund the Zambia Competition Commission (ZCC) to enable it to execute its mandate effectively if the market economy is to be successful in the country.

The Cross Border Traders Association (CBTA) has called on the Government to reduce the value added tax (VAT) to enable Zambians to compete effectively with other countries.

5
Conclusion

This paper has endeavoured to provide a concise account of the competition scenario in Zambia. It has given descriptions of a range of anti-competitive practices prevalent in the country, with some of the cases that the Zambia Competition Commission (ZCC) has handled. It has also highlighted briefly the foundation of the current policy instruments enforcing competition rules in the selected sectors of the economy, giving specific examples of major players in those sectors.

Vital to note are the consumers' views that have been gleaned from a brief field survey and also from current newspaper articles.

In all, the competition regime in Zambia can be said to have performed significantly well. As said earlier, the process has taught the nation many a lesson and continues to do that.

Commendable in this process is the consumer movement that has tirelessly voiced issues of consumer concern, though the number of such groups in the country is very small today.

ENDNOTES

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4. Zambia Competition Commission (2000): Annual Report, 1999 and 2000.
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Annexure

Vital Consumer Laws In Zambia

Some laws vital to the protection of consumer interest in Zambia are listed below. It should, however, be noted that legislation is not adequate in many areas. There is a need to enact new laws and repeal some old ones in order to fill the many loopholes in the legal process.

The various relevant laws are as follows:

1. The Hire Purchase Act
2. The Credit Agreement Act
3. The Price Control Act
4. The Competition and Fair Trading Act
5. The Standards Act
6. The Markets Act
7. The Weights and Measures Act
8. The Public Health Act
9. The Pharmacy and Poisons Act
10. The Day Nurseries Act
11. The Dangerous Drugs Act
12. The Therapeutic Substances Act
13. The Food and Drugs Act
14. The Trademarks Act
15. The Merchandise Marks Act
16. The Standardisation of Soap Act
17. The Registered Designs Act
18. The Dairies and Dairy Products Act
19. The Rent Act
20. The Electricity Act
21. The Energy Regulations Act
22. The National Water Supply and Sanitation Act

The following Acts, have been incorporated into the Zambian legal system from British laws. Note that these laws are only those that are particularly important to the consumer rights crusade.

1. Sale of Goods Act, 1983
2. The Bills of Exchange Act
3. The Conveyance Act, 1911
4. The Forgery Act, 1913
5. The Industrial and Provident Societies (Amendment) Act, 1913
6. The Larceny Act, 1916
7. The Bills of Exchange (Time of Noting) Act, 1917
8. The Married Women (Maintenance) Act, 1920
9. The Gaming Act, 1922
10. The Industrial and Provident Societies (Amendment) Act, 1928
11. The Limitation Act, 1939
12. The Law Reform (Enforcement of Contracts) Act, 1954