Why Should Zambian Consumers be Interested in Competition Policy & Law?

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CCPC

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Abbreviations

CCPC	Competition and Consumer Protection Commission
COPRA	Consumer Protection Act, India
CUTS	Consumer Unity & Trust Society
EC	European Commission
EU	European Union
FBI	Federal Bureau of Investigation
FMCGs	Fast Moving Consumer Goods
FTC	Fair Trade Commission
IPRs	Intellectual Property Rights
M&As	Mergers and Acquisitions
MRTPC	Monopolies and Restrictive Trade Practices Commission
NIEK	National Imports and Exports Corporation
RTP	Restrictive Trade Practice
SEC	US Securities and Exchange Commission
ZAMTEL	Zambian Telecommunications Company Ltd.
ZCBC	Zambia Consumer Buyers Company
ZCC	Zambia Competition Commission
ZESCO	Zambian Electricity Supply Corporation
ZMW	Zambian Kwacha

Editors' Note

It is increasingly becoming important for consumers and businesses alike, to understand competition law and policies and avoid becoming victims of anticompetitive practices and to eschew possible law-breaking situations. Today, all around the world, governments recognise that a system of competition law is essential for successful operation of a market economy and protection of consumers' interests. The promotion of competition by various jurisdictions is a result of this realisation, including in the developing world.

Competition weeds out failures, incompetencies, inefficiencies, and forces enterprises to respond to time and market demand and dynamics. We are glad that the Zambian government, after liberalising the economy since the 1990s took a step in formulating a competition regime that is both protected by statute and promoted by supporting policies and institutions.

However, what is more important is to ensure that these laws and policies are understood by those they seek to govern and protect. It is important that once this information is adequately filtered, a self propelling culture of compliance is observed and a culture of self policing is created. There is always a need to make information available to both consumers and businesses.

This booklet provides concepts relating to competition law and draws examples from Zambia and elsewhere for the benefit of all relevant stakeholders in the country. Examples from other jurisdictions have been included as a way to broaden the scope of understanding on competition law application across sectors and situations. This is a must read booklet that is a Zambian derivative of a 2010 publication by the Consumer Unity & Trust Society (CUTS) International, "*Why Should Consumers be Interested in Competition Law and Policy?*" The Competition and Consumer Protection Commission (CCPC), Zambia and CUTS International have been long-time partners on the subject and learnt immensely from each other. This publication is a symbol of our cooperation and an endeavour to educate Zambian consumers and the business community on what is expected of them.

This booklet comes at a time when competition laws and policies across the world are undergoing significant transformation in order to reflect the current state of competition in the economies. This booklet, therefore, has been prepared to help readers understand the basic concepts of competition and what constitutes a violation of competition laws as well as the remedies provided in specific cases.

We hope that this booklet would be used by people from all spheres of life in Zambia, and CCPC and CUTS International would look forward eagerly for any feedback.

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1
Introduction

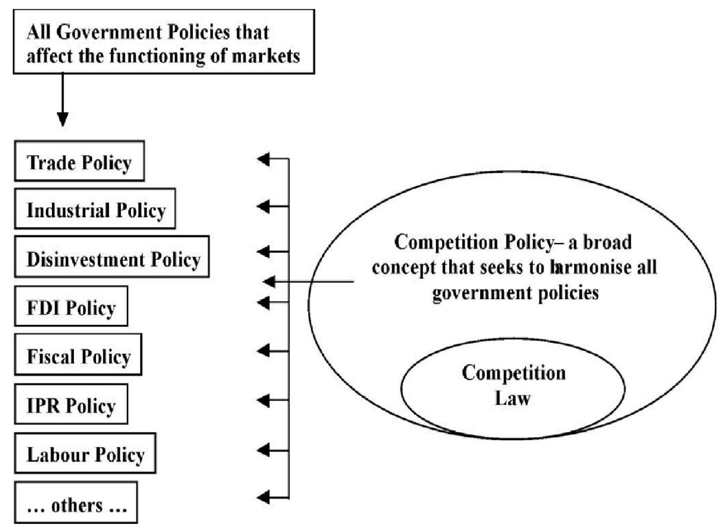
Competition is a process of economic rivalry between market players to attract customers. These market players can be multinational companies, domestic firms, wholesalers, and retailers, selling both goods and services. Such a competitive situation may also be affected by market contestability, where competition comes not only from existing players, but also from new players that could enter and contest in the market or from new products that could be introduced in the existing markets.

In a free market, competition is a force which ensures that only those firms/enterprises that work hard, innovate and respond to market are dynamics in order to capture greater market share. It drives firms to become more efficient and offer a greater choice of products at lower prices because of the fear that only the efficient ones will survive in the market. This ensures best possible utilisation of available resources.

Fair competition benefits consumers and the economy. All things being equal, consumers' purchasing power increase as a result of lower prices. For example, a poor person used to buying his bread for ZMW 5 each can, due to price competition, see the prices coming down to ZMW 2. The person would thus save ZMW 3 which he can use to buy something else.

Since competition furthers consumer interest and nourishes the economy, it becomes pertinent for the government to promote healthy competition in the market. This can be achieved by putting in place a competition policy and law regime. Competition policy is essentially understood to refer to those governmental measures that directly affect the behaviour of firms and the structure of the industry. A consistent and realistic competition policy should include both (see Figure 1):

Figure 1: Competition Policy *vis-a-vis* Competition Law



i) Economic policies adopted by government, that enhance competition in local and national markets (such as trade policy, industrial policy, consumer policy etc and also economic deregulation and privatisation etc.); and
ii) Competition law designed to check and stop anticompetitive business practices by firms and unnecessary government intervention in the market.

Moreover, merger control and regulations prevent concentration of wealth and power and serves the overall development of the economy. The Zambian Competition and Consumer Protection Act No.24 of 2010 empower the Commission to monitor, regulate and control concentration of power and behaviour of monopolies. These efforts are aimed at reducing the possible creation of monopolies and/or dominant firms that often end up abusing their positions. Positions of dominance do not give companies incentives to innovate and offer the best at competitive prices to their customers.

However, the natural tendency to make profits and/or eliminate others in the market on the part of firms, at times results in certain practices which distort competition, directly or indirectly. This is not a modern day phenomenon, and is probably as old as the market itself. Therefore, to ensure that consumers and businesses enjoy maximum benefits, competition must be maintained in the market.

Even businesses are customers of other goods and services, and hence need protection from anticompetitive practices of other businesses. This is where the role of the government comes in, especially through enacting competition laws and ensuring that the competition authority is made functional and effective. Government should keep an eye on the market behaviour and use several tools to promote competition through various policies such as industrial, trade, labour and investment, etc.

On the other hand, the competition authority is required to check anticompetitive practices through the effective enforcement of a competition law, thus promoting the interest of the consumer, the producer and the whole nation.

More so, consumers and their representatives themselves have to be alert in order to keep the government as well as the competition authority of their country active in implementing competition rules. This becomes more important in the liberalised era, where less regulated market players are well informed and organised, while consumers are still ignorant and unorganised.

This booklet aims at generating awareness that could be helpful for a layman to identify anticompetitive practices in the marketplace and seek action to rectify the same. The booklet is divided into four chapters. Section I describes various facets of competition. Section II deals with certain common myths regarding competition in the market, while Section III deals with various types of hurdles to competition. Section IV introduces competition law and policy to the reader and Section V concludes.

