

**Intergovernmental Group of Experts on Competition Law
and Policy
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**Roundtable on:
Capacity-Building and the UNCTAD Voluntary
Peer Review as a capacity-building tool**

**Contribution
by
Zambia**

The views expressed are those of the author and do not necessarily reflect the views
of UNCTAD.

1. Describe how UNCTAD peer review process has improved your competition law enforcement?

The Competition and Consumer Protection Commission (CCPC) has enforced competition and consumer protection for the past 16 years. During these years of enforcement there have been areas of success and other areas where the Commission has encountered challenges. This is expected in that the competition and consumer law was a new enactment in Zambia and therefore a new concept which was foreign to Government, private sector and the general public. Therefore the UNCTAD peer review provided a platform for the Commission and all other relevant stakeholders in the economy to check list the enforcement of the law to international best practice.

There are five factors that the UNCTAD peer review has improved enforcement of the competition law. These include;

- i. Advocacy
- ii. Review of the law and legal processes (including guidelines and regulations)
- iii. Enhanced transparency
- iv. Clearly defined due process
- v. Agency effectiveness

Advocacy

The UNCTAD peer review provided a platform for the Commission and Government to highlight the benefits of competition and consumer protection policy to various stakeholders. At the time of the peer review, the Zambian Government had just approved a policy on competition and consumer protection¹ and therefore a study by UNCTAD on the same topic highlighted the fact that Zambia was not the only country pursuing such policies. The review also saw the Consultant that was engaged undertake interviews with various stakeholders from both the public and private sector and this also contributed a lot to raising awareness of the activities of the Commission. The peer review report was later presented to the stakeholders at a workshop. It should be noted that Zambia still has to a certain degree a hangover of command type of economy and that many Government Ministries and agencies

¹ Competition and Consumer Protection Policy 2009

and departments including state owned enterprises still exhibit anti-competitive behaviours. For example, the electricity, petroleum and agricultural sectors all have a lot of Government interventions which foreclose these sectors to competition. The peer review helped to pinpoint the role of the Commission and the objective of the competition legislation to such stakeholders.

The review also addressed other stakeholders such as the Treasury (in terms of financing the Commission for effective enforcement), Judiciary (in terms of ensuring that the bench is trained in competition law and policy so that cases before them are well understood) the Legislature (in terms of amending some provisions of the Act) the Ministry of Commerce, Trade and industry (in terms of ensuring that the Tribunal is operationalized) and the cooperating partners (in terms of training the Commission and Tribunal staff). In view of this the Tribunal has since been established and is operational.

Review of Law and Legal Processes

The peer review assessed the legal framework and enforcement experiences of Zambia. The review was undertaken in 2011 a few months after the Government had repealed the Competition and Fair Trading Act of 1994 and replaced it with the Competition and Consumer Protection Act 2010. An earlier peer review, before the enactment of the 2010 legislation, would have been best but nonetheless, the review provided useful feedback on the new law and how it should be implemented. The recommendations made in the peer review have been taken up by the Commission and are currently waiting to be presented to the Minister for possible amendment of the law. It is hoped that these amendments will be presented to Parliament in 2014.

The review has suggested that certain clauses of the Act which may bring contention or which are not in line with best international practice be reviewed. A case in point is a provision which allows the Commission to retain a portion of the fines imposed on erring parties. Even though the Government policy does not support this and it has never been implemented, this clause does not send the right signal to stakeholders. Another clause to be amended is one that gives the Commission discretion to interpret public interest when considering mergers.

The peer review also looked at the procedures of the Commission and made recommendations for improvements. Interestingly, some of the recommendations made are

what the Competition and Consumer Protection Tribunal are requesting for. The review was therefore timely in this sense as the Commission has been able to show their investigative process which provides for natural justice.

Enhanced transparency

The peer review made recommendations that the Commission should provide guidelines wherever the legislation is silent or wherever the general public is not clear of how a certain provision is enforced. The Commission has over the last two years prepared draft guidelines on mergers, Abuse of Dominance, Substantial Lessening, efficiencies, issuance of fines and Administrative and Procedural guidelines. In addition a leniency programme has been drafted and presented to the Director of Public Prosecution (DPP) for consultation. The leniency programme will have to be implemented by the Commission and the DPP's office. The other guidelines are being reviewed by experts (other than Commission staff) before they are published to the public for further comments. It is expected that before the end of July the draft guidelines will be posted on the website for comments.

Clearly defined due process

The Zambian system has a Board system, where the Board is a decision making body but also has oversight of the secretariat which is the investigative wing. The Executive Director of the Commission is an ex officio member of the Board but has no vote. Though this is very clear to the Commission and its members of staff, the public were not sure of the relationship between the investigative wing and the Board. Appeals of the decisions of the Board are to the Competition and Consumer Protection Tribunal and further appeals lie with the High Court of Zambia and Supreme Court.

The Commission has over the years developed a system where after investigations, the report of the Commission is presented to the parties being investigated. This allows them to provide counter reactions to the allegations and also to enter into consent agreements with the Commission. Where parties feel the need to make presentations to the Board in person the Board is prepared to listen to such presentations before arriving at their decision.

The level of transparency in the conduct of investigations by the Commission has been raised to a high standard and it is hoped that this will reduce on the number of appeals in the long run.

Agency Effectiveness

The UNCTAD peer review process highlighted the need for a much bigger structure for the Commission. It was noted that the Commission was under staffed and that there was need to increase the staffing levels in relation to the amount of work that was being handled by the Commission. I am pleased to announce that the structure has since been reviewed and is pending final Board approval.

The peer review also gave the Commission an opportunity to compare its legal framework and legal processes with its peers. This provided a learning platform for the Commission.

2. Which areas do you recommend to UNCTAD to improve the delivery of the peer review process?

There is need to have a good understanding of local challenges, market dynamics and general social and political environments within which an authority operates. As it has been said no size does not fit all and therefore, recommendations made should be targeted at address the challenges that the Authority maybe facing. For Zambia, the recommendations were not too contentious but where such contentions exist, Consultants would have to work beyond the field of competition to address unique challenges of countries under the peer review.

There is also need to have high level meeting with policy makers to share the recommendations of the peer review. Recommendations such as resource mobilisation and allocation are critical to the success of any Authority and therefore it is important that this message is delivered to the policy maker directly.

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