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Sustainable Consumption and Consumer Protection

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COMPETITION & CONSUMER PROTECTION COMMISSION

**Intergovernmental Group of Experts on Consumer Protection Law and
Policy**

4th Session, 8-9th July, 2019, Geneva, Switzerland

**Sustainable Consumption and Consumer Protection: Contribution from
Zambia**

IMPLEMENTING ENTITY

The Competition and Consumer Protection Commission (CCPC) is a statutory body formed under Section 4 of the Competition and Consumer Protection Act No. 24 of 2010 (“the Act”). The Commission’s mandate is mainly two fold as it deals with both competition and consumer protection. Consumer protection law is important as it seeks to protect consumers against unfair trading practices. Under the Act, the consumer protection directorate investigates unfair trading practices and unfair contract terms and impose such sanctions as may be necessary. Other functions of the Commission with regards to consumer protection include:

- ❖ To advise the Minister on agreements relevant to consumer protection and on any other matter relating to consumer protection;
- ❖ To conduct inspections in trading premises;
- ❖ To act as a primary advocate for effective consumer protection in Zambia;
- ❖ To advise Government on laws affecting consumer protection;
- ❖ To provide information for the guidance of consumers regarding their rights under this Act.

Considering that CCPC’s mandate cuts across various sectors, it receives consumer complaints in all sectors of the economy. The work of CCPC cannot therefore, be done in isolation, and hence the need for CCPC to collaborate with relevant stakeholders in matters of consumer protection.

BACKGROUND

Consumer protection interfaces with many other laws. There is an interface between consumer protection and sustainable consumption. Like many other

consumer protection issues which are sector specific and are dealt with by sector specific regulators, the issue of sustainable consumption is not dealt with directly by the said Act, but is dealt with indirectly as it is an indirect outcome of the provisions of the Act. The objective of CCPC is to enhance consumer welfare. Sustainable consumption results in enhanced consumer welfare and promotes competition and innovative means of production to benefit the consumer, the environment and the economy. The role of CCPC, thus under Section 5 is to promote consumer welfare.

There are institutions in Zambia whose mandate deals directly with the issue of sustainable consumption. These institutions include the Zambia Environmental Management Agency (ZEMA), the Zambia Compulsory Standards Agency, the National Biosafety Authority, the Water Resources Management Authority (WARMA), and local councils to mention but a few. However, it remains an area of interest for CCPC as its mandate cuts across all economic sectors and hence still comes in with certain aspects such as environmental marketing claims, consumer education and business guidance. This is mainly to help consumers change their consumption behaviours and businesses alike, that they engage in production of eco-friendly products and service. However, there is need for an elaborate framework which will enable CCPC to streamline sustainable consumption in the broader consumer protection issues for CCPC to enable sustainable consumption to be fully carried on board in consumer protection issues.

DEFINITION OF CONCEPTS

Environment

The United Nations Environment Programme definition of the environment implies the natural environment of the planet and its interaction with all living species, the weather and natural resources and how they affect human survival

and economic activity.¹ This definition is relevant to sustainable consumption and related issues as consumption is directly linked to human survival.

Sustainability

The United Nations has stated that sustainable development “*implies meeting the needs of the present without compromising the ability of future generations to meet their own needs*”.² Sustainability has emerged as a way of using resources without depleting them, through human options that are expected to yield social and environmental vitality. In addition, it relates to the challenge of both preserving the environment and guaranteeing social and economic development. According to the Cambridge Dictionary, sustainability is the quality of causing little or no damage to the environment and therefore able to continue for a long time. In this write up, sustainability is connected to the principle of human development, consumer rights and sustainable consumption.

Sustainable consumption

The definition of sustainable consumption as adopted by the Oslo Symposium in 1994, means “*the use of services and related products, which respond to basic needs and bring a better quality of life while minimising the use of natural resources and toxic materials as well as emissions of waste and pollutants over the life cycle of the service or product so as not to jeopardise the needs of future generations*”.³

Guideline 49 of the United Nations guidelines for consumer protection defines sustainable consumption as meeting the needs of present and future generations

¹ United Nations Environment Programme, 2007, Global Environment Outlook: environment for Development (United Nations Publications, Nairobi).

