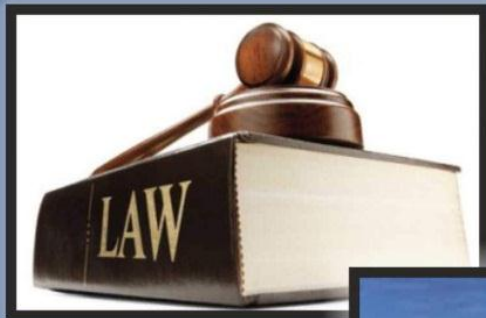


The Impact of the Competition Reforms on Business in Zambia

*An Evaluation of the Zambian Business
Licensing and Regulatory Reform Programme*



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Abbreviations

BLRP:	Business Licensing Reform Programme
BLRPC:	Business Licensing Reform Programme Committee
CCPC:	Competition and Consumer Protection Commission
CCPT:	Competition and Consumer Protection Tribunal
CFTA:	Competition and Fair Trading Act
CUTS:	Consumer Unity & Trust Society
DPP:	Director of Public Prosecution
ICN:	International Competition Network
MCTI:	Ministry of Commerce, Trade & Industry
NPA:	National Prosecution Authority
OECD:	Organisation for Economic Cooperation and Development
PSDRP:	Private Sector Development Reform Programme
PSDIJU:	Private Sector Development Industrialisation and Job Creation Unit
UNCTAD:	United Nations Conference on Trade and Development
ZACCI:	Zambia Chamber of Commerce and Industry
ZAM:	Zambia Association of Manufactures
ZCC:	Zambia Competition Commission

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Executive Summary

This study focusses on the impact that the repeal of the Competition and Fair Trading Act, 1994 (Cap 447) and subsequent enactment of the Competition and Consumer Protection Act, 2010 (CCPA) has had on the private sector and consumers. The study follows up on the earlier observations made by a Committee that was instituted to review how Zambia's licensing regime was impacting on private sector growth. The Committee, which was convened under the ambit of the Business Licensing Reform Programme (BLRP) of the Private Sector Development Reform Programme (Phase II), recommended that the regulatory framework governing the business licensing regime required streamlining, if Zambia's business environment was to be competitive.

The Competition and Fair Trading Act (CFTA) of 1994, implemented by the then Zambia Competition Commission (ZCC), was identified by the Committee as one of the critical legislations which had a huge bearing on business growth across several sectors of the economy. The BLRP Committee report observed a number of gaps in the 1994 legislation which required to be realigned to appreciate the current contemporary private sector exigencies. Major concerns hinged on the procedural law governing some of the critical mandates of the Commission such as authorisation of mergers and acquisitions etc. It was argued that the steps taken were too many and detrimental to the tenets of private sector growth. These and others concerns resulted in the CFTA of 1994 being repealed in 2010 and replaced with the Competition and Consumer Protection Act. The latter is said to have addressed the identified concerns and, therefore, this study assesses how the private sector and consumers have benefited from this development.

Two main methods were used to estimate the benefits arising from this competition, legislative and institutional reform. The BLRP Committee estimations were used as a baseline together with other benefits that ensued as a result of the reforms. These generally involved interviews with the Competition and Consumer Protection Commission (CCPC), a body mandated to implement the CCPA 2010 and firms that have dealt with CCPC under the new law. A random survey among private sector players across sector was also undertaken to understand their awareness of CCPC and the legislation.

Key Findings

While the old Act did not specify the time taken to investigate mergers and takeovers, the CCPA 2010 lays down for the Commission a period of 90 days to review a merger, even though most mergers have been completed within 60 days. This has benefited business by creating some predictability for planning purposes. Whilst merger approvals under the old Act took nine steps and six hours of administrative activities, it takes only about three steps and less than one hour of administrative activities under the CCPA. Under the old Act, there was no threshold for merger notifications, implying that all mergers had to be notified. However, under the new Act, merging parties with a combined turnover or assets which is

below ZMW10mn do not need to notify the Commission. Thus small transactions, which averaged about ZMW 2, 584.916 saved the costs of notification.

However, some challenges with respect to the merger review legislation that impose more costs to businesses than necessary still exist. These include a maximum of 90 days for merger review under the law, even though there are some simple mergers that can easily be dealt with within 30 days. Reforms to the law to make this distinction possible could therefore help speed up the review of simple transactions. The maximum notification fee of ZMW3mn might also not be justifiable in view of the actual costs incurred by CCPC in their investigations.

The procedure and costs for seeking authorisations for exclusive dealing, bundling and tying arrangements were also raised as a concern by the BLRP Committee, costing about ZMW 3,488.858 to get such authorisation. Under the 2010 CCPA, 2010, a firm seeking such authorisation would pay about ZMW14, 000 for assets or turnover of ZMW20mn and ZMW30, 000 for any assets that exceed ZMW20 mn. On an average, a firm now pays about ZMW22,000 to get such authorisation. The costs under the new law thus have actually shot up significantly, which might explain why CCPC is yet to receive many such applications.

Authorisation to relocate plant and machinery was also estimated by the BRLP Committee to cost about approximately ZMW 3,488.858 Relocation of plant and machinery is now not expressly provided for under the CCPA, 2010, although the Government requested the Commission to continue handling them. However, under the CCPA, there is no payment required for the firms that want to relocate their plant and equipment. Thus, based on the statutory obligations, the new law has saved business about ZMW 3,488.858 per transaction that was payable under the old Act.

The strengthening of the fine regime under the new Act also ensures that CCPC can be more effective than ZCC due to the deterrent effect. Under the old Act, offending companies were liable to a fine not exceeding one hundred thousand penalty units or imprisonment for a term not exceeding five years or to both. This was upon conviction by the courts of law. This was seen as a non-factor to businesses with a huge annual turn-over. All violations under the new Act can attract a maximum fine of 10 percent of combined assets or turnover, although the highest fine to date has been 2 percent for a leader in a cartel case. The new competition regime resulted in penalty worth about ZMW 211,000 on actions that could not be actioned against under the earlier regime. This amount was remitted to government through treasury.

Although the CCPA, 2010 has a leniency programme to facilitate easy identification of cartelistic behaviour, the application of the provisions gets delayed due to some bureaucratic process with the legal system. Thus, to date, no cases have been handled under the leniency programme, such that the effectiveness of its incorporation into the competition law is yet to be felt.

The Competition and Consumer Protection Tribunal (the Tribunal) was also established under the CCPA, 2010 to hear and determine appeals from business over decisions made by the CCPC. All appeal cases filed before the Tribunal attract no costs or fees, thus the private sector have access to a free appeal process unlike under the ZCC era where this was done only through the High Court. On an average, it takes about six months for a case to be disposed off at the Tribunal, which is shorter compared to what used to prevail under the ZCC era when an appeal was heard only after two or three years at the High Court.

However, there are a few challenges which are preventing full realisation of the positive impact of the Tribunal. The Tribunal lacks financial and human resources to facilitate its mandate. Some of the competition appeal cases which the Tribunal has ruled over have gone to High Court in appeals, which imply that such cases are now worse off in terms of time as they passed through another layer instead of going straight to the High Court. The time period for determining the appeal case before the Tribunal is also not defined in the Act.

The survey done on business perception reveals that the level of awareness on CCPC is generally high among business. However, business knowledge on the mandate of the Commission is still limited which requires more specific and targeted intervention by the Commission.