I
Types of Competition

Competition between firms can take place in two ways, namely price and non-price competition:

Price Competition: This is a form of competition among suppliers where they try to win customers by offering them a product at a price which is lower than their competitor's price. Lowering down of price is expected to bring about an increase in the market demand of the product. But this strategy may not work for those customers who are loyal to a particular brand and are not price conscious. However, lowering prices has limits in some jurisdictions such as Zambia beyond which it becomes illegal under competition law. Companies are not allowed to lower price below their cost of production if they are dominant as this would result in the elimination of its competitors, which is not desirable.

Non-price Competition: This is a form of competition among suppliers where they try to win customers not by lowering prices but by advertising, offering after-sales-service, using sale promotion tools introducing new products and services and improving the quality of existing products. Competition can also be categorised into fair and unfair competition.

(i) Fair Competition: This relates to the adoption of fair means by firms, such as producing quality products, becoming cost-efficient,

optimising the use of resources, adopting the best available technology, investing in research and development, etc. Fair competition also means that the competitors should play their games within the realms of the law and hence, companies are encouraged to adopt compliance programmes so that as they compete they are not found on the other side of the law.

(ii) Unfair Competition: This relates to the adoption of unfair means such as fixing prices with the rivals, setting a price which is lower than cost in order to throw out competitors from the market, advertising that belittles others' product, engaging in exclusive arrangements with suppliers of raw materials to foreclose other competitors.

Different Forms of Competition in the Market

Before understanding different forms of competition in the market, it is essential to understand what market is.

Market is an exchange mechanism that brings together sellers and buyers of any commodity or service. It is simply a transaction, not a physical place, where a buyer agrees to pay a price for the product that he buys from a seller. Forms of competition in the market can be distinguished according to the structural characteristics of the market such as: number of sellers and buyers, the type of goods produced, the nature of entry barriers, i.e. new firms cannot enter the market, etc. Generally, there are four types of market competition:

1) Large number of sellers and buyers, identical goods, free entry and free exit: This form of market experience is what is called *Perfect Competition*. The existence of a very large number of sellers, producing identical goods, results in same price for these goods. Existence of a unique price implies that in this form of competition, firms are price takers and not price setters and can sell any quantity of the products they desire at the existing market price.

A single producer whose share in the market is very small cannot influence the market. The degree of competition (price or non-price) is so low that it can be said that competition is virtually absent here. Moreover, on account of entry and exit being free and easy in this market, firms make only normal profits in the long run (i.e. normal return on capital employed, which is comparable to that obtainable in other equally risky markets plus a bonus for the risk bearing function that the producer undertakes).

Example: Perfect competition is an ideal situation and does not exist in practice but a near perfect competition can be seen in the market for vegetables. Almost everywhere in the world where there are large number of buyers and sellers, buyers have perfect information about the market and no individual seller can usually influence the market on his own.

Another good example in the Zambian scenario is the commuter transport, especially in a city like Lusaka. Mini buses are run by so many firms in this market that proprietors would ideally not increase the price from the prevailing price at any moment. If they did, commuters would simply shun the bus and use another readily available. Again, proprietors would not reduce the price because doing so would mean running loses.

2) Single seller, large numbers of buyers, no close substitutes of the product, high entry barriers: This form of market is called *Monopoly*. In this market form, the monopolist (i.e. the only seller) is the price and output setter. The monopolist can set price and allow demand to determine output or, can set output and allow demand to determine price. There may be reasonably adequate substitutes but not close substitutes. For example, road transport services (public and private), airlines etc. are reasonably adequate substitutes for railways but not close substitutes. Because of absence of close substitutes, competition is absent in the railway sector.

Example: In most of the developing countries of the world, public utilities such as railways, electricity are examples of monopoly where the State is the sole supplier and there are no close substitutes. In case of Zambia, Zambian Electricity Supply Corporation (ZESCO) is an example of a public monopoly in the electricity distribution market across most parts of the country. Zambian Telecommunications Company Ltd. (ZAMTEL) is a monopoly provider of fixed lined telephone in Zambia while Mpulungu harbour in Northern Zambia is also a monopoly.

3) Large number of sellers and buyers, existence of close substitutable products, no entry barrier: This form of market is called *Monopolistic Competition*. Existence of large number of sellers and buyers may give an impression that this form of competition resembles perfect competition. But it is unlike perfect competition. Here the existence of a large number of buyers and sellers does not imply that only a single price prevails in the market. Rather, several prices exist in this market form. Each firm enjoys certain price setting power over its product because of product differentiation. Firms do not engage in price competition in this market form since the effect on the demand for the product of the low-priced firm is negligible. Instead, they engage in non-price competition, such as product differentiation, to attract more customers, not as a reaction to the decision taken by other firms.

Example: In most of the countries of the world, markets of the fast moving consumer goods (FMCGs) such as soap, toothpaste and other toiletries are examples of monopolistic competition where a large number of close substitutes are available. However, in order to remain in competition, the suppliers actively engage in product differentiation to attract customers.

4) Very few sellers, large number of buyers, large number of branded products, high entry barrier: This form of competition is called *Oligopolistic Competition*. The number of sellers is so small that they are conscious of their interdependence (be it in price, product or promotion). They take into account the competitors' possible reactions while deciding their strategy. Firms, in this market form, tend to produce large number of branded goods in order to diversify the product line and thus compete on non-price terms (such as brand loyalty) and strengthen this with high advertising budgets.

Example: The Zambian market is composed of only three players in the Direct to Home Television (Digital Television) – Multichoice, Strong TV and Go TV. Go TV is partly owned by Multichoice and the Zambia National Broadcasting making Multichoice and Go TV related. In essence, there are only two independent' DTH services in the country with Multichoice is enjoying a significant market share.

Table 1: Different Forms of Competition

Models of Competition	**Number of Buyers**	**Number of Sellers**	**Natures of Products**	**Barriers to entry and exit**
Perfect Competition	Very Large	Very Large	Identical products	None
Monopoly	Very Large	One	Single product	Very Large
Monopolistic Competition	Very Large	Large	Minimum differences	None
Oligopolistic Competition	Very Large	Very Few	Large difference	Large

II
Some Myths and Realities

Despite competition being beneficial for consumers and the economy, certain sections in society are sceptic about competition policy and law. While consumers welcome a competition law, business take it as a threat to its existence. Many in the civil society also look at competition policy and law as another market access push by western countries similar to the structural adjustments programmes introduced in the 1990s. A few of these myths and realities are addressed here to get a better understanding of the situation.

Myth: Competition policy and law will allow foreign firms to come in and undermine domestic firms.

Reality: Competition law protects the process of how businesses go on with their activities. It does not dictate who comes in the market; those that do not work hard and innovate find themselves on the margins or out of the market in a competitive market. The coming in of foreign firms is not normally under the auspices of competition law and policy but rather treated under trade or investment policies and regulations. Therefore, attributing entry of foreign companies to existence of a competition law is rather misplaced.

Nevertheless, the effect of foreign entry into the market depends upon capabilities of domestic firms. If anything, competition law provides some protection to domestic firms from foreign firms that use anticompetitive practices to capture the national market.

There are instances and experiences from various countries where multinationals had to pay heavy fines for their engagement with anticompetitive activities. One of these is the vitamin cartel where several leading and sophisticated drug manufacturers were involved in a global conspiracy to fix prices of bulk vitamins. Action was taken against the cartel in the US, European Union (EU), Canada and Australia, as a result of which a fine of over a billion dollars was levied on the perpetrators. Many developing countries soon followed suit, imposing fines for the cartelised behaviour in their own markets.