² A/RES/42/187.

³ See <https://sustainabledevelopment.un.org/topics/sustainableconsumptionandproduction>

for goods and services in ways that are economically, socially and environmentally sustainable.

Sustainable consumption and the Sustainable Development Goals

The United Nations Development Programme states that achieving economic growth and sustainable development requires that we urgently reduce our ecological footprint by changing the way we produce and consume goods and resources. Agriculture is the biggest user of water worldwide, and irrigation now claims close to 70 per cent of all freshwater for human use. Such use needs to be re-examined, to preserve resources. In order to support developing countries in moving towards more sustainable consumption by 2030, encouraging industries, businesses and consumers to engage in recycling and the reuse of products is key, in order to achieve Goal 12.

A recent study by UNCTAD states that “consumer policy is an important means by which countries can support the implementation of many, if not all, of the 17 Sustainable Development Goals” and that consumer protection is an important tool by which to promote the Goals, “aiming to empower consumers to stand up for their rights and to make informed and sustainable choices”.⁴ The effective enforcement of consumer protection laws helps protect consumer rights and provide channels for dispute resolution and redress. Consumer protection allows consumers to play an active role in the marketplace which, in turn, is meant to stimulate more dynamic and competitive markets. Equally, this helps them assert their rights as consumers, either individually, collectively or through non-governmental organizations, leading to a more inclusive and balanced society.

Sustainable consumption patterns that encourage the use of products and services to satisfy basic needs without negatively impacting the environment, so

⁴ UNCTAD, 2017a, *Achieving the Sustainable Development Goals through Consumer Protection* (United Nations publication, New York and Geneva).

that future generations can meet their needs, require consumers to intentionally make informed choices of goods and services, to consume and to dispose of whatever remains with due regard for the economic, social and environmental impacts of their acquisitions and use. Consumers should be encouraged to refrain from purchasing goods and services that are produced without taking into account efficiencies or lead to contamination of the environment such as fishing using chemicals and explosives that kill even fingerlings. The rights of consumers to safe and effective products and services go together with their responsibility to help preserve the planet.

CCPC ROLE IN PROMOTING SUSTAINABLE CONSUMPTION

In order to achieve sustainable consumption, where the consumers and businesses are moving forward together to achieve this, CCPC being the primary advocate for consumer protection Zambia, would consider entering into MoUs with sector specific regulators dealing with sustainable consumption in order to undertake certain investigations, inspections and advocacy programmes together. The provisions of the Act ensure that businesses that make claims of eco-friendly products do actually produce eco-friendly products and that they do not mislead or misrepresent to the public the production process, contents and benefits of the products they produce.

CCPC would advocate for cooperation which would include:

- Common testing procedures,
- Exchange of consumer information and advocacy programmes,
- Joint training programmes and
- Joint elaboration of regulations

Close collaboration with agencies in health, metrology or food regulation, would therefore, help to fight and reduce fraudulent and deceptive commercial practices. CCPC would understand these procedures implemented by other agencies so that it can enforce any misrepresentation by producers or sellers.

HOW CCPC DEALS WITH SUSTAINABLE CONSUMPTION

CCPC is the enforcement tool of sustainable consumption as it provides accountability to those who make marketing claims by ensuring that they do not mislead or misrepresent. CCPC deals with environmental marketing claims; that is making false claims that distort or are likely to distort the consumers purchasing decisions which is prohibited under the Act. For example, a trader or producer may make assertions that the products they are selling are organic when in fact not. The Act under Section 46 and 47 spells out sanctions of misleading conduct to a consumer by a person or an enterprise. A fine of not exceeding 10% of annual turnover with a cap as provided for in the Fines Guidelines would be imposed on such a person or enterprise.