1. Background

In 2009, Zambia launched the BLRP under the second phase of the Private Sector Development Reform Programme (PSDRP II). The goal of the PSDRP II was to promote and facilitate the development of a competitive business environment in Zambia in order to contribute to job and wealth creation. The BLRP seeks to achieve this mainly by making Zambia's licensing regime simpler, transparent and to focus only on necessary regulation processes. Reduction of unnecessary licenses and their requirements as well as refocusing regulatory authorities' and agencies' attention from predominantly revenue generation to sustainable business facilitation are keys in the BLRP process. It is hoped that the reform will lead to greater investment, growth and employment and the creation of a sustainable business environment.

While a total of 92 licenses were eliminated and 43 were reclassified as levies under the BLRP, it is not known how this development has impacted businesses in different sectors of the economy. Among the legislations identified for reform by the BLRP Committee was the Competition and Fair Trading Act, 1994 (Cap 447) which established the Zambia Competition Commission (ZCC). The regulator featured prominently in the BLRP report, as the institution was identified as one of the critical authorising agents for businesses across several sectors of the economy. Therefore, it was prudent that the BLRP Committee focused on this legislation and engaged private sector players to make recommendations on where reforms should be concentrated.

The CFTA was eventually repealed and replaced by the Competition and Consumer Protection Act, 2010. This was an attempt to align the policy, legal and institutional framework to the contemporary needs of private sector development. The new Act is almost five years old and therefore, assessing its impact in promoting private sector growth is timely. This report makes an impact assessment of the reforms that were undertaken on business growth and arguably contributes towards increasing the body of knowledge on the subject.

2. Introduction

The CFTA was enacted in 1994 by the Parliament. The Zambia Competition Commission (ZCC), the body established to enforce the legislation, however, only became operational in May 1997. During its 15-year tenure, the enforcement of the Act was characterised by a number of problems and constraints. These circled mostly around the inadequate manner through which the legislation covered critical competition issues which eventually limited the effectiveness of the law.

Examples include the interpretation and treatment of cartels and vertical restraints; the way the law defined mergers and their notification process; the coverage of public interest in the Act and timeframes with which business had to wait for the decisions of ZCC. The way in which the legislation was crafted also created problems for ZCC as the law limited its investigative powers and administrative penalties that the institution could impose on businesses. The legislation also denied the Commission a wider institutional mandate, and due to the absence of a leniency programme, it made it difficult to prosecute cartels.

Due to these weaknesses and pressure from different quarters, including from the BLRP process, the CFTA, 1994 was repealed in 2010 and replaced by the Competition and Consumer Protection Act (No. 24 of 2010). The new law also renamed the competition authority as the Competition and Consumer Protection Commission (CCPC) in line with its extended mandate to cover consumer issues. The new law also introduced an appellate body, the Competition and Consumer Protection Tribunal, to ensure that decisions of the competition authority could now be appealed outside the normal courts as was the situation during the ZCC era. Given that it is now about five years since the new law is being in existence, it is expected that businesses and consumers in general have been benefiting from this improved competition regime which is in line with international best practices.

3. Objectives

The ultimate objective of this research is to assess whether there has been impact of the competition reforms in Zambia, particularly the reforms' ability to address the challenges that had been identified by the BLRP Committee. This would be achieved through the following immediate objectives:

- measuring the impact of the competition reforms on businesses in terms of costs and time spent in engaging the competition authority;
- establishing whether the weaknesses in the old competition legislation have been dealt with under the new law;
- establishing the effectiveness of the Zambia competition legal system based on perceptions of businesses and stakeholders who have dealt with the competition institutions; and
- making recommendations about gaps and challenges that still need to be addressed to make the competition enforcement system more effective in Zambia.

4. Methodology

Given that competition enforcement cuts across all sectors of the economy, it is difficult to come up with a single method that would be able to capture accurately all the actual impacts of competition reform in terms of benefits or costs of the reform; especially in the absence of baseline data to compare with. Given also that both consumer welfare and producer welfare are broad issues which encompass other variables outside the competition reforms, it is difficult to come up with a quantifiable measurement of producer or consumer welfare gains as a result of the reforms. However, the study made an attempt to use two main methods to estimate the benefits from the reform. This involved using the BLRP Committee estimations as a baseline which was also supported by looking at other benefits that might have accrued as a result of this reform.

The study acknowledges the difficulties in measuring the impact of the reforms by disentangling the effect of other reforms and other economic events that affect the performance of the industry. It was on this basis that the study had narrowed down the focus area to the specific issues that were identified as concerns during the previous regime. This involved tracking down the changes, if any. The study, therefore, specifically looked into the following reform areas under the Competition and Consumer Protection Act:

Cost Assessment of Services Rendered by CCPC

One of the primary concerns of the BLRP Committee was the costs for businesses in terms of fees and time spent on securing a clearance from the ZCC. In particular, the BLRP Report gives estimates about the amount of time and money that was spent in getting the following:

- Authorisation for mergers
- Negative clearances
- Authorisation for exclusive dealing and relocation of plant and machinery
- Authorisation for bundling and tying arrangements

Using this data as a baseline, the study made an attempt at quantifying the time and money involved in getting the same authorisations under the new law. In addition to interviews with CCPC, this also involved identifying the firms that have been served by CCPC and interviewing them on the time and money they spent in getting the necessary authorisation.

Compensation of Losses Caused by Distortion of Competition

The extent to which a competition authority was able to extract rents from the competition violating firms to the public can be regarded as complementary in the overall effectiveness of the institution in preventing abusive tendencies by firms against other firms or consumers. Unlike under the ZCC era, the CCPA, 2010 gives the CCPC the mandate to fine up to 10 percent of an offending firm's annual turnover for abuse of dominance and other

anticompetitive agreements. The actual fines that CCPC collects are based on various factors, including the perceived welfare damage caused in the overall economy by the practice of the offending party. Thus, the amount of fines imposed on competition violating firms, which are remitted to the treasury, are also considered as positive effects of the reform on the economy since they are considered as a correctional mechanism to ensure that at least there was liability for the welfare losses in the economy. This measure was weakly also considered as a proxy for the effectiveness of the CCPA in the economy as it was able to reverse some of the losses by redistributing the unfairly obtained gains back into the economy through the treasury.

Leniency Programme

The new legislation also introduced a leniency programme which was expected to make it easier to investigate cases of distortion of competition and to prosecute cartels. This was introduced to reduce the time it takes to complete investigations as well as to increase the chances of identifying a cartel. The study made attempts to identify whether there were cases that were prosecuted based on the leniency programme. This was to be measured from the context of how this had helped enhancing the effectiveness of the law and relevance of CCPC in the economy.

Introduction of the Competition Tribunal

Introduction of the Tribunal was one of the significant developments by the reform. The role of the Tribunal includes hearing appeals from businesses against decisions of CCPC. Before the establishment of the Competition Tribunal an aggrieved party had to approach normal courts, and it took years until a ruling was made. This according to businesses was resource (financial) consuming. The impact of the setting up of the Tribunal was measured making a comparison of the costs and time spent for a hearing at the High Court and at the Tribunal.