Myth: Competition law and policy are tools for rich and urban societies.

Reality: Laws are passed by the Parliament and interpreted by the judiciary making them effective due to this separation of power. The bottom line of all competition laws is the creation of a fair and enabling competitive environment where those that thrive to woo consumers legally survive.

In order to address this misconception, reference can be made of case known to CUTS in India of a poor peasant widow, who used the law to get redresses against a moneylender.

Rukmini Devi, a poor, elderly and illiterate widow, lived in a small village near Chittorgarh in Rajasthan, a state in western part of India. She had applied for a loan from the local cooperative bank, under the Indian government's Integrated Rural Development Scheme.

As per the bank requirements, Rukmini Devi had to affix passport size photographs to the loan papers. Rukmini approached two local studios to get her photo taken but both denied. She was unable to apply for the loan and forced to go to a usurious money lender in the village. Both the studios, it emerged, were in league with the moneylender.

Rukmini Devi took help of a local consumer activist and complained to the local district forum under the Consumer Protection Act (COPRA) against the studio owners. She won the case and collected damages from one studio and the illegal agreement between the studios was broken.

This real-life example shows how cartels can operate at all levels and sap people and the economy. It also shows that the poor do benefit from action against competition abuses, if they can access justice.

***Myth*:** Competition law and policy works for the rich and affluent sections only.

Reality: This doubt again can be dispelled through simple real life examples.

An example of tied sales shows that competition law and policy works not only for the rich but also for the poor sections of the society. In the 1980s, Zambia had three state owned supermarkets namely Mwaiseni, National Imports and Exports Corporation (NIEK) and Zambia Consumer Buyers Company (ZCBC). It was made mandatory that when one buys bread, they were also supposed to buy butter. At that same time, the country had a shortage of soft drinks, take aways and other eating places would only sell a soft drink on the condition that a pie or chips or fried chicken or any other product is also bought. Post 1990 when the economy was liberalised and the Competition Law introduced, consumers were no longer forced to buy things tied to one another.

Thus, competition policy and law can benefit the poor.

III
Hurdles to Fair Competition

There are three major ways through which business can engage in anticompetitive practices. These can be explained as follows:

A. Anticompetitive Agreements

Once Napoleon said: “There are only two forces that unite men: fear and interest”. Competition being a formidable force of the market gives both these reasons to firms to come together, connive and thwart the cherished fruits of competition hurting the interests of not only consumers but the economy as well.

Firms can engage in various agreements, either with firms at the same level of production and supply chain (horizontal agreement) or with the firms that are at different level of production and supply chain (anticompetitive vertical agreement). Regardless of the nature of such agreements, all have the ultimate objective of raising prices and increasing profits.

Horizontal Agreements

A cartel is an example of a horizontal agreement; it is an agreement between firms to act in concert on prices, production levels and territories. The elimination of rival firms that formerly competed is accomplished not by integration of production activities, as would happen in the case of a merger. Instead, the formal rivals maintain separate firms but act jointly in fixing prices or dividing the market, or both. Cartels can also construct private barriers to prevent entry, such as threat of retaliatory or predatory price wars and patent pooling. For all these reasons, cartels are the most egregious of all anticompetitive practices and afford the firm the luxury to remain inefficient.

Box 1: Delivery Firms Fined for Operating European Cartel
A group of 14 international freight companies was fined a total of €169mn by the European Commission (EC) for operating a series of price-fixing cartels. The secret agreements, which ran between 2002 and 2007, saw charges being set secretly and illegally for shipping on busy routes between Europe, Asia and America. Investigators found that the so-called 'gardening club' operated four distinct cartels. According to the *Financial Times*, their arrangements only came to light when one of the companies involved – German-owned DHL – came forward with evidence of the agreements, and was granted immunity from prosecution. Managers of the companies involved took advantage of the introduction of electronic declarations for exports to get together and agree to levy a surcharge to customers for providing this information.
Source: www.excess-international.com/news/5640/delivery-firms-fined-for-operating- european-cartel. Retrieved April 02, 2012

Cartels are a particularly damaging form of anticompetitive activity. Their purpose is to increase prices by removing or reducing competition and as a result they directly affect the purchasers of the goods or services, whether they are public or private businesses or individuals. Cartels also have a damaging effect on the wider economy as they remove the incentive for businesses to operate efficiently and to innovate.

Box 2: Our Competitors are Our Friends, Our Customers are the Enemy

Do not be surprised! The statement cited above was actually made by a person sitting in a meeting of colluders in the US who had been involved in a famous cartel in the animal feed additives (lysine) business; Archer Daniels Midland. The world heard it because undercover agents from the US Federal Bureau of Investigation (FBI) recorded it on audio and videotapes. The tapes exposed the cartel mentality, which was so contemptuous of its customers and antitrust laws, thus providing conclusive and incriminating evidence of conspiracy.

What had made these tapes such an effective deterrent is not just the unnerving notion that the FBI might be watching, but the fact that the high level executives went to jail and their companies paid heavy fines as a result of their cartel activity. No wonder it has been said that cartels are the most egregious violations of competition law and they are ubiquitous.

Source: Mehta, Pradeep S (2007), Competition and Regulation in India, 2007, Book, XXXII+220, CUTS/CIRC, Jaipur. Pg.104-105

Horizontal agreements work in the following ways to thwart competition.

1. Price Fixing: The colluding firms undertake these kinds of activities in order to eliminate price competition between them. Sometimes they also follow this route in order to eliminate entry of any potential competitors into the market. A successful cartel raises price above the competitive level and reduces output. Consumers would have no option but to pay the higher price for the cartelised product, as these are mostly essential products.

Box 3: Garage Cartels
The Competition and Consumer Protection Commission (CCPC) fined 15 garages in Lusaka for engaging in uncompetitive business tendencies. The garages were found to have agreed to uniformly charge clients for various services contrary to Section 9 (1) A of the Competition and Consumer Protection Act number 24 of 2010, which prohibits horizontal agreements between enterprises. Top Gear, the major instigator, was fined up to two percent of its annual turnover of the latest financial business year while the others were each fined one percent of their annual turnover.
Source: Competition and Consumer Protection Commission - http://www.ccpc.org.zm/ index.php?option=com_docman&task=cat_view&Item_id=78

2. Bid Rigging or Collusive Bidding: Competitors might agree on who would win a tender or bid, mostly government tenders, and allows the winner to quote higher prices than under competition and win. The other members of the collaboration will either decline to participate in the tender or will make fake offers, called cover bids. These are known as bid rigging cartels.

Box 4: US SEC Charges Wachovia with Fraudulent Bid Rigging in Municipal Bond Proceeds
The US Securities and Exchange Commission (SEC) charged Wachovia Bank N.A. with fraudulently engaging in secret arrangements with bidding agents to improperly win business from municipalities and guarantee itself profits in the reinvestment of municipal bond proceeds. The SEC alleged that Wachovia generated millions of dollars in illicit gains during an eight-year period when it fraudulently rigged at least 58 municipal bond reinvestment transactions in

Contd...

25 states and Puerto Rico. Wachovia won some bids through a practice known as "last looks" in which it obtained information from the bidding agents about competing bids. It also won bids through "set-ups" in which the bidding agent deliberately obtained non-winning bids from other providers in order to rig the field in Wachovia's favour. Wachovia facilitated some bids rigged for others to win by deliberately submitting non-winning bids. Wachovia won bids by playing an elaborate game of "you scratch my back and I'll scratch yours", rather than engaging in legitimate competition to win.

