

REPUBLIC OF ZAMBIA

DRAFT No. 1

**NATIONAL
COMPETITION
&
CONSUMER
PROTECTION POLICY**

*Ministry of Commerce, Trade and Industry
P.O. Box 31968
Government Complex
Lusaka*

May, 2009

FOREWORD

The enforcement of systematised competition and consumer protection in Zambia has been in existence since 1997. The primary purpose of such a system has been to ensure that individuals and businesses complied with the competition, fair-trading and consumer protection law. The process has however been marred by lack of sufficient knowledge on the issues and the enforcement system has previously not been seen as a national priority.

The Ministry of Commerce, Trade and Industry considers that it is in everyone's interest, to trade in an environment where business terms and conditions are the fairest not secretive but transparent, that is, devoid of underhand methods and other secret deals that would likely disadvantage those that are not privy to such secret dealings. My Ministry is cognisant that to ensure that any category of agreements, decisions or concerted practices that have the object and effect of preventing, restricting or distorting competition to an appreciable extent in any market or transaction are monitored, controlled and prohibited at national level and in all possible situations.

To assist the Government in monitoring, controlling and prohibiting anti-competitive practices or tendencies and consumer bashing in the Zambian economy, the Ministry has summoned consensus around a national policy that is expected to offer guidance.

This Policy set's out Government's vision and mission in developing competitive markets that will lead to industrial and economic growth and development. It sets out guidelines and for a professional, transparent and high performing implementation and networking system with Zambia's economic growth and development as the primary dictate. Implementation of such a policy requires concerted efforts of all organs of Government.

I would like to make an assurance that Government shall ensure that the implementation process is well funded and staffed. In this context, the Ministry shall provide the requisite political support for competition and consumer policy in the country.

Thank you

Hon. Felix C Mutati, MP

Minister

MINISTRY OF COMMERCE, TRADE AND INDUSTRY

ACKNOWLEDGEMENT

The National Competition and Consumer Policy has been a joint and/or consultative effort between various stakeholders working with the staff of the Zambia Competition Commission and the Ministry of Commerce, Trade and Industry.

I wish to acknowledge the Honourable Minister's concerns on the process of implementation and the need to ensure that the implementation process is well funded, staffed and coordinated. The Policy does provide the guidance we need as Government to ensure that we attain the objectives of the competition and consumer aspirations in the economy. It also provides strategies that we shall be expected to use in attaining the Policy's vision.

We recognise the critical role of all the implementing agencies in the institutional arrangement for the administration of competition and consumer law in Zambia and we shall count on their vigilance in ensuring that we do not sit on the Policy but actually execute its activities.

I wish to acknowledge the hard work that was put in preparing this Policy and acknowledge the leadership role that the Minister provided in ensuring that the document underwent through the Government approval process.

Thank you

Dr. James Mulungushi
Permanent Secretary
MINISTRY OF COMMERCE, TRADE AND INDUSTRY

TABLE OF CONTENTS

TITLE	CONTENT	PAGE
<i>Foreword</i>		
<i>Acknowledgement</i>		
<i>Working definitions</i>		
<i>Acronyms</i>		
Chapter One	Introduction	
Chapter Two	Situation Analysis	
Chapter Three	Vision	
Chapter Four	Rationale	
Chapter Five	Guiding Principles	
Chapter Six	Foundational Pillars	
Chapter Seven	Policy Objectives and Strategies	
Chapter Eight	Implementation Framework	
Chapter Nine	Monitoring and Evaluation	

WORKING DEFINITIONS

“Acquiring firm” means a firm –

- (a) that, as a result of a transaction in any circumstances set out in section...., would directly or indirectly acquire, or establish direct or indirect control over, the whole or part of the business of another firm;
- (b) that has direct or indirect control over the whole or part of the business of a firm in paragraph (a): or
- (c) business is directly or indirectly controlled by a firm contemplated in paragraph (a) or (b);

“Acquisition or takeover” means to obtain, secure or gain a legal or equitable interest through shares, assets, management goodwill and market in another independent company;

“Affiliated”, means associated with each other, formally or informally, by shareholding or otherwise;

“Agreement” means when used in relation to a prohibited practice includes a contract, arrangement or understanding whether or not legally enforceable;

“Anti-competitive trade practice: means any conduct which prevents, restricts or distorts competition

“Bid-rigging” means collusive tendering

“bundling” means a person forcing purchasers to buy products they do not want, or force wholesalers or retailers to hold more products than they wish or need;