Consumer Protection

Another significant development in the new Act is the strengthening of consumer protection provisions. The new Act contains a detailed section (Part III) which deals with consumer protection and includes clear guidance on the display of disclaimers, strengthened provisions on consumer product safety and the prohibition of misleading advertisement, tied selling, unfair contract terms, supply of defective and unsuitable goods and services etc. There was no government body that had the authority to deal with cross cutting consumer issues before the CCPA, 2010. In view of the strengthened consumer protection provisions, it is important to understand how consumers have benefited from these provisions under the new Act.

The study used a case study approach, given the difficulties in getting the names of individual consumers from CCPC. A case study on consumer complaints on electrical products is used to showcase some of the benefits from the implementation of the consumer provisions of the CCPA. While this is not a measuring instrument for welfare gains, the benefits in terms of refunds and compensation to consumers serve as an important indicator for benefits from the

reforms. This was also complemented with annual announcements of the general refunds and amounts realised by CCPC.

Effectiveness of Competition Reforms

The effectiveness of the reforms as well as the institutions that were set up by the reforms are difficult to assess as effectiveness would also depend on other variables which are not necessarily influenced by the competition reforms. However, one way of assessing the effectiveness of CCPC is the extent to which the institution is known among its stakeholders. A perception survey for businesses was conducted to assess their knowledge about the Act and CCPC. A combination of purposive and simple random sampling was opted for, where associations would be used to get a list of members who would then be randomly selected as respondents. Attempts were made to source the list of the businesses to be interviewed through their membership organisations, which include Zambia Association of Manufacturers (ZAM) and the Zambia Chamber of Commerce and Industry (ZACCI).

The study targeted only formally registered businesses and left out the informal sector as these had limited chances of engaging with CCPC on competition issues. However, due to the elections as well as the festive season, the response rate has been very low, especially among the manufacturing firms. After eliminating the questionnaires which had missing data, about 48 questionnaires were used for the analysis. Although this was far below the original target of at least 100 responses, the responses were considered random enough to eliminate sample bias. CCPC has offices in the Copperbelt and Lusaka, which led to Lusaka and Ndola being chosen as locations for the perception survey. Another location, Solwezi, was also added as a control location, as it is fairly distant from the CCPC offices. Only employees at senior management level in the firms were selected to ensure that only those who are conversant with the issues were interviewed. The targeting of senior personnel also explains the low response rate due to their unavailability during the data collection stage.

Legal Analysis of the Competition Regime

Another measure of effectiveness of the reforms is the limitation of the reforms in meeting their intended objectives through flaws in either the legislation or the institutional set up. A legal analysis of the CCPA in terms of gaps and weaknesses against best practice as well as on implementation challenges was also conducted. This involved assessing the competition regime based on model competition laws by different bodies.¹

Thus, CCPC was approached to give a list of firms they have dealt with to date on the issues for which concerns were raised by the BLRP Committee report. These were then followed up for interviews regarding their experiences with respect to the problematic issues which used to prevail and had been covered by the BLRP Committee. As expected, cooperation within the timeframe of the study was very limited as most of the firms wanted to confer with their legal departments concerning information that they could release as the exercise was deemed to be intruding on their confidential information. Most submissions were still expected at the

¹ Such bodies which have model laws include UNCTAD, ICN and OECD

time of writing the report. However, out of eighteen firms across the different sectors that were targeted, ten firms responded, and together with the information supplied by CCPC, formed the basis for this report.

5. Impact of the Reforms on Costs of Regulation

Authorisation for Mergers and Takeovers

Based on the BLRP Committee report, under the old Act, to get authorisation for mergers took a total of nine steps, with at least three of them being contacts with officials at CCPC before authorisation for a merger could be issued. It also took about six hours of administrative activities to prepare the authorisation, costing an average of about ZMW2,584.916 for each business enterprise. The BLRP Committee did not provide an estimate as the total waiting time that a party to the merger had to wait while ZCC was conducting its investigations to get feedback.

The time taken to investigate mergers and takeovers under the old Act was strictly to ZCC's discretion, as the old Act did not specify the period of time under which a merger should have been reviewed. This evidently contributed to the delays, even though ZCC also tried to ensure that the merger investigations are completed within 90 days. Under the CCPA, the Commission has a period of 90 days to review a merger, even though most mergers have been completed within 60 days. The average time it took the firms that were interviewed under the study to have their mergers approved ranged between two and three months and yielded an average of about two months (60 days).

In addition, if a merger is complicated and requires more consultations which could take more than 90 days, the new Act provides for a possibility of a 30 day extension, for which the parties must be informed at least 14 days before the 90 day deadline. Due to more investigative powers compared to the old Act, the time taken to approve mergers and takeovers has generally been reduced, though it is difficult to quantify the improvement due to the absence of baseline data from the BLRP Committee.

While the BRLP Committee estimated that it would take about six hours for administrative activities for the approval to be received, due to failure to get confirmation on how such hours were calculated, it is assumed in this report that this excludes the investigation time which took more than three months. Thus such hours are assumed to refer only to the time taken in preparing the necessary approvals once the investigations are complete. The preparation time under the new Act is officially informed through a letter which is generic and does not take an hour to prepare. The only lag is the delivery time, as the letters are sent in hard copies. For all approvals in the capital, this takes less than an hour to deliver.

However, such time could be significant to parties outside the capital, which would also affect the overall process. Once the parties to the merger notify the Commission, the Commission would only get back to the parties within the course of its investigations if they did not supply adequate information. While it took a total of nine steps under the old Act, the only steps of note under the new Act is the submission of the notification form, payment of the fees and the official communication from CCPC once the investigations are conducted.

Thus, at most three steps would be expected under the current operational framework. For a precise comparison, however, this would require the identification of the actual steps that were identified under the old Act to assess whether they are still applicable under the new Act.

There are two main issues that determine costs that would be borne by the parties. The most significant of these is the merger notification fee. Under the old Act, there was no threshold for merger notifications, implying that all mergers had to be notified, even if very small firms were merging. However, under the new Act,² the merger threshold has been set as 50 million fee units which currently translates to ZMW10,000,000, thus merging parties with a combined turnover or assets which is below ZMW10,000,000 do not need to notify the commission (unless the Commission requests them to do so if it believes there is competition harm). The old Act also provided for the notification fees to be 0.1 percent of the combined assets or turnover (whichever is higher of the merging parties) and this has not been changed with the new Act. Thus, any cost savings for business would arise from the leniency on small firms.

Based on the threshold, the minimum costs payable to CCPC for notifiable mergers under the new Act is, therefore, ZMW10, 000. Since the BLRP Committee estimate of about ZMW 2, 584.916 was an average, it follows that payment had been dominated by small firms, which would not qualify under the new Act. Thus, on an average, most of the firms that paid notification fees under the ZCC era would not pay any fees under the new Act. Since this is an average, about ZMW 2, 584.916 for every merger transaction fee would become the ceiling for savings that occurred since CCPC replaced ZCC. However, since only the big firms can now notify the mergers, the average cost is definitely bound to go up. For example, based on the firms that were willing to disclose the amount they have paid in notification fees,³ an average fee of about ZMW 62,667 was paid to CCPC. Thus, generally the cost went up although this is mostly due to the weight that is imposed by the large firms after eliminating the small firms that were merging.