Wachovia agreed to settle the charges by paying US$46mn to the SEC that will be returned to affected municipalities or conduit borrowers. Wachovia also entered into agreements with the Justice Department, Office of the Comptroller of the Currency, Internal Revenue Service, and 26 state attorneys general that include the payment of an additional US$102mn. The settlements arise out of long-standing parallel investigations into widespread corruption in the municipal securities reinvestment industry in which 18 individuals have been criminally charged by the Justice Department's Antitrust Division.

Source: Washington, DC, December 08, 2011 – www.sec.gov/news/press/2011/2011- 257.htm, retrieved April 02, 2012

Mechanisms for bid rigging are numerous and varied such as:

2a. Bid suppression: One or more competitors agree to refrain from tendering or to withdraw a previously submitted tender so that another firm can win the tender.

2b. Complementary bidding: The competing firms agree among themselves as to who should win a tender, and then agree that the others will submit artificially high bids to create the appearance of vigorous competition.

2c. Bid rotation: The competitors take turns in winning tender, with others submitting high bids.

Box 5: Railways Procurement of Concrete Sleepers
The extent of the malice can be gauged from the fact that even the Parliamentary Standing Committee on Railways (2004) of the Government of India, while discussing the question of procurement of concrete sleepers observed, "The procurement of concrete sleepers have become a very sensitive matter because a lot of unscrupulous existing manufacturers have formed a cartel to secure orders by unfair means or tampering with the procedure and simultaneously keeping the new competitors out of the race. The Committee is constrained to notice that there exists a regional imbalance in the setting up of concrete sleeper manufacturing units. The Committee also expresses its unhappiness that new entrants are not encouraged which ultimately strengthen the cartel of old/existing manufacturers". In procuring broad gauge sleepers, the Indian Railways awarded contracts to the existing 71 firms, and ignored the new 24 firms entirely.
Source: Mehta, Pradeep S (ed.), 'Towards a Functional Competition Policy for India, CUTS and Academic Foundation, 2006

3. Allocating Markets: Competitors can agree to allocate geographic territories or type of goods or customers among themselves and avoid competing with each other in the areas to allow each other opportunities to enjoy super normal profits. This is known as marketing allocating agreements. The agreement between two firms to allocate market is a very serious anticompetitive practice, and may have a greater impact on competition due to price fixing.

Box 6: Sugar Producers in Spain Hauled Up
Four sugar producers in Spain were engaged in a market allocation agreement (apart from price fixing, sales quota agreements) that restricted sugar supply to the level at which maximum monopoly profits could be earned. As a result, Spanish sugar prices, for many years, were five to nine percent higher than those in the rest of Europe. Based on a complaint from associations of businesses that purchase sugar, and based on the information collected through a raid, the Spanish Competition Authority uncovered the sophisticated cartel and slapped US$12mn fine on four producers.
Source: Report of the Ministerial level meeting of the OECD, 2000

4. Limiting Output: Competitors might agree to limit the output they produce or supply into the market, so as to cause some artificial shortages of the product, resulting in excess demand for the product and opportunities to raise prices. These are known as output restricting cartels.

Box 7: The Belgian Competition Council fines three companies nearly €1.5mn for price fixing, market sharing and output-limitation in the chemical industry and applies leniency ***(Bayer - Ferro - Lonza and Solutia Europe)***
On April 04, 2008, the Belgian Competition Council found the three biggest producers of Butyl Benzyl Phthalate (BBP) - *i.e. Bayer*, *Ferro* and *Solutia Europe* - and a distributor (*Lonza*) guilty of fixing price, market-sharing, limiting output and exchanging strategic information. BBP is a chemical used among others to produce joints, pastes and flooring products made of PVC. *Bayer*, who blew the whistle, was granted full

Contd...

immunity. The other participants to the cartel benefited from reduction in their fines due to their subsequent requests for leniency. Ultimately, *Ferro* was fined €175,594, *Solutia Europe* €197,543 and *Lonza* was fined €114,618.

The cartel involved the main producers and distributors of BBP in Europe. At the time of the infringement, only few companies (two or three depending on the period) were producing BBP in Europe. *Bayer* was producing and distributing BBP during the whole period of the infringement. *Solutia Europe* entered the market of BBP in 1997. In 2000, *Ferro* acquired the BBP activity of *Solutia Europe* and started to produce and distribute BBP. All of them were involved in the cartel. *Enichem* produced BBP until the end of 1997. This company was not involved directly in the concerted practices but its distributor, *Lonza* was a member of the cartel. In January 1998, *Lonza* started to distribute BBP produced by *Solutia Europe* and later by *Ferro*.

Without much analysis, the Council considered the European BBP market as the relevant market for the purpose of analysing the collusive agreements. According to the decision, the participants to the cartel engaged in the following behaviours: fixing prices, sharing the market, limiting production and sales and exchanging information. The practice was considered by the Belgian Competition authority as a *per se* very serious violation of article 2 paragraph 1 of the LPCE and article 81 of the EC Treaty.

Source: www.concurrences.com/article.php3?id_article=22118&lang=fr, retrieved April 02, 2012

Vertical Restraints

Agreements between firms which are at different stages or levels in the production (or supply) chain can also stifle competition. This can happen through certain imposed conditions.

1. Tie-in Agreement: Here the supplier sells a product (tying product), which is dependent on the purchase of some other product, usually a slow moving product (tied product). This tie-in arrangement is such that even if the customer does not want to buy the tied product, he has to buy it in order to get the desired product.

Box 8: Tie-up Sales of Gas Stoves with Supply of Gas Connection

Shyam Gas Company, was the sole distributor of Bharat Petroleum Corporation Ltd, of cooking gas cylinders at Hathras (Uttar Pradesh) in India, which was allegedly engaged in the following restrictive practices:

- giving gas connections to customers only when they purchased a gas stove or hot plate from the company or its sister enterprise, Shyam Jyoti Enterprise;
- charging customers for the supply of fitting and appliances at twice the market price.

The Monopolies and Restrictive Trade Practices Commission (MRTPC) held that the company was indulging in a restrictive trade practice (RTP) that was prejudicial to public interest. When charged, Shyam Gas Co. agreed to stop the RTP and the MRTPC directed the company to abide by the undertaking.

This practice was also common across other parts of India as well, but has now been addressed.

Source: Monopolies Trade Regulation & Consumer Protection, DPS Verma, 1985

2. Exclusive Dealing Agreements: Here upstream firms (e.g. producers) force an agreement upon downstream firms (e.g. retailer), whereby the latter is prohibited from dealing with competing producers or distributors. This dealing arrangement can act as a barrier for new entrants and hence affects competition adversely.

Box 9: Anticompetitive Trade Practices against Commercial Banks in Zambia by Property Valuation Surveyors

In July 2009, the Commission handled a complaint from Azimuth Assessors and Realtors (AAR) with regard to allegations of anticompetitive practices in the property valuation business against commercial banks. Specifically it was alleged that the use of a list of preferred valuers by banks was foreclosing the market to valuers not on the list. The conduct by commercial banks of only accepting valuation works for selected property valuation surveyors would likely lead to the restriction of competition among property valuation companies.