In addition, Section 50 of the said Act, demands that all products sold in Zambia must be properly labelled. As such, products must be properly labelled so that the consumers make an informed choice to know if the said products are organic or not. As such, CCPC can cooperate in food safety, ensuring that GMO products are clearly labelled and that such products on the market are those which we have been allowed in the country after risk assessment has been conducted and have been found to be safe for humans, animals and the environment. The National Biosafety Authority has a list of approved GMO products can be provided.

ZAMBIA LEGAL FRAMEWORK ON SUSTAINABLE CONSUMPTION

Sustainable consumption in Zambia is scattered in various pieces of legislation, hence being implemented by various institutions. Some of the institutions are discussed below.

The Zambia Environmental Agency

Zambia Environmental Management Agency (ZEMA) is an independent environmental regulator and coordinating agency, established through an Act of Parliament, the Environmental Management Act no 12 of 2011. It is mandated to do all such things as are necessary to protect the environment and control pollution, so as to provide for the health and welfare of persons, animals, plants and the environment.

Functions of ZEMA include⁵:

- a) Advising government and the private sector on environmental management and pollution control matters;
- b) Monitoring trends of natural resource usage and resulting impacts on the environment;
- c) Advising the Minister on declarations of protected areas and their management;
- d) Gathering and disseminating information to the public on environmental protection and pollution control;
- e) Initiating and promoting research, training & investigations in environmental management;

⁵ <http://www.zema.org.zm/index.php/about-us/> retrieved on 31/06/2019

- f) Coordinating the implementation of activities of ministries & other authorities in environmental management;
- g) Conservation of biodiversity;
- h) Licensing undertakings and processes involving waste water, hazardous waste, Ozone Depleting Substances and chemicals;
- i) Ensuring the integration of environmental concerns in national planning;
- j) Environmental management through tools such as SoE, NEAP, Environmental Management Strategies, EIA & SEA; and
- k) Environmental protection and pollution control.

The main services provided by the agency include:

- a) Enforcement of regulations and standards on all aspects of the environment;
- b) Advising government on the formulation of policies, standards and regulations related to environmental management.
- c) Administration of the Environmental Assessment processes.
- d) Environmental education and awareness programmes to educate and raise awareness on the role of the public in the protection of the environment.
- e) Collection, production and dissemination of environmental information.

ZEMA engages in a number of awareness activities such as radio, television shows and drama to ensure that there is sustainable consumption by both individuals and businesses in the manner they behave and operate respectively.

So far, CCPC and ZEMA have collaborated in dealing with consumer complaints that CCPC has referred to ZEMA for quick resolution and possible redress to consumers. The case study below shows that CCPC supports the work of ZEMA.

The Case of use of Re-usable shopping bags in Zambia

Following the introduction of Statutory Instrument No. 65 of 2018 on Extended Producer Responsibility (EPR) Regulations⁶, a ban on use of flat plastic bags that are less than 30 microns in thickness was imposed. This is in an effort to enhance the fight against plastic and other forms of pollution. ZEMA conducted various activities to showcase use of rid baskets and reusable paper bags for shopping and worked with other stakeholders such as the Consumer Unit and Trust Society, a Non-Governmental Organisation interested in consumer protection, during the commemoration of International Women's Day in March, 2019, to demonstrate the use of the eco-friendly carrier bags which were available.

In this particular matter, CCPC received about five complaints against supermarkets selling alternative carrier bags from the time this SI came into force. The complaints were about supermarkets selling the alternative carrier bags at high prices and at different prices, while the other issue was that they were selling branded carrier bags, thereby causing consumers to freely market their brands. CCPC referred the matter to ZEMA. Engagement with ZEMA by CCPC revealed that the SI did not stop traders to charge for alternative carrier bags, neither did it provide for a particular price for the said carrier bags. In addition, the law did not prohibit sell of branded alternative carrier bags.