While some firms indicated that they did not incur any legal costs in the process as they used their own internal legal systems, there are others who also incurred costs by hiring legal expertise as a way of complying with the CCPA. Due to ignorance about competition issues in Zambia, some end up incurring a lot of costs to hire experts in other countries, for an example, one of the merging parties engaged the South Africa Competition Commission for assistance and was charged R1mn for the service. Thus, due to challenges in interpreting the law, firms end up paying a lot in legal fees, which also increases the costs. It is, however, not expected that there have been any factors that would have resulted in legal costs being higher under the CCPC era than the ZCC era and vice versa. Thus, the legal costs, though still significant, are assumed to be the same as those that used to obtain prior to the reforms and are not being used as part of the comparison exercise under this study.

² Through Statutory Instrument 97 of 2011

³ The researchers were not able to convince others that the amount they paid was going to be treated as confidential and were unwilling to disclose.

Based on the peer review exercise by the United Nations Conference on Trade and Development (UNCTAD) in 2012,⁴ even under the new legislation there are still some challenges with respect to the merger review legislation that impose more costs to businesses than necessary. For example, the law provides for up to 90 days for merger review, even though there are some simple mergers that can easily be dealt with within 30 days. Thus further reforms to the law could categorise mergers into two phases, with the first phase involving simple transactions taking a shorter period of about 30 days, while the more complex transactions take up to 90 days. To enhance feasibility of the 30 day deadline, the law would have either Board of Commissioners working full-time so that cases can be brought to their attention on a continuous basis or power being given to CCPC to have discretion on simple mergers. Costs to business could also arise from the maximum fee that is payable to the Commission. The maximum fee of ZMW3mn is deemed too high. Such high fees are not justifiable by the actual costs incurred by CCPC in their investigations. This also has a huge impact on the financial position of the firm concerned.

Negative Clearances

The BLRP Committee used the term ‘negative clearance’ with respect to the provisions of section 13 of the old Act, which provided that some activities which would not be prohibited outright by the Act might still have to be approved by the Commission if it believes that they could cause negative impact on competition. The BLRP Committee established that it took a total of nine steps that a business has to initiate, with at least three of them being contacts with public officials before an authorisation can be issued. The BLRP Committee also estimated that it took approximately 6 hours of administrative activities and cost approximately ZMW 3,488.858 for each business enterprise to comply with Government regulation.

The new Act has introduced negative clearances only with respect to mergers, where only those parties who are not sure if their proposed transaction needs to be notified with the Commission need to apply.⁵ Parties seeking negative clearance pay about ZMW14,000⁶ for assets or turnover of ZMW20,000,000 and ZMW30,000⁷ for any assets that exceed ZMW20,000,000. This is less than the normal notification fee of 0.1 percent which would be charged for parties to a merger. Negative clearance for mergers was not provided for under the old Act, which makes it difficult for comparison purposes. However, the context in which this was discussed in the BLRP Committee report is in line with exemptions under the new Act, which allows for comparisons as follows:

⁴ UNCTAD (2012), Voluntary Peer Review of Competition Law and Policy: Zambia, UNCTAD/DITC/CLP/2012/1 (OVERVIEW), Zambia, 2012

⁵ Section 28 of the CCPA, 2010

⁶ That is 70,000 fee units

⁷ That is 150,000 fee units

Authorisation for Exclusive Dealing, Bundling and Tying Arrangements

The procedure and costs for seeking authorisations for exclusive dealing, bundling and tying arrangements were estimated by the Committee to take a total of nine steps, approximately 6 hours of administrative activities and it cost approximately ZMW 3,488. 858 to get such authorisation. Under the new Act,⁸ an enterprise that wishes to be exempted from the provisions on agreements (including exclusive dealings, bundling and tying arrangements) may apply to the Commission for exemption on various grounds that are laid out under the Act.⁹ For such an exercise, the costs payable have also been set as the same as those payable for negative clearance. Thus, a firm seeking such authorisation would pay about ZMW14, 000 for assets or turnover of ZMW20,000, 000 and ZMW30,000 for any assets that exceed ZMW20,000,000.

Currently, CCPC has handled only one case on exemptions, involving Kenyan Airways and KLM in 2013, whose details about costs incurred could not be established at the time of preparing this report. This makes it difficult to get an average fee that has been payable for comparison purposes. However, assuming equal chances for firms whose assets are above and below ZMW20,000, 000 to apply, then on an average, a firm pays about ZMW 22,000 . This would, therefore, imply that the costs under the new law have actually shot up significantly, which would not be good from a business' point of view. This probably explains why CCPC is yet to receive many such applications since the new law became operational in 2010.

The new law does also not stipulate any time frame with respect to the time in which the Commission should analyse such an application for exemption. However, since the factors that have to be taken into account in the analysis involve investigations, the Commission believes this would take about 30 days. However, the absence of time frames in the law is also something that does not enhance predictability for business.

Relocation of Plant and Machinery

Authorisation to relocate plant and machinery was also estimated by the BRLP Committee to cost about approximately ZMW 3, 488.858. Although relocation of plant and machinery were provided for under the old Act, it has not been expressly provided for under the CCPA, 2010. Relocations are now dealt with only on policy level as Government requested the Commission to continue handling relocations despite them not being expressly provided for under the Act. Therefore, CCPC uses one of its functions to deal with this issue. And in view of this directive from government, it is has been indicated that this responsibility will be retained in the subsequent Act.

Currently, CCPC estimates that the whole process takes between two and seven days to complete. The BLRP Committee did not give an estimate about the actual time which the investigations took to complete under the old Act. Under the CCPA, there is no payment

⁸ Section 18 of the CCPA, 2010

⁹Section 19 of the CCPA, 2010

required for the firms that want to relocate their plant and equipment as this is not provided for under the new Act. Thus, based on the statutory obligations, the new law has saved business about the kwacha equivalent to the ZMW 3, 488.858 that was payable under the old Act. Interviews were conducted with some of the firms that have sought authorisation for relocation of plants and equipment from CCPC. The firms all confirm that they did not pay any costs to CCPC in the process and CCPC investigations took an average of two days, which is quite remarkable. The firms also indicated that the costs they incurred were negligible, mostly related to telephone expenses and transportation costs, to file papers.

6. Redistribution Impact of Reforms

The strengthening of the fine regime under the new Act also ensures that CCPC can be more effective than ZCC due to the deterrent effect of fines. Under competition enforcement in Zambia, there are two types of fines; administrative fines and penal fines. The administrative fines are imposed by the Commission while the penal fines are those imposed through the courts. Thus, CCPC only imposes administrative fines and they only become penal fines once the parties decide to challenge the decision of the Commission as well as the Tribunal and take the matter to court. Under the CCPA, 2010, an enterprise that violates any provisions of the Act is liable to a fine of 10 percent of its annual turnover.

In comparison, the old Act only had some specific cases where fines could be imposed, with a specific fine attached to specific offences. ZCC, however, was not able to fine for cartels, abuse of dominance and unfair trade practices, especially disclaimers. ZCC, therefore, was mostly giving cease and desist orders, with the power to fine being mostly on refusal to obey the decision of ZCC. All violations under the new Act can attract a maximum fine of 10 percent of combined assets or turnover, whichever is higher. It should be noted, however, that since the CCPA 2010 was put in place, no enterprise has been fined up to 10 percent, as the highest fine has been 2 percent for a leader in a cartel case.