The Commission was concerned that having commercial banks with a list of preferred property valuers, restricted competition in that those companies that were not on the list were effectively excluded could not ultimately compete in the market. Further, a prospective or new entrant in the market would find it difficult to enter and grow in the market, respectively. Thus, the conduct was exclusionary and foreclosed the market, which restricted and prevented competition in the relevant market.

Following the liberalisation and the attendant growth of the Zambian economy, there were many individuals and private companies that had engaged in various forms of investments. To meet their financial needs, both individuals and private firms obtained financial lending from institutions such as commercial

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banks for loans especially those that required significant amounts. Nonetheless, commercial banks have to hedge against risks associated with lending money to individuals and private companies that may not be credit worthy. As such, commercial banks ask for collateral from their clients. Registered property valuation surveyors in Zambia do the valuation properties. Therefore, the practice by commercial banks of restricting the number of property surveyors through the preparation of panel of valuers would likely reduce the number of valuation surveyors.

The Commission felt that there was need for commercial banks to ensure that having a list of preferred property valuation surveyors did not result in them foreclosing the market for those surveyors who are not on their respective lists. The Commission wanted to ensure that reports submitted by duly registered surveyors not on a bank's list were not rejected solely for the reason that the bank does not have the surveyor on their list. There was need for guidelines on the selection of property valuers in the banking and financial sector in consultation with the Bankers' Association and the Valuation Surveyors Registration Board

Source: CCPC Annual Report, 2011

3. Exclusive Distribution Agreements: This agreement is between the supplier and the distributor, where the former dictates the latter on his/her market. That means, whether or not the distributor will sell to any particular region or to particular class of customers is to be decided by the supplier. Again these are marketing strategies, generally followed by firms, but sometimes these practices may pose competition concerns.

Box 10: McDowell & Co. and its Distributors
McDowell & Co. Ltd., in India, imposed territorial restriction on its franchise-holders manufacturers/bottlers, to the effect that they were to confine their selling operations to areas allocated to them and prohibited them from selling their products at any place outside the respective areas. The MRTPC held this practice to be a restrictive one. The Commission observed that in view of the relatively small share of McDowell in the soft drink industry and relatively large areas allocated to each bottler, the territorial restriction was not substantial and did not restrict or discourage competition but the possibility of these restrictions inhibiting competition at a later stage cannot be ruled out if and when the market share of McDowell increases significantly.
Source: Law of Monopolistic & Unfair Trade Practices, S. M. Dugar, Third Edition, 1997

4. <u>Refusal to Deal</u>: In such cases firms decide among themselves not to sell or buy from certain customers. In other words, they refuse to deal with any third party, normally a competitor of one of them. Though this may be a fair marketing strategy for optimum profit, sometimes such practices may reduce competition in the market and consequently could be restrictive in nature.

Box 11: The Case of Bata
Once, Bata Co. enjoyed a dominant presence in the footwear market in India. It is engaged in the manufacture of leather and rubber canvas footwear. It entered into agreements with small-scale manufacturers for purchase of footwear to be sold by it under its own brand. These manufacturers comprised of mostly poor cobblers and leather workmen. The agreement

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prohibited the small manufacturers from purchasing raw materials and components from parties other than those approved by Bata.

The MRTPC after due inquiry, ruled that the conditions imposed by Bata constituted RTP and were prejudicial to public interest.

Source: Mehta, Pradeep S (2007), Competition and Regulation in India, 2007, Book, XXXII+220, CUTS/CIRC, Jaipur. Pg.104-105

5. Resale Price Maintenance: Here the producer dictates the resale price of goods that would be charged by the retailers. When resale price maintenance is imposed, the price of goods becomes uniform at all points of resale irrespective of the difference in location, character and quality of the services provided. This practice is prohibited by Section 10 of the Competition and Consumer Protection Act (2010) in the Zambia jurisdiction.

Box 12: Apple Computers Admonished by Japanese FTC

Apple Computer Inc. was suspected to be pressurising retailers not to sell its iMac desktop and iBook notebook computers below retail list prices. Japan's anti-monopoly watchdog, the Fair Trade Commission (FTC) held such a practice to be restrictive and issued a warning to its Japanese unit over suspected resale price maintenance.

Source: The Economic Times (India), October 04, 2000

B. Abuse of Dominant Position

Dominance by an enterprise is to be judged by its power to operate independently of competitive forces or to disadvantage its competitors or consumers in its favour. Abuse of dominance can also be collective, such as a cartel not allowing new entrants into the market. It is not necessary that a single firm possess a high market share to abuse its dominance. However, consequences for competition can be severe if the firm is dominant.

For determining whether a specific undertaking is dominant the geographical and product market is to be understood. Geographical dimension includes the geographical area within which the competition takes place. Product market includes all such substitutes that the consumer would shift to, if the price of the relevant product were to increase.

For example, if Coca Cola, together with its cola drink competitor, Pepsi, in a parallel price movement and not necessarily through collusion, decide to increase their prices unreasonably, consumers can shift to other cheaper soft drinks. The only argument here would be about consumers who want only a cola drink for reasons of taste or peer pressure, and then may find it difficult to shift to another soft drink.

Abuse of dominance is broadly of two types: *Exploitative* and *Exclusionary* abuse

1. *Exploitative abuse* means exploiting customers by ignoring the needs of customers and competitors.

Box 13: Abuse of Dominance in the Tourism Sector
On June 02, 2011 the Commission received a complaint from Chongwe Camp against Royal Zambezi Lodge who owned an airstrip in the Lower Zambezi National Park alleging that Royal Zambezi had introduced an unreasonable charge of US$2000 per bed per year in order for the competitors' customers to land on the airstrip. The complainant further stated that the timing of imposing this charge was calculated to eliminate the competitors out of the market because the peak period for tourism was just beginning. The Commission directed Royal Zambezi Lodge not to go ahead with its proposed plans of denying access to the airstrip as the Commission had instituted investigations on the matter.

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The Commission construed two issues from the allegation which issues are:

1. Unfair Trading Condition in accordance with section 16 (2)(a) of the Act
2. Essential Facility Doctrine in accordance with section 16 (2)(e) of the Act

The Commission established that although the real market share for Royal Zambezi airstrip could not be established with absolute certainty, Royal Zambezi had through its behaviour demonstrated power in the relevant market and was hence dominant. The timing to impose the charge on the airstrip by Royal Zambezi was clearly an abuse of market power for the airstrip product to restrict competition in the market for provision of accommodation for tourists through lodges where it was not dominant. Such conduct amounted to imposing, directly or indirectly, unfair purchase or selling prices or other unfair trading conditions especially as regards the timing of the condition when tourism had reached its peak period.

The Commission found that Royal Zambezi was dominant with market power for only six months up to the end of the year. This was because it was during this period that the competitors were locked to the airstrip which became an essential facility in the short term of six months. They were locked to this facility by virtue of fact that they had already advertised their services to their foreign customers based on the fact that the customer shall land on the Royal Zambezi airstrip. This meant that if they had to use alternative airstrips, they would have had to cancel the earlier presentations they had made to their customers.

Source: CCPC Annual Report - 2011

The various ways in which exploitative abuse could be exercised are:

- refusal to deal, such as denial of essential facilities;
- tying, bundling, forced line selling;
- price discrimination;
- intellectual property rights (IPRs) abuses; and
- excessive pricing or price gouging.

2. *Exclusionary abuse* involves exclusion of competitors. For example, in some states in India, truck operators are not allowed to load and unload goods within the route unless they become part of the truck association. The truck association charges tariffs almost 35-40 percent higher than the prevailing market rates to the non-member truck owners.