⁶ Environmental Management Act. No. 65 of 2018

It was seen that since traders were incurring a cost in producing these alternative carrier bags which had a relatively longer life than the ordinary plastic bags which were below 30 microns. In addition, supermarkets had an understanding that allow consumers to use any shopping branded shopping bag with any supermarket. This meant that no trader would refuse to pack a consumer's shopping in a carrier bag bearing a competitor's branding. Moreover, consumers needed education on the fact that alternative carrier bags were not restricted to only plastic bags as they could use bags made from various materials like reeds, sisal, paper, fabrics, and many more which were environmental friendly.

The other key thing that was seen was that consumers needed education on this aspect and CCPC would share the same platform with ZEMA to enlighten consumers on the need to change their behaviour and consume responsibly as there was absolutely no need for a consumer to purchase carrier bags at every shopping. If a consumer invested in a shopping bag which was durable like one made from reeds, and sisal they would not have to worry about paying for a plastic bag in a supermarket as their carrier bag would last long.

In this case, it can be seen that consumer awareness is key to make consumers realise that much as consumers have rights, they also have responsibilities to ensure that they make choices that support sustainable consumption. However, this is a mammoth task which needs stakeholder collaboration. CCPC is thus working with ZEMA to education consumers on both their rights and obligations.

Local Authorities

The Local Government Act No 2 of 2019 provides for the establishment of local authorities which have varies functions.

Section 16 of the Act spells out functions of local authorities as follows:⁷

(1) *“A local authority shall discharge functions conferred on it by this Act within the area of that local authority, and may, with the approval of the Minister discharge that function outside the area of that local authority.”*

(2) *“Without prejudice to the Constitution, the functions of a local authority within an area are as set out in the First Schedule”*

For the purpose of this discussion, only functions to do with sustainable consumption are included and they consist: establish and maintain sanitary services for the removal and destruction of, or otherwise dealing with, all kinds of refuse and effluent, and compel the use of those services; establish and maintain drains, sewers and works for the disposal of sewerage and refuse; take and require the taking of measures for the drainage of water; require and control the provision of drains and sewers and compel the connection of any drains and sewers established by the local authority; provide and maintain supplies of water and, for that purpose, establish and maintain waterworks and water mains; manage refuse removal, refuse dumps and disposal of solid waste; and take and require the taking of measures for the conservation and the prevention of the pollution of supplies of water.⁸

Under the Act, CCPC upholds competition principles to ensure that evergreen clauses do not exist and that consumers can choose service providers in various local authorities. This is the joint action that exists between CCPC and local authorities to avoid restrictive business practices, such as market allocation, by service providers.

⁷Local Government Act No 2 of 2019

⁸ Ibid

Water Resources Management Authority

The Water Resources Management Authority (WARMA) is an autonomous body established by the Water Resources Management Act, No. 21 of 2011. WARMA exercises control over all water resources in Zambia as envisioned in the Water Resources Management Act. The Act set out provisions to regulate the use of water in Zambia by considering or issuing of water permits with the exception of international shared water bodies.⁹ On 9th March 2018, three (03) Statutory Instruments (SIs) were launched which were commenced on 7th March:

- SI No. 18 Fees and Charges Regulations,
- SI No. 19 Licencing of Drillers and Other Constructors and
- SI No. 20 Groundwater and Boreholes Regulations.

The regulations were developed together with multiple stakeholders, including Drillers, Commercial Farmers, the general public and various other interest groups. The stakeholders not only advised on the formulation of these regulations but also on a sustainable pricing strategy that will ensure further economic growth.

In a nutshell, the newly introduced SIs bring in inclusiveness in the management of Water resources by not only trying to safeguard surface water but groundwater as well by banning the drilling of boreholes without authority. It entails submission of applications prior to drilling as well as registration of all existing boreholes and should the water be utilised for non-domestic purposes the usage will attract fees. The SIs further provide for prescribed specifications for a standard borehole design and distances for siting boreholes from potential sources of pollution such as pit latrines soakaways, garage, fuel tanks, cemeteries etc. Prescribed distances are also listed for minimum distances

⁹ <http://www.warma.org.zm/warma-about-us/faqs/>

between boreholes with respect water quantity as dictated by the hydrogeological conditions.¹⁰

Working with WARMA, CCPC has referred over 50 cases of consumer complaints to do with unsatisfactory borehole drilling by drillers. With the new SI 19 and 20, WARMA will be implementing sharing of boreholes by a number of consumers in order to allow for sustainability because the current practice of each household having a borehole is not sustainable.