The most common offences where the commission has imposed fines since the enactment of the CCPA, 2010 are those involving cartels, disclaimers and other unfair trade practices, categories which would not have been fined under the ZCC era. The total fines realised from the fine imposed to date for such offences is about ZMW210,881.87, of which about ZMW84,386.24 were cases involving disclaimers. Disclaimers are generally regarded as a breakthrough with respect to consumer welfare protection, as they were a reaction to the 'no guarantee, no return' disclaimer associated with all categories of products in Zambia. Consumers who were short-changed had no platform for redress as shops did not entertain any consumer grievance. The practice is almost grinding to a stop now, with the fines being remitted to the treasury. The new competition reforms thus saw about ZMW 211, 000 being transferred from businesses which had unfair practices into government programmes. A case study on electrical products (box 1) can be used to illustrate this.

Box 1: Consumer Issues in the Electrical Products Market in Zambia

Zambia is a net importer of electrical products and most of the electrical products enter the country illegally due to porous national borders. Most of these are also of cheap and poor quality, which sees retailers putting disclaimers on their sale, informing consumers that once they have purchased, there is ‘no return, no refund and no exchange’. This mostly affects low income consumers, who mostly demand such poor quality products as they are cheap. Following the enactment of the CCPA, 2010, and sensitisation campaigns about the illegality of disclaimers under the new Act, cases relating to disclaimers dominated the Commission’s cases. Between 2011 and 2013, approximately 45 percent of consumers’ complaints received and resolved were on defective electrical appliances such as fridges, TVs, radios, phones etc.

Under the new Act, a fine of up to 10 percent of the enterprise’s annual turnover would be charged for refusing consumers’ right to get redress through refund or exchange for products that are defective. Due to increased compliance by retailers, there has been a drastic reduction in electrical products related complaints from 45 in 2013 to 25 percent in 2014. The value of refunds and replacements was also reduced from ZMW 2.6mn in 2013 to ZMW 0.7mn in 2014. Thus, generally, through the new reforms, consumers were able to exchange products worth over ZMW 3.3mn, which they would otherwise have held on to despite them being defective. This evidently contributed positively to their welfare.

Source: Competition and Consumer Protection Commission, ‘Dealing with Electrical Products Consumer complaints-Zambia’s Experience’, presentation shared with CUTS, January 2015

7. Impact on Effectiveness of Institutions in Executing Mandate

Leniency Programme

The leniency programme was incorporated into the new Act in order to facilitate easy identification of cartelistic behaviour. Under the new Act,¹⁰ the leniency programme is not only limited to cartels but other anti-competitive practices as well. However, due to the fact that matters under the Act are criminal in nature, CCPC could not begin to implement the programme without the involvement of the office of the Director of Public Prosecution (DPP). This was a new programme under Zambia's legal framework and this required appraising relevant government department on its relevance. In this regard, the Commission has made efforts through inviting the DPP to an international cartel conference organised by the International Competition Network in October, 2014 in Taiwan where the importance of competition law and such a programme were raised. A department handling the leniency programme has now been established under the National Prosecution Authority (NPA) and sensitisation programmes among enterprises is underway. Thus, to date, no cases have been handled under the leniency programme, such that the effectiveness of its incorporation into the competition law is yet to be felt.

Introduction of the Tribunal

The Competition and Consumer Protection Tribunal (the Tribunal) was established in 2010 through the enactment of the Competition and Consumer Protection Act, No. 24 of 2010. The Ministry of Commerce, Trade and Industry acts as Tribunal Secretariat as stipulated under the Act¹¹ to provide the necessary secretarial and accounting services to the Tribunal. The Tribunal is an appellate body under the CCPA and is charged with the responsibility of hearing and determining appeals made to it under the Act. It was created as a reaction to the lengthy time that the courts took in handling cases of firms which appealed against the decision of the ZCC. Those not happy with the decision of the Tribunal still have recourse before the High Court of Zambia.

Under the CCPA, 2010, all appeal cases filed before the Tribunal attract no costs or fees. This implies that businesses now have access to an appeal process which can be done without incurring any costs except for travel to the hearing. In the event that the firm decides to be represented by a legal counsel, the firm would have to meet their own legal fees. Tribunal sittings are usually held in Lusaka, although in the last quarter of 2014, the first ever sitting out of the capital city was held in the Copperbelt, Kitwe on November 24-26, 2014. The Act gives the Tribunal freedom to choose where to sit and it has decided to intensify provincial and district sittings to reduce costs for the concerned parties.

¹⁰ Section 79 of the CCPA, 2010

¹¹ Section 68 of the CCPA, 2010

Although already established in 2010, the Tribunal only commenced hearings in October 2012 following the approval of the Tribunal Rules in June 2012. From October 2012 to December 2014, 85 appeal cases have been filed with the Tribunal Secretariat. Approximately 75 percent of the total filed appeal cases during the period under review are consumer related cases while 25 percent are competition cases. The Tribunal has passed 11 judgments, the majority of which were in favour of the clients as opposed to CCPC¹² and ruled to allow 12 appeal cases to be withdrawn from the Tribunal as a result of both CCPC and clients/companies/consumers agreeing to settle the matters outside the Tribunal. Nine cases to date have been voluntarily withdrawn.

Although the Tribunal was established to reduce costs for the businesses as well as the time of the competition cases, there are a few challenges which are preventing full realisation of the positive impact of the reforms in terms of both time and costs of doing business. Although 85 cases have been filed with the Tribunal,¹³ only 32 cases have been completed to date. Most of the cases have been affected by delays due to the parties asking for adjournments as well as lack of sufficient information on the part of the aggrieved firms. The Tribunal is also not sufficiently funded to get full time employees which also limit the number of sittings. On an average, it takes about six months for a case to be disposed off at the Tribunal, which is however shorter compared to what used to prevail under the ZCC era when an appeal was heard only after two or three years.

In addition, some of the competition appeal cases which the Tribunal has ruled over have gone to High Court in appeals. This lack of confidence on both CCPC and the Tribunal by the private sector would also defeat the whole purpose for which the Tribunal was established, as this would imply that instead of the cases going straight to the High Court, they now pass through another layer which only further delays the time of having the case heard at the High Court. However, this has happened for only a minority of cases that have passed through the Tribunal.¹⁴ The issue on timing is also worsened by the fact that the time period for determining the appeal case before the Tribunal is not defined in the Act and thus there are no binding commitments that can be made by the Tribunal to speedily resolve cases.

There is more that needs to be done to ensure that the Tribunal becomes more effective and reduces the overall costs of competition regulation in Zambia. Both the Tribunal and its Secretariat currently operate on a part-time basis, which poses a challenge to the effectiveness and efficiency of the institution. The Tribunal also faces inadequate funding, which also limits its ability to hold hearings outside Lusaka, especially for firms located far away from the capital. The Tribunal also lacks an effective communication strategy to help guide the dissemination and publication of its work.

¹² The Tribunal estimates that about 80 percent of the appeal cases were in favour of the clients and 20 percent in favour of CCPC

¹³ This also includes 20 cases that were filed in 2014, of which there might not have been sufficient time in 2014 to deal with some of them, especially if they were filed towards the end of the year. Efforts to have these separated from the rest were not successful

¹⁴ About 75 percent of cases handled by the Tribunal are consumer related cases. Thus it is mostly from the remaining 25 percent constituting competition cases where further appeals to the High Court were made.