The way in which exclusionary abuse could be exercised is given below:

- Exclusive dealing arrangements (distributors cannot sell another supplier's goods or services)
- Predatory pricing
- Non-predatory pricing

C. Mergers and acquisitions

A merger is a fusion between two or more firms whereby the identity of one (or more) is lost and results in a single firm. Acquisition (or takeover) of one firm by another usually involves purchase of all or a sufficient amount of the shares of another firm to enable it to exercise control.

Such mergers and acquisitions (M&As) might be horizontal, vertical or conglomerate.

1. <u>Horizontal M&As</u>: These involve firms that are competitors, i.e. at the same level of production-supply chain. For example, two firms producing toothpaste merge together.

Box 14: Takeover of Northern Breweries by Zambian Breweries

Northern Breweries was on the brink of failure when Zambian Breweries expressed interest to take over its operations. The takeover of Northern Breweries (1995) Plc by Zambian Breweries Plc was assessed and an interim authorisation was granted to the Zambian Breweries Plc in December 1998. There was a general fear that the takeover of Northern Breweries was the recipe for creating a monopoly in clear beer industry. Despite this fear, the Commission authorised a conditional takeover of Northern Breweries by Zambian Breweries in order to save jobs.

The Commission secured commitments from Zambian Breweries Plc through undertakings aimed at maintaining and enhancing market access by other clear beer suppliers in Zambia. Finally, the Board of Commissioners on the 28th January 1999 authorised the takeover of Northern Breweries using the "failing company defence" to avoid liquidation and other socio-economic adverse effects. A compliance programme was put in place to monitor and enforce the undertakings. Among the many, the undertakings include the following:

1. *That it, or any of its subsidiaries, will not in trade or commerce, carry out excessive advertisement of recommended prices with the effect of price fixing in relation to their goods and services.*
2. *The board of directors of Northern Breweries (1995) Plc should, in the majority, be separate and independent from those of Zambian Breweries Plc. To enhance the condition for separate management, the two companies are called upon to keep independent books of accounts.*
3. *There shall be no preclusions for entry into the Zambian clear beer market. The market forces should determine the*

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individual courses of actions based on specific circumstances. Accordingly, persons or any other enterprises should not be barred from entry or re-entry of the clear beer business in Zambia by way of an agreement with Zambian Breweries Plc or any other person, enterprises or institution
Source: Zambia Competition Commission Annual Report, 1999

2. Vertical M&As: These involve firms that are at different level of production-supply chain. For example, a firm producing cold drinks merges with the other producing bottles to contain such cold drinks.

3. Conglomerate M&As: These involve firms in diversified and unrelated business. For example, a firm producing cars merges with a firm that deals in finance. While horizontal mergers may raise competition concerns, conglomerate mergers, generally, do not raise any competition concern.

When two competitors merge, it is but obvious that the market share of the merged entity would be more than that they individually used to share. Broadly there could be three cases due to any *horizontal merger*:

(a) a monopoly situation may arise;
(b) the merged entity may become a dominant player in the market; or
(c) even the merged entity cannot capture enough market power.

While cases (a) and (b) might pose competition concerns, case (c) is unlikely to give rise to any competition concern, if there remain other competitors in the market. Hence, the issue from the point of view of competition law and policy is not merger in itself, but whether such merger results in a monopoly situation or a dominant market player.

Box 15: Merger between Biscuit Manufacturers in Australia

The Australian Competition and Consumer Commission (ACCC) considered a case of merger involving two biscuit manufacturers (say A and B). A had 55 percent share of the biscuit market, while B had 15 percent share. Both decided to merge. ACCC wanted to block the merger as it would result in a dominant market player.

One argument that merging entities put forward was that the market to be considered here should be the market for snacks and not mere market for biscuits. Consequently, the market share of A would be 10 percent and that of B would be mere one percent. So, the main issue to be decided by the Commission was that whether it is a market for biscuits or a market for snacks. The Commission ultimately disallowed the proposed merger, deciding it as a market for biscuits.

Source: Report of the Asia-Pacific Regional Workshop on Competition Law, CUTS and UNCTAD, Jaipur, India, April 16-17, 2000

Box 16 focuses on the purchase of Lumwana Copper Mine by Barrick Gold Corp. Had it been that the merger were consummated without any checks, there was going to be a high chance that positions of power assumed would be abused and the secondary supporting services thwarted or pushed out of business with resulting huge job losses.

Box 16: Takeover of Lumwana Mines by Barrick Gold

The Competition and Consumer Protection Commission (CCPC), Zambia approved the purchase of Lumwana Copper Mine by Barrick Gold Corporation of Canada as part of the takeover of Equinox Minerals Limited of Australia. CCPC granted final conditional authorisation to the proposed acquisition of 100 percent shareholding of Equinox Minerals

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Limited by Barrick Gold Corporation of Canada. The conditions were that the mining giant honours the subsisting agreements that Lumwana Copper Mines had entered into with the local smelter, local suppliers to the mine and other third line industries. Other conditions were that Barrick Gold Corporation takes necessary steps to ensure no job losses occurred as a result of the transaction and that since Lumwana Mine was considering future extraction of uranium, that Barrick Gold ensures people are protect from potential radioactive hazards that uranium poses.
Source: Competition and Consumer Protection Commission/ http://www.postzambia.com/post-read_article.php?articleId=20798

The Zambia Competition Authority is very stringent when it comes to mergers. Every merger or takeover has to be notified and if the Commission has reasonable ground that such a merger or takeover will result in adverts effects on competition, the same is rejected (refer Box 17).

Box 17: Exclusive Agreements in the Poultry Industry
In 1998, Zambia Competition Commission uncovered restrictive business arrangements involving Hybrid Poultry Farm (a dominant day old chicks breeder) and Galunia Holdings Limited (a commercial chicken broiler seller). Hybrid Poultry Farm decided to dispose off part of Mariandale Farm, which specialised in the raising of day old chicks to Galunia Holdings. However, the terms of the agreement were such that Galunia Holdings would only purchase day old chicks from Hybrid Poultry Farm, with Galunia not allowed to raise any type of poultry at the farm, apart from broiler chickens, including the provision not to go into business of a chicken

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hatchery. The parties also agreed that Galunia Holdings should be accorded the right of first refusal should HPF intend to sell some of its shares. Further, Galuna was also required to consider HPF's right of first refusal should it intend to resell Mariandale Farm.

The Commission held the view that the exclusive dealing effectively excluded competition as Galaunia could not buy day old chicks from Hybrid Poultry's only formidable competitor at the time, Tamba Chicks. At the time, it was evident from the Commission's analysis that Hybrid Poultry was a dominant firm both in the quantitative and in the qualitative sense in the relevant product market. The Commission observed that the agreements led to higher prices of day old chicks for Galaunia and affected the operations of Tamba Chicks and effectively constrained entry in the markets. Based on the assessment, the Commission nullified the agreements and when Tamba Chicks was finally advertised for sale, the Commission blocked the bid by Hybrid Poultry and instead allowed a new entrant, Ross Breeders, who is still around and providing the relevant market with competition that is desirous to the Commission.

