

12th Session of the
Intergovernmental Group of Experts on Competition Law and Policy
Geneva, 9 to 11 July 2012

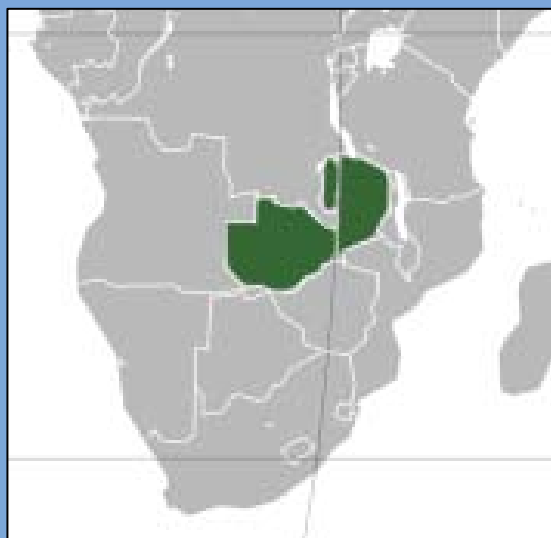
**Voluntary Peer Review of Competition Policy:
Zambia**

(UNCTAD/DITC/CLP/2012/1)

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

INTRODUCTION



- Zambia - a landlocked country in Southern Africa
- is a member of
 - the Common Market for Eastern and Southern Africa (COMESA) and
 - the Southern African Development Community (SADC).

Economic reforms in Zambia in the 1990s under SAP led to the Govt putting in place a competition enforcement mechanism that would ensure that the gains of privatisation and the new investment that was coming into the country was not to be eroded by the anti-competitive conduct of private monopoly and dominant players in the newly liberalised economy.

INTRODUCTION (2)

- Zambia formally adopted competition law in 1994 with the enactment of the Competition and Fair Trading Act, CAP 417:
 - the enforcement agency, the Zambia Competition Commission (ZCC), however only became operational in 1997.
- In 2010, the Competition and Fair Trading Act, 1994 was repealed and replaced by the Competition and Consumer Protection Act (No.24 of 2010).
- In line with international best practice, Zambia's competition Act is a general law of general application.

SCOPE OF COMPETITION POLICY AND LAW (1)

The core substantive issues covered by the Act are in:

- Part III (restrictive business and anti-competitive trade practices);
 - Hard core cartels are *per se* prohibited while other agreements are assessed under the rule of reason.
 - Prohibition of the abuse of dominance: The market share threshold for establishing dominance has been lowered from formerly 50% to 30% under the new Act.
- Part IV (mergers);
 - The definition of ‘mergers’ in new Act covers all three main types of mergers, as well as joint ventures, and the acquisition of both assets and shares.
 - The new Act also gives the Commission powers to review mergers that fall below the prescribed notification threshold if the Commission has reasonable grounds to believe that the merger will raise serious competition and/or public interest concerns.
 - The concept of public interest has formally been introduced in the new Act, and includes: the promotion of exports and employment; and the promotion of micro and small business enterprises.

SCOPE OF COMPETITION POLICY AND LAW (2)

- Part V (market inquiries); and
- Part VII (consumer protection)
 - introduced by the reform in 2010;
 - the new Act harmonises the various pieces of consumer protection legislation in Zambia with the CCPC being the focal point enforcement agency.
- Sector regulated activities in Zambia are fully provided for under the new Act:
 - activities of enterprises in regulated sectors fall under the jurisdiction of the CCPC in as far as restrictive business and anti-competitive trade practices are concerned (unless the enterprise fall under the explicit exemptions provisions of the Act);
 - the CCPC is however required under the Act to enter into cooperation agreements with sector regulators in the implementation of competition policy and law.