“Collusive Tendering” means conspiracy against the public by firms to collude in the tendering process

“Commission”, means the Zambia Competition Commission or other successor institution

“Commodity”, means anything whether movable or immovable, corporeal or incorporeal, which is capable of being required or disposed of for value;

“Competition” means any rivalry between independent firms

“Complainant”, means a person who has submitted a complaint to the Commission in terms of violating any provisions of the Act;

“Concerted practice means, co-operative or co-ordinated conduct between firms, achieved through direct contact, that replaces their independent action, but which does not amount to an agreement;

“Constitution”, means the Constitution of the Republic of Zambia for the time being in force;

“Consumer”, means any person –

- (a) Who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production and manufacture of any other goods or articles for sale.
- (b) To whom a service is rendered.

“Controlling interest” means in relation to-

- (a) any undertaking which enables the holder thereof to exercise directly or indirectly, any control whatsoever over the activities or assets of the undertaking;
- (b) .any asset which enables the holder thereof, to exercise, directly or indirectly any control whatsoever over the asset;

“Court” means the High Court of Zambia.

“Customer” means a person purchases goods or services;

“Distribute” means in relation to-

- (a) to supply, sell, let for hire, store or transport the commodity;
- (b) to supply or provide the service whether or not it is intended by the supply of a commodity;

“Distribution” means any act by which goods are sold or services supplied for consideration;

“Distributor” means a person who engages in distribution

“Dominance” refers to a dominant firm which inherently exercises independent market power

“Enterprise” means firm, partnership, corporation, company, association and other juridical persons, irrespective of whether created or controlled by private persons or by the State, which engage in commercial activities, and includes their branches, subsidiaries, affiliates or other entities directly or indirectly controlled by them

“Essential facility” means an infrastructure or resource that cannot reasonably be duplicated, without access to which competitors cannot reasonably provide goods or services to their customers;

“Excessive price” means a price for a good or service which-

- (a) bears no reasonable relation to the economic value of that good or service; and

- (b) is higher than the value referred to in subparagraph (a) above;

“Exclusionary act” means an act that impedes or prevents a firm entering into, or expanding within a market;

“Exclusive dealing” means a person supplying goods on condition that the distributor will not acquire the same goods directly or indirectly from a competitor;

“Executive director” means the Executive Director of the Commission appointed in terms of paragraph 7 of the schedule;

“Firm” includes a person, partnership or a trust;

“Form” means a form prescribed in the schedule or a form substantially in accordance with a form so prescribed;

“Full line forcing” means a person requiring distributors or purchasers, for access to any of his products, to purchase all of that person’s product range;

“Goods or services” mean when used with respect to particular goods or services that are reasonable capable of being substituted for them, taking into account ordinary commercial practice and geographical, technical

And temporal constraints;

“Horizontal relationship” means a relationship between competitors;

“Market power” means the power of a firm to control prices, or to exclude competition or to have to behave to an appreciable extent independently of its competitors, customers or suppliers;

“Merger” “means situations where there is a legal operation between two or more enterprises whereby firms legally unify ownership of assets formerly subject to separate control. Those situations include takeovers, concentrative joint ventures and other acquisitions of control such as interlocking directorates;

“Minister” means the responsible for commerce, trade and industry;

“Monopoly” defined is a single enterprise in a defined product or geographic market or a firm that exercises independent market power

“Person” includes an individual, a company, a partnership, an association and any group of persons acting in concert, whether or not incorporated;

“Policy” means the National Competition and Consumer Policy

“Premises” includes land, or any building, structure, vehicle, ship, vessel, aircraft or container;

“Prescribed” means prescribed by regulation;

“Price” includes any consideration whatsoever in respect of the distribution of a commodity or service;

“Product” refers to service or good

“Prohibited practice” means practices that cannot be engaged in without the authorization of the Commission;

“Public regulation” means any national local government legislation, or subordinate legislation, or any licence, tariff, directive or similar authorization issued by a regulatory authority or pursuant to any statutory authority;

“Regulation” means a regulation made under the Act;

“Regulatory authority” means an entity established in terms of national or local authority regulation responsible for regulating an industry, or a sector of an industry;

“Relevant market” refers to the general conditions under which sellers and buyers exchange goods, and implies the definition of the boundaries that identify groups of sellers and of buyers of goods within which competition is likely to be restrained. It requires the delineation of the product and geographical lines within which specific groups of goods, buyers and sellers interact to establish price and output. It should include all reasonably substitutable products or services, and all nearby competitors, to which consumers could turn in the short term if the restraint or abuse increased prices by a not insignificant amount.