As a result of the Commission's intervention, the poultry sub-sector is currently one of the largest employers in the country and is highly fragmented downstream, with a large informal sector thereof. The industry has increased from 16 million birds in 2000 to about 26 million in 2007, with enquiries and orders for mainly processed eggs and hatching eggs coming from as far as the Comoros Islands, the Democratic Republic of Congo, Angola, Tanzania and Uganda among other countries in the region

Source: ZCC Annual reports 2004

IV
Mechanisms to Safeguard and Promote Competition

Zambia has put in place a mechanism to safeguard and promote competition in the form of the Competition and Consumer Protection Act, 2010. The Act establishes the Competition and Consumer Protection Commission (CCPC) as the authority responsible for implementing the competition law in the country. The Competition and Consumer Protection Commission, formerly Zambia Competition Commission, has the primary responsibility of fostering a competitive culture where individuals and their businesses (large and small, at all levels of production) have the opportunity to trade efficiently and fairly, while ensuring that consumer rights are upheld and adequately protected. Section 5 of the Competition and Consumer Protection Act No.24 of 2012 gives the CCPC the following **primary functions to**;

1. monitor acts or behaviour which are likely to adversely affect competition and fair trading in Zambia
2. control acts or behaviour which are likely to adversely affect competition and fair trading in Zambia
3. prohibit acts or behaviour which are likely to adversely affect competition and fair trading in Zambia
4. carry out investigations in reported and observed instances of anticompetitive trade practices
5. investigate proposed merger transactions

6. provide persons engaged in business with information regarding their rights and duties under the Act
7. provide information for the guidance of consumers regarding their rights under this Act
8. undertake studies and make available to the public reports regarding the operation of the Act
9. cooperate with and assist any association or body of persons to develop and promote the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act
10. do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under this Act

Before the Competition and Consumer Protection Act, 2010, Zambia's competition regime was regulated under the Competition and Fair Trading Act of 1994. Although the 1994 Act was aimed at ensuring that anticompetitive practices that impact consumer welfare, were prohibited and concentration of economic power is regulated, it failed to live up to its expectation owing to its structure and limited provisions to adequately deal with the new dynamic changes in the competition and consumer protection front. The competition authority had little administrative powers to impose fines whilst the Act was also weak on consumer protection as it had only one section to deal with consumer protection issues. This is unlike in other countries where consumer protection is given much prominence and enacted as a separate law.

The Zambia competition regime is also underpinned by a comprehensive competition policy, which was put in place in 2009. Zambia, thus, became one of the few countries across the whole world that has a competition policy. It is well-established that competition law can regulate markets best if it is part of a comprehensive competition policy rather than when it has been enacted in isolation. It is the enactment of a competition law without a complementary adoption of most of the other elements of competition policy that has resulted in some operational shortcomings in many developing countries.

The general expectation of Competition and Consumer Policy (2009) is to preserve and promote competition as a means to ensure the efficient allocation of resources in an economy. This preservation and promotion of competition should result in tangible growth leading to an increase in commercial and industrial economic activities. Thus, competition offers the promise of increased employment opportunities to alleviate poverty, promote equitable distribution of resources, lower prices, adequate supplies of goods and services and improved choice for consumers.

In line with its objectives of promoting competition in the Zambia economy, CCPC has already been active in the economy by ensuring that competition distorting practices are quickly dealt with.

Table 2: Number of Cases that CCPC has dealt with over the past three years

Year	Restrictive business practises	Cartels	Dominance	Mergers and Acquisitions
2011	24	1	1	21
2010	35	1	1	45
2009	15	2	0	18

V
Conclusion

As we see competition is enormously beneficial for the consumers and the economy. In the words of Adam Smith competition is the "Invisible Hand" that keeps the society on track, assuring that, it produces the goods and services it needs. However, uncharitable market players resort to unethical and illegal practices to thwart competition. In a situation like this, the tasks of law enforcement agencies become very crucial. Especially, with regard to a vibrant and expanding economy like that of Zambia, strict enforcement of competition law is all the more necessary. The competition authority has a mammoth task ahead and is expected to establish a vibrant competition regime in the country.

Above all, consumers should stand for their own rights. Consumers are stakeholders in any matter affecting competition; hence, they must remain aware of the issues concerning their welfare. Zambia has even gone a step further by including consumer rights in their constitution and consumers have a duty to understand these provisions if they are to claim these rights and enjoy their entitlements. Civil society shares the onus equally. In some countries, especially Zambia, competition agencies have limitations pertaining to financial resources that hinder their ability to effectively implement the laws.

Civil society, therefore, needs to fill in the vacuum by mobilising consumers to seek redresses against anticompetitive practices. It is, therefore, collective responsibility of the government, civil society organisations and consumers themselves, with their respective resources to establish and improve the competition culture in Zambia for promoting economic opportunities and preserving citizens' welfare.

Annexure
Competition Case Laws – *Lessons for Consumers*

One of the basic objectives of competition in any economy is that the gains of competition should be equally distributed among various sections of the society. The question of availability and affordability emerges in the case of basic needs, such as food, clothing, healthcare, education, energy, transportation etc. which are essential for survival. It can be analysed through examples as to what kind of distortions plague these sectors and how the consumers can make themselves aware.

1. <u>Healthcare:</u> World over healthcare delivery system suffers from information asymmetry. People by and large depend upon private health facilities for their healthcare needs. Yet, no systematic information is available about the quality and types of services, as well as the prices charged by different private hospitals. Besides, pharmaceutical companies tie up with doctors to prescribe their medicines, and thus make profits higher than normal. In fact the consumer has no choice at all, who has to go by the doctor's advice.

Box 18: Bristol-Myers Settles Fraud Allegations
In a landmark case, Bristol-Myers Squibb Co. had to pay more than US$515mn to settle fraud allegations involving kickbacks to doctors and inflated drug prices. Bristol agreed to settle charges that the drug maker illegally compensated doctors to induce them to prescribe Bristol drugs to patients, ostensibly for their participation in various programmes, which included trips to luxurious hotels. Bristol was also accused of conniving with Apothecon, for setting and maintaining fraudulent and inflated prices.
Source: The Hindu Business Line, September 29, 2007

Box 19: Cartel in the Medical Oxygen Supply Market
In July 2005, the Competition Authority of Argentina found four medical oxygen foreign companies, viz Air Liquide (France), Praxair (US), AGA (Germany) and Indure (Chile), guilty of entering into an agreement to distribute customers among themselves and also bid rigging. The Authority levied a fine of amounting to US$24mn on these companies.
Source: Chapter on Argentina, Competition Regimes in the World: A Civil Society Report, Book, LVIII + 638, Pradeep S Mehta (Ed), CUTS International Jaipur. Pg.543

2. <u>Food</u>: Despite being the most basic need, food sector has also witnessed practices which stifle competition and artificially raise the prices. Unlike other sectors, it is very easy for the consumers to be victims of over pricing in the food sector.

Box 20: Bringing Down Milk Prices in Mauritius

Mauritians have to rely upon powdered milk to meet their and their children's nutritional demand as fresh milk was not available in the country. The powdered milk market was dominated by a handful of players. One of them enjoying 60 percent of the market share (clearly a dominant position) decided to raise the prices of the product abruptly. The price rose to a peak Mauritius Rupees (MUR) 190 per kg during 2004-2006. The company was enjoying a profit margin of nearly 41 percent in the retail market, at that time.

At this point of time, as a result of CUTS project on competition policy and law issues (7Up3), implemented in seven countries of Eastern and Southern Africa, including Mauritius, with assistance from Norwegian Agency for Development Cooperation (NORAD) and the Department for International Development (DFID) – the level of awareness and understanding on competition issues in the country had improved considerably.