Forestry Department

The Forests Act No. 4 of 2015 under which the Forestry Department operates also contributes to issues of sustainable consumption in Zambia. It discourages indiscriminate cutting down of trees especially by charcoal traders who sale charcoal which is used as an alternative for electricity by households. Tree planting is also encouraged.

Fisheries Department

The Fisheries Department created under the Fisheries Act, No 22 of 2011 also ensures that there is fish availability in Zambia by imposing a fish ban during a certain season to allow fish to breed and also by discouraging the indiscriminate catching of fish methods which include catching fish using mosquito nets, chemicals and explosives that causes even fingerlings to die.

Zambia Compulsory Standards Agency

The Zambia Compulsory Standards Agency (ZCSA) is a statutory body formed under the Compulsory Standards Act No. 3 of 2017 with the following functions:

(a) administer, maintain and ensure compliance with compulsory standards;

¹⁰ <http://www.warma.org.zm/warma-about-us/history-of-warma/>

(b) give premarket approval of high risk commodities falling within the scope of compulsory standards;

(c) conduct market surveillance for products falling within the scope of compulsory standards in order to monitor postmarket compliance of commodities with compulsory standards;

(d) educate the public on compulsory standards and provide public information for the protection of the consumers on products and services which do not comply with this Act;

(e) cooperate with Ministries and other State institutions and international organisations in enforcing compulsory standards; and

(f) do all such things as are connected with, or incidental to, the functions of the Agency under this Act.

The Commission has been involved with the developing of standards with other stakeholders and will continue to work with ZCSA to ensure standards are developed which will address the issue of sustainable consumption. For example, there is need for standardisation of certain chemicals used in the fields in order to ensure that much as the chemicals work on the crops to protect them from pests, they do not damage the soils such that the crops fail to germinate or grow in the following season.

CCPC has handled a number of joint inspections with the ZCSA and the Lusaka City Council (LCC). For example, in 2018, a combined team of ZCSA, LCC and CCPC inspectors undertook inspections of Blue Band margarine which was alleged not to have been melting under any conditions. The matter was tested and was found to be conformity with the set standards. The case was closed with no sanctions on the producer as the allegations could not be substantiated.

National Biosafety Authority of Zambia

The National Biosafety Authority (NBA) is a statutory Body under the department of Science and Technology in the Ministry of Higher Education that regulates Genetically Modified Organisms (GMO). A GMO is any biological entity, capable of replication or of transferring genetic material or any plant, animal or microorganism, whose genetic material has been altered through modern biotechnology.¹¹

Its services help to regulate the research, development, application, import, export, transit, contained use, release or placing on the market of any genetically modified organism whether intended for use as a pharmaceutical, food, feed or processing, or a product of a genetically modified organism. The NBA sets and implements standards for assessment of biotechnology products, and ensures that they are done in a safe, sustainable and effective manner.¹²

The Biosafety Act, No. 10 of 2007 provides for regulation, research, development, application, import, export, transit, contained use, release or placing on the market of any genetically modified organism whether intended for use as a pharmaceutical, food, feed or processing, or a product of a genetically modified organism. It also ensures that any activity involving the use of any genetically modified organism or a product of a genetically modified organism prevents any socio-economic impact or harm to human and animal health, or any damage to the environment, non-genetically modified crop and biological diversity. The Act also sets and implements standards for the assessment, evaluation and management of any potential risk involving the use of any genetically modified organism or product of a genetically modified organism.¹³

¹¹ <https://www.nbazambia.org.zm/> retrieved on 31/05/2019

¹² Ibid

¹³ The Biosafety Act, No 10 of 2007

In dealing with GMOs, CCPC working with the local authorities, comes in to remove and destroy any unapproved genetically modified foods found to be sold to consumers as they are harmful to humans and may contaminate the environment