8. Business Perception About Effectiveness of the Reform

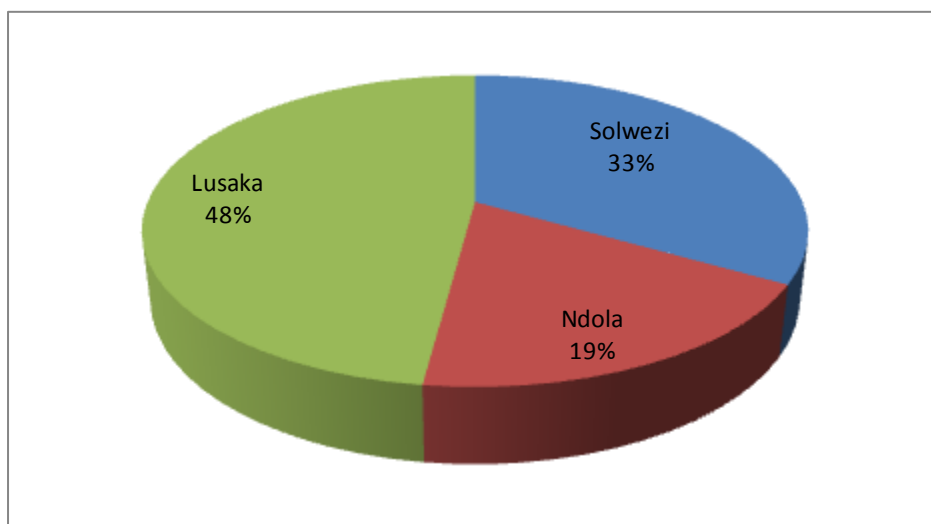
The effectiveness of the reforms as well as CCPC (and the Tribunal) can also be assessed based on the extent to which the competition law and its institutions are known by the private sector, which is a primary stakeholder. Competition can be enhanced if all stakeholders who stand to benefit are aware of the reforms, as reforms can only achieve minimal impact if stakeholders are not aware of them. A survey was undertaken on formal sector enterprises to measure their level of awareness of the reforms. The following are the findings from the survey.

Characteristics of the Respondents

Location of the respondents

The survey was conducted in three main areas in Zambia; Lusaka, Ndola and Solwezi. It would be expected that businesses in Lusaka and Ndola, which are closer to CCPC might have a different level of awareness than those in Solwezi, which is relatively distant from CCPC offices. While efforts were made to ensure that a similar sample size is drawn from the three locations, the different response rates saw more responses in Lusaka and Solwezi than in Ndola (figure 1).

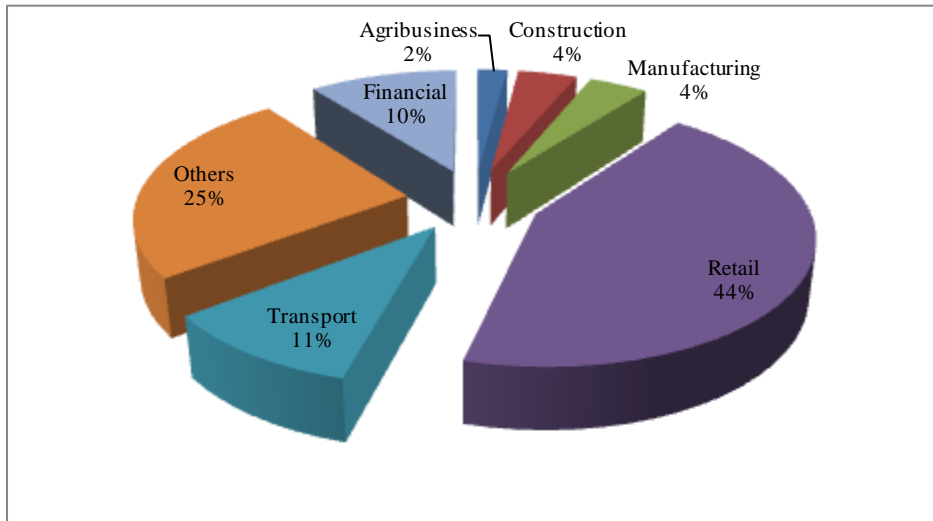
Figure 1: Distribution of Respondents by Location



Business Lines of Respondents

Given that there are some sectors of business that are more likely to be prone to anticompetitive behaviour than others, which would also influence the knowledge on CCPC, attempts were made to ensure that the respondents are all from different lines of business. However, some sectors were more responsive than others, which also created differences in the level of responses per sector (figure 2).

Figure 2: Business Sectors of Respondents

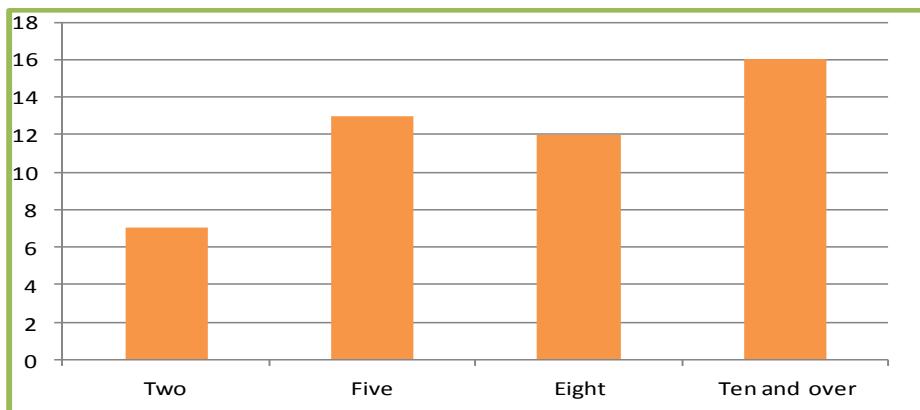


There were more respondents from the retail sector than other sectors. “Others” include respondents from the media, hospitality and others which could not be easily classified. It is also expected that the uneven distribution of the respondents could play a hand in influencing the results.

Age of the Business

The businesses interviewed were also of different ages, which would also be expected to have an effect on the extent to which they know CCPC or the competition law. The majority of the businesses were at least 8 years old (figure 3), which is also expected to increase their chances of being aware. The businesses which are fairly young, averaging about two years were the less frequent.

Figure 3: Age of the businesses interviewed



Having discussed the characteristics of the businesses, an assessment of their level of awareness of CCPC and the competition law can be made.

Awareness of the Law

About 56.3 percent of the respondents indicated that they were aware that Zambia has a competition law in place. The awareness is high in Lusaka, as about 65.2 percent of the respondents in Lusaka indicated that they are aware of the law while only 44 percent of the respondents outside Lusaka are aware of the existence of the Competition Act, 2010. Such a high level of awareness in Lusaka could reflect that CCPC is more visible in Lusaka than in other areas, while it could also imply that firms in Lusaka have had more experience in dealing with CCPC, either through being engaged as stakeholders in cases or being the actual complainants, especially since the CCPC is within their proximity. In general, the level of awareness of the law is quite high in Zambia, which could also imply that awareness efforts have been beneficial. Awareness also improves slightly with the age of the business, as those that indicated that they are aware have an average age of about eight years while those that indicated that they are not aware of the legislation have an average age of about six years.