SCOPE OF COMPETITION POLICY AND LAW (3)

- One of the major shortcomings of the old Act was the inadequacy of sanctions under that Act which did not deter would-be offenders:
 - the new Act rectified that problem and provides for the imposition of various sanctions, of both administrative and criminal nature:
 - the most deterrent administrative sanction is the imposition of fines of up to 10% of the offending enterprise's annual turnover;
 - imprisonment can also be imposed on anyone who delays or obstructs the CCPC's investigations, or gives the Commission false or misleading information in the course of its investigations;
 - managers of offending enterprises can also be made personally liable for offences committed by the enterprise.

INSTITUTIONAL FRAMEWORK (1)

- CCPC has two operating arms – the Secretariat, and the Board of Commissioners:
 - the Secretariat is the investigative arm of the Commission, and is headed by the Executive Director;
 - the Board of Commissioners is the adjudicative arm.
- The Secretariat has wide investigative powers, including the undertaking of dawn raids by Inspectors:
 - the Act also provides that the Commission may operate a leniency programme to facilitate the Secretariat's cartel investigations;
 - the Secretariat submits to the Board of Commissioners for determination the findings and recommendations from its investigations into competition and consumer concerns.

INSTITUTIONAL FRAMEWORK (2)

- The Board of Commissioners is composed of 7 members appointed by the Minister on a part-time basis:
 - the Executive Director of the Commission is an *ex officio* member of the Board.
- A member of the Board of Commissioners may be removed from office by the Minister.
- The new Act provides for the establishment of a Tribunal to hear appeals against the orders or directions of the Commission:
 - appeals against the decisions of the Tribunal can be made to the High Court.
- The Tribunal consists of 5 part-time members appointed by the Minister:
 - members of the Tribunal may be removed by the Minister for reasons that are not specified in the Act.

INSTITUTIONAL FRAMEWORK (3)

- CCPC has a total of 37 positions on its full-time staff establishment, of which 29 were filled by the time of the fact-finding visit:
 - 6 (21%) were in managerial positions;
 - 14 (48%) were in other professional positions; and
 - 9 (31%) were in financial and administrative support positions.
- A total of 17 managerial and professional staff were directly involved in competition and consumer issues (constituting about 60% of the total number of employees).
- All members of the Commission's professional staff have University degrees in their respective areas of competences (i.e., economics, law, administration, and accounts).

INSTITUTIONAL FRAMEWORK (4)

- The First Schedule to the Act provides that the funds of the Commission consist of:
 - “such moneys as may: (a) be appropriated by Parliament; (b) be paid to the Commission by way of fees, levies, grants or donations; or (c) vest in or accrue to the Commission”.
- In 2010, 36% of the Commission’s total income was in the form of Govt grants, while 61% was from statutory fees.
- The new Act also provides that the Minister of Finance may prescribe a percentage of the fines payable to the Commission to be retained by the Commission:
 - but this has not been done.

COMPETITION LAW ENFORCEMENT

- Cases handled by the CCPC can be divided into 7 categories: (i) relocation of plant and equipment; (ii) RBPs; (iii) mergers and acquisitions; (iv) trade agreements; (v) trade associations; (vi) control of concentrations of economic power; and (vii) unfair trading and consumer protection:
 - cases involving unfair trading practices and consumer protection by far outnumber all the other cases.
- The Commission's case load during the period 1998 to 2010 was a total of 1 996 cases, of which:
 - 923 (46.24%) involved unfair trading practices;
 - 386 (19.34%) involved restrictive business practices;
 - 331 (16.58%) were mergers and acquisitions; and
 - 235 (11.77%) involved relocation of plant and equipment.