Pursued by continuous lobbying by the Institute for Consumer Protection (ICP), CUTS' local partner, the government eventually intervened in the market and fixed the margin of profit for the sector at 14 percent. This led to decrease of price, which later stabilised between MUR 90-120 per kg across the country. Currently, the government is also contemplating further liberalisation of this sector, which is likely to force the price down further.

Source: Some Evidences of Impact of CUTS Competition Projects on Citizen's Welfare Across the Developing World – A Note for DFID, UK: www.cuts-ccier.org/pdf/Impact_of_CUTS_Competition_Projects.pdf

Box 21: Dairy and Meat Product Cos. Abuses Market Dominance

In a case in 1995 in Ukraine, the Vinnysta Meat Industry and Vinnysta Milk Processing Industry, joint stock companies were monopolies in relevant regional markets of meat products and butter, respectively. Both enterprises increased wholesale prices for meat and milk products to the level of monopolistic prices. Moreover Vinnysta Milk Processing Industry had previously decreased the production volumes of butter, which caused shortage of this product in the market.

After the authorities took action, the two ceased violating the regulations and remitted the illegally gained profits to the state budget.

Source: Chapter on Ukraine, Competition Regimes in the World: A Civil Society Report, Book, LVIII + 638, Pradeep S Mehta (Ed), CUTS International Jaipur. Pg.521

3. Transportation: In a globalised world need of efficient and cheaper transportation has increased. The recent growth in this sector has led transporters to resort to illegal competition distortion practices.

Box 22: Cambodian Boaters Engaged in Collective Price Fixing

To leave for Siem Reap, the most popular tourist town in Cambodia, boats are the most popular means, especially for tourists. Boat transportation services are provided by eight private companies. Competition among these boat companies has driven down the prices beyond the profitable level and thus caused extensive losses to some of the boaters.

Recently, the companies decided to sit down together and resolve the problem. Even though no written agreement was

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recorded, the companies have agreed to fix their service prices to 40,000 riles for Khmer nationals and US$20-25 for foreigners. The eight companies further agreed that they would not compete with each other anymore and would share their departure schedules. According to their verbal agreement, only one boat may provide boat transportation service in a day by taking turn from one company to another. The bigger companies have more quotas to provide the service.

There is no competition law yet in Cambodia and hence action against the cartel of boaters has not been taken. However, the local authority can take action under some other laws.

Source: Chapter on Cambodia, Competition Regimes in the World: A Civil Society Report, Book, LVIII + 638, Pradeep S Mehta (Ed), CUTS International Jaipur. Pg.33

Box 23: Hike in the 'Daladala (City Bus)' Fares in Tanzania

In 2003 in Tanzania Consumers Protection Association (TCPA) lodged a complaint with the Fair Competition Commission against petroleum companies that decided to raise petrol prices in pursuit of profits without any increase in corresponding cost price of petrol. Consequent to the rise in petrol prices, bus fares and food prices also rose.

The complainant's threat to litigate and publicise the issue provoked the opposition. The publicity forced the government to act in a firm manner by threatening to cancel the licences of any bus service provider who hiked prices. Consequently, bus operators reverted to old fares.

Source: Chapter on Tanzania, Competition Regimes in the World: A Civil Society Report, Book, LVIII + 638, Pradeep S Mehta (Ed), CUTS International Jaipur. Pg.291

4. Fuel: Although the oil cartel of Organisation of Petroleum Exporting Countries (OPEC) is known to all, alas, nothing can be done as it is considered to be a sovereign activity of governments. However, cartelisation in oil sector at the local level adds to the woes of common consumers.

Box 24: Anticompetitive Practices of Fuel Distributors in Czech Republic

In 2001, six fuel distributors were engaged in concerted practices aimed at fixing fuel prices at petrol stations. At the end of 2001, these distributors simultaneously increased prices by almost the same amount. Moreover, there was no objective justification for such a rise in fuel prices, as purchase costs of this product had been decreasing since the middle of May 2001.

This behaviour was thoroughly investigated by the Office for the Protection of Competition, which found that these distributors had numerous mutual contacts in their association, exchanged e-mails and also informed each other of their price strategy via press statement. The Office found these firms of concerted pricing and imposed fines amounting to US$13mn on the six fuel distributors.

Source: Chapter on Czech Republic, Competition Regimes in the World: A Civil Society Report, Book, LVIII + 638, Pradeep S Mehta (Ed), CUTS International Jaipur. Pg.351

Box 25: Action against Gas Cartel in Germany

In 2008, the German Federal Cartel Office (FCO) initiated more than 30 proceedings against gas suppliers from all regions of Germany against charging excessive gas prices to household and small commercial customers. However, in most proceedings the gas suppliers involved voluntarily offered to

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reduce their prices, and the FCO accepted the commitments. According to a 2006 online report by E.ON Ruhrgas AG, an energy giant, the number of dwellings with a gas-fired space-heating system was about 18.2 million (equivalent to 48 percent of the total number of dwellings in Germany) in 2006. Imagine the total amount of benefits that accrued to these households due to the intervention of the FCO!

5. Miscellaneous

Box 26: Bhaskar Monopoly in Jaipur, India

There is a natural monopoly of Cable TV at the Multi System Operator (MSO) and local cable operators levels in Jaipur and many other cities, which is symptomatic of larger cities. Taking advantage of this, the MSO 'Bhaskar' charges arbitrary rates on an incremental basis with poor standards. They periodically increase their subscription charges, in clear violation of Telecom Regulatory Authority of India's Telecommunication (Broadcasting and Cable) Services Tariff Order 2004. There is no redressal forum at the local level to redress grievances of cable TV consumers who are suffering from such a monopoly.

The only respite is for consumers to give up cable TV and go in for a Direct-to-Home (DTH) system, as many have done. Furthermore, such satellite services perform better than cable TV due to no cables or amplifiers in a cable TV network. The downside if any is the availability of programming.

Source: Mehta, Pradeep S (2007), Competition and Regulation in India, 2007, Book, XXXII+220, CUTS/CIRC, Jaipur. Pg.123

Box 27: Significant Cartel Case on School Uniforms in Korea

In Korea three school uniform makers hindered the cooperative buying plan launched by the Parents' Association, and agreed not to supply to the sales agencies participating in such cooperative buying.

Such a practice was in violation of Article 19 of the Monopoly Regulation and Fair Trade Act (MRFTA). Korea Fair Trade Commission (KFTC) imposed a surcharge of US$8651.52, and prosecuted seven individuals and four entities. This case was significant as it involved both horizontal and vertical cartels, and had direct effects on consumer welfare.

Source: Chapter on Korea, Competition Regimes in the World: A Civil Society Report, Book, LVIII + 638, Pradeep S Mehta (Ed), CUTS International, Jaipur. Pg. 95

Box 28: Competition in Australian Banking Sector Helps Consumers

A more open competitive sector was introduced in the early 1980s in Australia, which resulted in intense competition between banks. The intense competition has brought with it a lot of benefits to consumers. Competition has driven down interest rates to their lowest levels in 30 years, and also resulted in much wider products and services for customers. The lower interest rates resulted in substantial benefits for home buyers, which saved thousands of dollars on mortgage payments each year, due to the squeeze on the margins between official rates and home loans. The margin fell until it was about 2.5 percent narrower than a decade before. It is estimated that the squeeze on margins due to competition saved the average home buyer more than US$92 a week.

Source: 'Competition Benefits Consumers', Australian Bankers Association, online at www.bankers.asn.au

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