CONSUMER EDUCATION AND AWARENESS

The UNCTAD Manual on Consumer Protection defines consumer education as the process of gaining the knowledge and skills to manage consumer resources and taking steps to increase the competence of consumer decision-making; while consumer information refers to the provision of data relating to particular products or transactions so as to enable decision-making in relation to a purchase, and consumer information is thus situation-bound, while consumer education is a prerequisite for the effective use of consumer information.¹⁴

Consumer-oriented education campaigns are one of the ways through which Governments communicate knowledge. Education is a strong tool in promoting long-lasting individual behavioural changes in society, including sustainable consumption habits.

The United Nations Environment Programme notes that the success of public campaigns is linked to planning, market inquiries, the identification of target groups and areas and the best tools, as well as persistence and resilience, until results are obtained.

In Zambia, various institutions conduct various consumer education programmes to educate consumers on issues to do with sustainable consumption. ZEMA has a series of radio and television programmes used to communicate to various stakeholders about the subject matter. ZEMA conducts

¹⁴ UNCTAD, 2017b, Manual on Consumer Protection (United Nations publication, Geneva)

school quizzes as a way of educating learners on various issues of sustainable consumption.

The Chongololo club is one of the oldest school clubs in Zambia which teaches learners on the importance of conserving nature and has also been broadcasting on national radio and television for a long time.

CCPC can work with these sector specific regulators to ensure that there is awareness raising to both the consumer and the business on various issues of sustainable consumption with respect to consumer protection. For example, CCPC can share the same platform on radio, television writing of newspaper articles on this subject matter.

BUSINESS PRACTICES AND SUSTAINABILITY

Businesses aiming to adopt sustainable patterns should be guided in producing, selling and distribution according to such patterns. In addition to legally binding rules aimed at achieving sustainable production, awareness-raising and self-regulation activities can lead the private sector to operate in a more responsible manner. The inclusion of economic, social and environmental impacts in business models has been increasing. Sustainable business practices and business guidance have been key to this shift. The people, profit and planet or three Ps concept, has emerged as a tool for promoting sustainable business. The concept adds, to the importance of profits, the consideration of social (e.g. on employees and local communities) and environmental (e.g. on the use of energy and water) impacts in the course of doing business.

Labelling, whether mandatory or voluntary, by providing information on product characteristics and production methods, is also a useful means of informing

consumers of the social and environmental impacts of products acquired and of raising awareness of more socially and environmentally beneficial products.¹⁵

Awareness campaigns are also undertaken to guide businesses on knowing that it is an offence to commence a project such as starting a factory without an Environmental Impact Assessment as per SI No. 28 of 1997. Businesses and households alike are educated on penalties that go with contravening SI 112 of 2013 which deals with open air burning of wastes. The institution uses radio, television, website and social media e.g. the institution Facebook page to communicate these key messages to businesses.

CONCLUSION

CCPC seeks to collaborate with all regulatory agencies in Zambia to ensure that there is harmony in the enforcement of the law with regard to sustainable consumption for the good of our future. In doing so there is need to have a legal framework that will provide for cooperation and synergies among the various regulators so that ultimately, the various laws benefit the businesses and the consumer at large.

CCPC would also identify other stakeholders such as CSOs and mainstream government department who are championing sustainable consumption so that synergies can be created to foster the interests of consumer rights and responsibilities.

WAY FORWARD

In order to achieve sustainable consumption, where consumers and businesses are moving together to achieve this, CCPC being the primary advocate for consumer protection law in Zambia, would consider the following:

¹⁵ See UNCTAD, 2017b.

1. Entering into MoUs the relevant regulators and other interested institutions dealing with sustainable consumption.
2. Form Joint Working Committees with relevant regulators to deal with the issues of sustainable consumption and consumer protection;
3. Undertake joint investigations with relevant regulators;
4. Conduct inspections with relevant regulators;
5. Conduct advocacy programmes with relevant institutions and regulators in the field of sustainable consumption and consumer protection.