Awareness of CCPC

Although only 56.3 percent of the businesses interviewed were aware of the existence of the law, the level of awareness for the CCPC is higher. This generally reflects that most businesses are aware of the institution that administers the law rather than the law being administered. About 83.3 percent of those interviewed indicated that they know the CCPC. However, most of the knowledge was gained through the media, which includes both CCPC media programmes as well as general coverage by the media of action that CCPC might have taken. About 73.2 percent of those that indicated that they were aware of CCPC indicated the media as their source while only 26.8 percent got to know about CCPC through engagement with the regulatory authority while it was undertaking investigations, either as respondents or as complainants. The knowledge of CCPC was also higher outside Lusaka than in Lusaka, as about 92 percent of the respondents outside Lusaka knew about CCPC while 78.3 percent in Lusaka knew about CCPC. This also demonstrates the extent to which the media rather than experience with CCPC is instrumental in generating awareness.

In order to check whether the businesses were indeed aware of CCPC, they were asked to mention what they really know about the functions of the CCPC. About 36.6 percent of those that had indicated that they were aware of the CCPC were not able to state the functions of the CCPC, which virtually implies that effectively, only 54.2 percent of the respondents were really aware of the CCPC in terms of its mandate. About 22.9 percent of the respondents were only able to identify the CCPC as a regulatory body without being able to point out its functions. About 27.1 percent of the respondents associate the CCPC only with consumer issue regulation while only 20.8 percent of the respondents were able to demonstrate that they know that CCPC deals with both competition and consumer protection issues. While requesting the respondents to qualify what they know about the CCPC reduced the level of awareness, the general level is still relatively high at 54.4 percent.

However, the fact that some businesses believe that the CCPC only protects consumers and not them is an issue for concern as they might not take any action even after encountering anticompetitive practices. This also underlines the need for awareness generation programmes by the CCPC.

Experience of Encountering Anticompetitive Practices

The firms were asked if they had encountered any cases of anticompetitive conduct. The purpose was to assess whether there are any firms that were experiencing anticompetitive practices but did not know where or how to report them. Only 25 percent of the firms interviewed indicated that they had encountered cases of anticompetitive behaviour within the course of their business operations. However, about 83 percent of those that had encountered anticompetitive cases did not report them to CCPC. Reasons given include that they did not know how to report, they complained to the perpetrators, they felt it would take some time to resolve and that they reported to the wrong platforms such as the police and the media. Surprisingly, all those who indicated that they had encountered anticompetitive practices had also indicated that they were aware of CCPC, which could also validate what some respondents said about not knowing how to report the cases.

The findings from the perception survey on awareness were also corroborated when those firms that have dealt with CCPC were engaged to understand their experience. Among these were two firms in the financial sector that had merged and got approval from the Bank of Zambia and only got to know that they should also have approached CCPC when CCPC contacted them to inform them that they had violated the law after they had announced in the press about the merger. They were fined about ZMW 83,000 for not notifying the Commission about the merger, an amount which they believe could have been substantially less had they complied with the law. The firm recommends enhanced awareness generation on the part of CCPC.

Rating of CCPC Awareness Platforms

The respondents were also asked to rate on a scale of one to five, with five representing the highest level, what they thought about the sufficiency of CCPC awareness programmes about its mandate and how the private sector could benefit from their intervention. Since most of the businesses had heard about CCPC through media coverage of competition issues, it is also not surprising that they rated the awareness campaigns as poor. About 87.5 percent of the respondents rated the awareness programmes as poor or very poor (1 and 2), while the remaining ones rated the programme as satisfactory (3). This also demonstrates the extent to which efforts are still called for on the part of the CCPC to ensure that there is greater appreciation of its mandate among businesses in Zambia.

However, CCPC has done a lot of activities aimed at enhancing their awareness. These include weekly paper articles in the Daily Mail and Post newspapers; TV and radio programmes; as well as bilateral engagements with the private sector. CCPC has also decentralised for easy communication with consumers and businesses.

9. Effectiveness of the Law: Legal Analysis¹⁵

A look at the law generally reveals that while it has made a lot of improvements on the old law, it also has some challenges that need to be worked on to make it more effective. On the positive side, the law managed to resolve some implementation problems that characterised the ZCC era, which include implementation issues arising from interpretation of some terms such as ‘concerted practice’ and ‘vertical agreements’ which were loosely defined. The CCPC has also been given some new functions that the ZCC did not have which enhance competition enforcement and include powers to investigate unfair trade practices and contract terms and other consumer protection issues which were missing in the old Act. Merger enforcement has also been enhanced as the notification was only provided for with respect to horizontal mergers in the old Act. Now for all mergers that meet a prescribed threshold the CCPC needs to be notified and has to investigate even if they are vertical or conglomerate mergers. The provision for the appointment of inspectors under the new Act, with powers to conduct ‘dawn raids’ on potential cartel cases, has also enhanced the investigative powers of the CCPC.

However, some grey areas still need polishing up for the new Act to become more effective. The definition of ‘undertaking’ under the new Act has generally been out of line with regional practice, as it is used to refer to a commitment or promise to the Commission while in other jurisdictions it means an enterprise. The new Act has only given one example of a vertical agreement (re-sale price maintenance), which is prohibited *per se*, without giving other examples of vertical agreements which are investigated by the Commission.

The new Act has also given powers to the CCPC to order parties to stop any behaviour which it has reason to believe could constitute a violation of the Act while it is investigating it.¹⁶ However, the new Act does not specify the period of investigation before the parties can continue with the business activity in question, which might not be encouraging for predictability. If the investigations take a long time, this would have a serious negative impact on the business of the parties concerned.

As has already been mentioned, the Commission continues to investigate whenever a company wants to relocate its plant and equipment from one region to another in Zambia even though it is not provided for under the CCPA, 2010. Relocation of plants and equipment can have serious implication on competition if an essential facility is just moved from an area where it was central to business for several other firms. There is need to ensure that this provision is provided for in the Act and not in form of a policy as this can be easily challenged in court. In addition, currently all cases involving the relocation of plants and equipment are being investigated, without any threshold as to the level that is deemed

¹⁵ In addition to review of the law and submissions from CCPC, this section also benefitted from the 2012 Peer Review Report of the Zambia legislation by UNCTAD

¹⁶ Under sections 62 to 64 of the CCPA, 2010

important to cause competition harm. Provisions should call for an intervention of the Commission only when there are concerns by the competitors or if the assets are of a defined threshold as this could save a lot of resources for the Commission.

Under the new Act, parties to a horizontal agreement which would see either one or both supplying about 30 percent of the market must notify the Commission for approval.¹⁷ This is however higher than the level for which vertical agreements must notify.¹⁸ This implies that a cartel can be allowed to happen as long as the parties to it can prove that the cartel did not see anyone enjoying a 30 percent share of the market. There is need to lower the level for the horizontal agreement, for example to the same level as the vertical agreement of 15 percent.

¹⁷ Section 14(1) (a) of the CCPA, 2010

¹⁸ Section 14(1) (b) of the CCPA, 2010

10. Other Issues and Study Limitations

Regional developments in competition policy at the COMESA level also resulted in CCPC working with the COMESA Competition Commission in dealing with competition concerns with cross border dimensions has also enhanced the effectiveness of CCPC when compared to ZCC, which operated without a regional competition authority. The effectiveness of competition regulation can also not be divorced from other sector specific bodies which also have the mandate to deal with some specific competition issues, especially mergers and acquisitions. Thus the cost of competition regulation on business can only be reduced if other regulatory bodies such as the Zambia Information and Telecommunication Technology Authority and the Energy Regulations Board also have legislation which does not impose unnecessary costs on business.