“Relocation”, means the physical movements of core operating assets from Zambia

“Sale” includes an agreement to sell or offer for sale and includes the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing, and any other act or notification by which willingness to enter into any transaction for sale is expressed;

“Secretary” means the person appointed under paragraph 8 of the schedule;

“Service” includes the sale of goods where the goods are sold in conjunction with the rendering of a service;

“Supply”, in relation to goods, includes supply or re-supply by way of sale, exchange, lease, hire or hire purchase;

“Takeover”, means as defined in acquisition;

“Trade association” means a body of persons which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members;

“Trade agreement”, means any formal or informal agreement effected in the market place between two independent enterprises;

“trade practice” means any practice related to the carrying on of any trade and includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of goods, whether real or personal, or of any service; and

“Trade union” means a trade union registered under a law of Zambia

“Unconscionable conduct” unreasonable conduct that is against good conscious

LIST OF ACRONYMS

BOZ	Bank of Zambia
CAZ	Communications Authority of Zambia
ERB	Energy Regulation Board
FDI	Foreign Direct Investment
MAZ	Millers Association of Zambia
MNC	Multinational Corporations
NCCP	National Competition and Consumer Policy
NWASCO	National Water and Sanitation Council
PIA	Pensions and Insurance Authority
PRA	Pharmaceutical Regulatory Authority
SEC	Securities and Exchange Commission
UN	United Nations
ZABS	Zambia Bureau of Standards
ZAWA	Zambia Wildlife Authority
ZCC	Zambia Competition Commission or the successor institution
ZDA	Zambia Development Agency
ZRA	Zambia Revenue Authority
ZWMA	Zambia Weights and Measures Agency

CHAPTER ONE

1.0 Introduction

From the late 1980s, there has been an international recognition of the role that competition plays in a liberalised economy. In 1991 Zambia embraced the free market economic reforms, which resulted in trade liberalization, privatization and deregulation. Underlying these reforms is a renewed confidence that market forces and individual decisions of millions of consumers and the decisions of privately owned businesses, can make a greater contribution to economic and social development than in an inward looking centralized economic system.

However, the potential benefits of a shift towards a more market-oriented economy may not be realized unless business firms are prevented from imposing restrictions on competition. Government has thus put in place a competition enforcement mechanism that would ensure that the gains of liberalization are not eroded by anti-competitive business conduct.

Vision 2030

Zambia has set itself a long term target that by 2030 it shall become a middle income country. In order for Zambia to become a middle-income country by 2030 and improve the living standards and opportunities for its people it has no alternative but to improve the productivity and competitiveness of its firms and institutions. The implementation of this vision shall be through 5-year national development plans, of which the Fifth National Development Plan is in progress.

Expectations

The general expectation of competition and consumer policy 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.

However, the market reforms undertaken by Zambia from 1991 also brought challenges in terms of consumer protection and welfare from businesses and manufacturers keen on, among other things deceiving them. While consumer matters have been identified and measures undertaken to address them, consumers still lack confidence in the regulatory mechanism present because they do not provide for efficient and cost effective redress.

1.1 Scope of the policy

This policy document provides a brief background of the genesis of competition law and policy on the global and national context. It then takes an in-depth look at the

current prevailing conditions, the vision and the rationale of the National Competition and Consumer Policy. Thereafter the policy highlights the guiding principles of the nation on competition issues and the competition and consumer objectives. Finally the policy delves into the institutional arrangements and implementation of this policy.

CHAPTER TWO

2.0 SITUATION ANALYSIS

2.1 General Overview

2.1.1 This policy seeks to address both competition and consumer issues. The situation analysis is therefore divided into two parts, namely competition and consumer issues. There is currently no distinctive policy document that has in proper context enunciated national vision for competition and consumer welfare in the domestic economy.

2.1.2 **The theme of Zambia’s Fifth National Development Plan (FNDP) is: “Broad based Wealth and Job Creation through Citizenry Participation and Technological Advancement”**, with a deliberate **Strategic focus on Economic Infrastructure and Human Resources Development**. The FNDP concentrates on reducing the suffering of the citizens of Zambia through four sub-goals:

- (1) creating wealth;
- (2) increasing development in agriculture, education and health;
- (3) creating jobs; and
- (4) constructing better roads and other infrastructure in the rural areas.