COMPETITION LAW ENFORCEMENT (2)

Type of Case	1998- 2001	2002- 2004	2005- 2007	2008- 2012	Total
Relocation of Plant and Equipment	0	49	79	107	235
Restrictive Business Practices	94	78	111	103	386
Mergers and Acquisitions	81	79	78	93	331
Trade Agreements	36	14	22	7	79
Trade Associations	7	2	7	0	16
Control of Concentrations of Economic Power	0	6	19	1	26
Unfair Trading and Consumer Protection	62	177	306	378	923
Totals	280	405	622	689	1 996

COMPETITION LAW ENFORCEMENT (3)

- Sectors that are prone to anti-competitive practices or conduct in Zambia include: the (i) telecommunications and broadcasting services sectors; (ii) agricultural and mining sectors; and (iii) beverages and cement industries:
 - the major competition concerns are monopolisation and cartelisation.
- Not many competition and consumer protection cases had undergone judicial review by the time of the fact-finding visit:
 - The few reviewed cases included two criminal cases against Zambia Breweries involving foreign bodies in a sealed beer bottle, and abuse of dominance.
- The CCPC for the first time conducted two dawn raids towards the year of 2011.

COMPETITION ADVOCACY

- The CCPC has wide advocacy responsibilities under the Act, and is the “primary advocate for competition and effective consumer protection in Zambia”:
 - Its competition advocacy functions include:
 - advising the Govt on laws affecting competition and consumer protection; and
 - providing information for the guidance of consumers regarding their rights under the Act.
- The Commission makes itself visible to the business community and general public through extensive use of the media (both print and electronic):
 - it also undertakes awareness campaigns throughout the country.

INTERNATIONAL COOPERATION

- The CCPC cooperates with other competition authorities and organisations worldwide at both multilateral and bilateral levels:
 - cooperation at multilateral level is done under the auspices of various international and regional organisations, such as UNCTAD, ICN, COMESA, SADC, SEACF, and AFC;
 - cooperation at bilateral level is mostly informal, mainly involving exchange of information with other competition authorities in the region.

FINDINGS AND POSSIBLE POLICY OPTIONS

- The implementation of competition policy and law in Zambia has developed considerably over the years:
 - the new Act of 2010 removed most of the weaknesses in the legal framework that were prevalent in the old Act.
- The business community in Zambia is generally receptive of the country's competition and consumer protection law:
 - in particular, the Commission's consumer protection work is highly appreciated.
- Very few things were found to be going wrong in the implementation of competition and consumer protection policy and law in Zambia:
 - the relatively few recommendations made are mostly aimed at increasing the effectiveness of that implementation.

FINDINGS AND POSSIBLE POLICY OPTIONS (2)

Recommendations Directed To:	Recommendation(s)
CCPC	<ul style="list-style-type: none"> •Further amplifications to the business community through guidelines of certain provisions of the Act pertaining to, <i>inter alia</i>, merger control, and vertical agreements. •Extension of MoUs with sector regulators. •Clarification of the <i>ex officio</i> membership of the Executive Director to avoid conflict of interest.
Legislature	<p>Passing the identified amendments to the new Act, including:</p> <ul style="list-style-type: none"> •Synchronisation of the share of supply thresholds for horizontal and vertical agreements; •Harmonisation of dominance thresholds in all Acts of Parliament; •Retention by the Commission of administrative fines; •Removal by the Minister of members of the Board and Tribunal.

FINDINGS AND POSSIBLE POLICY OPTIONS (3)

Recommendations Directed To:	Recommendation(s)
Ministry of Commerce, Trade and Industry	<ul style="list-style-type: none"> •Clear spelling out in the Rules to the Act of the roles of the Commission, the Tribunal and the general law courts in the enforcement of the consumer protection provisions of the Act.
Treasury	<p>Ensuring that the operations of the Commission are fully funded from Govt grants, including the provision of funds to:</p> <ul style="list-style-type: none"> •fill the existing human resources gap in the Commission; and •Procure the much-needed capital goods and equipment (motor vehicles and office premises).
Cooperating Partners	<ul style="list-style-type: none"> •Competition law training for members of the Tribunal and other members of the Judiciary. •Extensive training for the Commission in the conduct of dawn raids, as well as in other competition enforcement areas, such as investigations and litigation.

Thank You