While the study has made some attempts to make comparisons with the previous regimes, there have been some limitations on the extent to which such comparisons could be precise. The BLRP Committee did not define some critical terms on which they based their estimates. For example, it is not known what ‘administrative’ hours entail as well as how these were calculated. In addition, the ‘steps’ that were estimated were not defined, neither was it provided how such steps were arrived at. The BLRP Committee also failed to give some estimates about the total investigation time for each of the areas of concern, which would have made it easier for comparison purposes.

11. Conclusion

The competition reforms that were done in Zambia had some impact on the private sector and the overall cost of doing business. The merger regulation reforms, which introduced a threshold for which mergers become notifiable, saved small businesses which dominated mergers under the ZCC era from paying notification fees, which used to average about ZMW 2, 584.916. However, since only the big firms have to notify on mergers now, the average cost for merger regulation has gone up to about ZMW 62, 667. although this is mostly due to the weight that is imposed by the large firms after eliminating the small firms that were merging. While the BRLP Committee estimated that it took nine steps under the old Act, these have been reduced to only three under the current operational framework.

The procedure and costs for seeking authorisations for exemptions were estimated by the Committee to costs approximately ZMW 3, 488.858. Under the new Act,¹⁹ a firm can pay up to about ZMW 22,000 implying that the costs under the new law have actually shot up significantly, which would not be good from a business' point of view. This probably explains why CCPC is yet to receive any such application for over three years since the new law became operational. The new law does also not stipulate any time frame in which the Commission should analyse an application for exemption, which does not enhance predictability for business.

The authorisation for relocation of plant and machinery was estimated by the BRLP Committee to cost about approximately ZMW 3,488.858. The reforms have actually eliminated all such costs, as under the CCPA, there is no payment required for the firms that want to relocate their plant and equipment. Consumer welfare has also been enhanced by the reforms as a platform for redress now exists, which has also seen consumers being able to exchange products worth over ZMW3. 3mn , which they would otherwise have held on to despite them being defective.

Although the leniency programme was incorporated into the new Act in order to facilitate easy identification of cartelistic behaviour, no cases have been handled under the leniency programme yet due to delays in putting in place the supporting legal frameworks. The benefits from the reforms are thus yet to materialise in this respect.

The establishment of the Tribunal has given firms a faster appeal platform, with an average time of about six months compared to the High Court process which usually took more than two years. However, maximum benefits have been thwarted by some challenges, which include lack of awareness about the Tribunal requirements, lack of capacity of the Tribunal as well as lack of confidence by firms with the Tribunal, which has seen further appeals to the Tribunal decisions, a process which actually lengthens the appeal process further in comparison to the period prior to the reforms.

¹⁹ Section 18 of the CCP Act, 2010

A perception survey among business enterprises reveals that the level of awareness of both the law and CCPC as an institution is quite high in Zambia. The knowledge was mainly gained through the media, which includes both CCPC media programmes as well as general coverage by the media of actions that CCPC might have taken. However, only 20.8 percent of the respondents were able to demonstrate that they know that CCPC deals with both competition and consumer protection issues. This also reveals that some gaps still exist in regard to knowledge about what CCPC's mandate really is in the economy. Businesses generally rate the level of CCPC awareness programmes as poor, as evidenced by the poor rating which was given by about 88 percent of respondents.

A legal analysis of the law also reveals that there are some grey areas which need to be amended to enhance effectiveness of the law. These include identification of vertical agreements, definition of thresholds for determining dominance, absence of timelines within which CCPC can order firms to stop from an activity while it is undertaking investigations and thresholds for vertical and horizontal agreements. The ensuing discussion therefore constitutes some of possible advocacy aimed at enhancing the effectiveness of the competition reforms in Zambia.

12. Recommendations

In view of the fact that the CCPA, 2010 is currently undergoing review, it is important that the review processes benefits from the finding of this study. Key among them includes:

- ***Mergers and acquisitions:*** Further streamlining of the merger and acquisition processes through a fast track process. The current 2010 Act gives a minimum of 90 days to dispose-off applications. Applications which might be less complex also have to be subjected to this minimum threshold - a situation which could arguably be said to be detrimental to such businesses. One possible way to address this concern is to give CCPC secretariat mandatory powers to handle simple mergers or acquisition transactions which were likely to take a shorter period than 90days.
- ***Negative clearance and authorisations:*** There is need to strengthen procedural law provisions under this section. Clear timeframes need to be stipulated within the law with regards to the time in which the Commission is expected to analyse such applications. The current state of affairs shows lack of these timeframes and this does not enhance predictability for business.
- ***Operationalisation of the leniency programme:*** The delay in the operationalisation of the leniency programme has undermined the very essence of why it was conceived – that of bursting cartels or any other anticompetitive practices. In view that the National Prosecution Authority (NPA) has now been given mandate to implement this programme, in partnership with the Commission, resources ought to be leveraged towards raising awareness on its relevance. Its significance depends on how informed society is.
- ***Relocation plant and machinery:*** Removing of this requirement in the 2010 Act saved businesses about ZMW 3, 488. 858. per transaction that was payable under the old Act. In view of the fact that the parent Ministry (MCTI) for the Commission has requested the latter to continue handling matters related to this subject, it is likely that the ZMW 3, 488. 858. or more might be returned. Therefore, it is important, were possible, to ensure that retaining this provision in the subsequent amended Act does not pose additional costs to businesses.
- ***Introduction of the Tribunal:*** Insufficient funding of the Tribunal resulting in limited number of sittings to dispose cases exemplifies lack of appreciation of its role and relevance in the judicial architecture. More funding is, therefore, required if the Tribunal is to function effectively. One precondition to also achieving this is to ensure that the Tribunal secretariat functions on a full time basis. Secondly and more importantly, there is also need to codify and strengthen the timeframe and procedural

legal provisions for determining appeal cases. This will bind the Tribunal to speedily dispose-off cases.

- ***Awareness of the law and CCPC.*** It is evident from the findings that greater awareness is concentrated to the latter than the former. Whereas this is mostly the case as laws are considered complex, it is critical for the Commission and other stakeholders to continue developing more simplistic but innovative ways to communicate. Effectiveness of the law will only be guaranteed if the very institutions and stakeholders it wishes to protect are aware of it. Two possible sub-recommendations are :
 - *Need to consider or build on efforts using popular personalities as ambassadors to communicate key complex legal messages*
 - *Need to develop and institutionalise a scientific method to measure the impact of the awareness generation programmes being undertaken by the Commission. This will assist in informing the Commission on which programmes or interventions are effective or otherwise and resources should be leveraged towards those which are effective.*
- Lastly, further studies are required to look at the vertical relationship between the CCPA, being a supreme law, and other sector specific laws that also provide substantive procedural law covering issues related to relocations, take-overs, acquisition and mergers. Such a study would also be relevant, if framed, to look at the regional dimension of these issues. Presently with the coming in of COMESA Competition Commission (CCC), cross border related acquisitions, mergers, relocations, takeovers etc. are handled by the CCC and its decisions have potential to impact negatively or positively on business growth in Zambia.