2.1.3 Chapter 13 of the FNDP, under paragraph 13.1 states that:

*Trade is widely viewed as an important tool for economic growth which, in turn, is a pre-requisite for long-term poverty-reduction. **With a small domestic market, Zambia will use its trade policies to take advantage of external market opportunities and promote the diversification of the economy. The limited domestic market size and low domestic purchasing power suggest that sustained economic growth must be export-led. Active participation in multilateral trade will enable Zambia take advantage of opportunities in foreign markets, while improving domestic competitiveness.*** (bold added for emphasis)

2.1.4 The small size of the Zambian market makes it susceptible to unfair advantage gained by private anti-competitive practices, those facilitated by corruption of public officers or through certain policies that create adhoc investment concessions, which in turn create an uneven competitive playing field. This tends to frustrate other prospective and thriving entrepreneurial activities in the economy as the global export market cannot be the preserve of a few firms that gain advantage unfairly in the domestic economy. The base of wealth creation is enlarged and sustained by competition in any economy.

2.1.5 Thus, in the furtherance of the Commerce, and Trade objectives in the FNDP, the Commission envisages a situation where competition plays a key role in ensuring that innovation in the production and distribution chain for goods and services

does have a positive impact on wealth creation by way of access to equitable business opportunities for all entrepreneurs and that whatever wealth is created by business, it does lead to increased welfare of citizens (i.e. consumers).

2.2 State of Competition

2.2.1 Global Context of Competition

In the late 1990s, the world witnessed an unprecedented economic liberalization, deregulation and privatization leading to free market economies. As a result, there has been an ever-increasing integration of global and regional economies resulting from the process of globalization. This process has facilitated an increase in the flow of international capital through Foreign Direct Investment (FDI) principally by Multinational Corporations (MNCs).

In all countries that embarked on economic reforms, there was recognition for the need to regulate the market players and therefore introduced competition policy and law. As such, competition policy is no longer a preserve of developed countries, but has become an important public policy even for developing countries to promote industrial democracy.

Governments have realized that market forces alone may not be able to address all the problems in the market place, especially in situations of market failure. While institutional failure may be addressed by regulatory measures and reforms, the market failure arising from anti-competitive practices by firms require the attention of competition policy. In this regard, Zambia moved with the rest of the world in ensuring that the benefits of economic reforms accrued to firms and consumers alike by enacting the Competition and Fair Trading Act Chapter 417 of 1994 of the Laws of Zambia.

2.2.2 National Context of Competition

Spurred by political, economic and institutional changes, Zambia undertook economic reforms to transform the state planned and controlled economy to a liberalised economy. . The policy framework in the 1990s was designed to encompass the structural adjustment programmes that were broadly aimed at enhancing economic growth and contributing to poverty reduction in Zambia. This shift necessitated the establishment and strengthening of sector regulators in the area of energy, water, telecommunications, pharmaceuticals, standards, weights and measures, competition and consumer protection and financial services, among others.

The advent of political and economic liberalisation in the early 90s in Zambia came with terms like deregulation, commercialisation and privatisation. The private sector became the driver of the economy in order to ensure efficiency, growth and innovation to the benefit of the consumers. However, in order to ensure that the fruits of the innovation and efficiency did not just accrue to firms but passed to the consumers and also to ensure that there was fair play among the players in the economy, the parliament of the Government of the Republic of Zambia enacted the Competition and Fair Trading Act in 1994.

Competition legislation sets down legal principles and institutions that govern the behaviour of firms in competitive markets including anti-competitive trade practices, merger regulation and provisions to deal with cartels as well as consumer welfare. Competition law can therefore be seen as a legal tool that compels firms to adhere to good corporate governance, competition and consumer welfare. Furthermore, competition law is a developmental tool which should be used address issues of national interest such as poverty. The competition law should be alive to the ever changing environment and adapt to ensure that it is not obsolete or moribund to the detriment of national development. The implementation of the policy should be in tandem with overall national developmental goals and aspirations.

2.2.3 Mergers and Acquisitions

Mergers, takeovers and acquisitions are business conducts that many businesses including multinational corporations engaged in, in the advent of globalisation.

Regulation to control mergers is important in market economies for the preservation and creation of competitive market structures that would deliver competitive outcomes for the benefit of all economic agents and consumers.

Increased international capital mobility resulting from international mergers and acquisitions and their effects on the domestic economy have recently received considerable attention especially where international mergers result in market concentration within Zambia.

The current competition law demands mandatory notification for all mergers that are consummated in Zambia. The rationale was to ensure that all mergers are notified in view of inadequate regulations and little knowledge of the competition law by the private sector. However, not all mergers raise competition concerns, so mandatory notification leads to the loss of focus and the need to allocate scarce resources on anti-competitive mergers. Explain why this is the position

The country has also witnessed MNCs engaging in mergers and acquisitions at a regional level, which in some instances may pose a threat to the local production capacity of Zambia. For instance, a company owning production facilities in neighbouring countries may decide to shut down certain production facilities in Zambia so that the Zambian market is served by imports from the neighbouring country. Such regional business rationalisation may make economic sense to a MNC but may have adverse effects on trade or the economy in general of the affected country.

Furthermore, in relation to the sale of strategic national assets, merger regulation acts as a means of checks and balances to ensure that the investors undertake to give access to small and medium scale companies. Where a MNC invests in Zambia through a merger or acquisition it is likely that the MNC may opt to have business transactions with only companies from its homeland ignoring the local companies. Where such a position is likely to exist merger regulation may be used

to remedy this situation by ensuring through the provision of undertakings that the MNC provides equal opportunity to the local companies as well.

2.2.4 Dominance

Dominance addresses firms that are obviously or realistically large and/or firms that actually and or under certain presumptions based on their market behaviour are considered to possess market power to allow them to act independently of its competitors, customers or suppliers.

The Zambian economy has been heavily characterized by dominant or monopoly companies whose status in terms of ownership changed from public to private monopolies during the privatisation melee of the early 1990s. The Zambian competition law does not prohibit the existence of monopoly or dominant position of market power.

Companies by their nature want to make profits and grow big because it is their size that allows them to undertake research and development, enter export markets and invest in newer and more efficient technology. Therefore, companies should not be punished for obtaining a dominant position or even a monopoly position in a market. Such punishment would actually discourage investment and innovation and may result in reduced competitiveness and economic growth.

2.2.5 Abuse of Dominance

Abuse of dominance occurs in instances where a person/firm unfairly uses its market power to engage in unfair business practices to the detriment of competitors, consumers and suppliers. Abuse of any power needs to be checked, controlled and prohibited in the public interest.

However, the law prohibits the abuse of dominance or monopoly power. Abuse of this power may be collective or unilateral through engaging in anti-competitive practices.

The most common abuses of dominant position of market power include exclusive dealing arrangements, territorial restrictions, retail price maintenance and excessive pricing. This abuse is prohibited as it distorts, prevents and restricts competition and fair-trading hence impacting negatively on the welfare of consumers through price increases, poor quality of products and services, reduced consumer choice, erection of barriers to entry.

The competition law should be adequate to address abuse of dominant position of market power cases as it should have regulations for effective implementation of provisions. Therefore, many of the dominant players in the market that abuse their power to the detriment of competition and consumer welfare should be monitored and their abusive behaviour controlled accordingly through an effective enforcement mechanism.

2.2.6 Equal Access to Essential Economic facilities

An essential facility is an infrastructural facility or resource that cannot be easily duplicated, without access to which competitors cannot reasonably provide goods and services to their customers. They may include harbours and ports, railway lines, network facilities, copper refining facilities, as well as compulsory licensing of Intellectual Property Rights (IPRs).

The existence of an essential facilities doctrine has been acknowledged in all jurisdictions that have enacted competition legislation. Though there are some differences in the way the doctrine is applied in various countries the basic premise is the same: that the facility cannot be easily replicated and that where access to a facility is essential in order for a person to operate in that market, they should be granted access at a reasonable economic price. Essential facilities may include power transmission lines, telephone landlines, ports and harbours, railway lines, fibre optic cables and even raw material.

The current competition and fair trading law in Zambia does not essential facilities with guidelines on what may be classified as an essential facility and what measures competitors have to undertake to access the facility.

Due to the fact that no duty is currently imposed on companies running essential facilities to deal with competitors it has been difficult to combat abusive or unsatisfactory monopoly situations in the public interest.

2.2.7 Anti-competitive trade practices

Anti-competitive trade practices or restrictive business practices are acts or behaviours that prevent, restrict or distort competition.

It is clear that due to an inadequate competition culture in the economy, many anti-competitive cases go unreported and those that are reported are not dealt with sufficiently due to inadequate enforcement provisions and implementation.

Anti-competitive trade practices include business conduct between competitors (horizontal) and business arrangements between companies on different levels of production (vertical restraints). The *rule of reason* approach may be used in handling vertical restraints and some horizontal arrangements which may have benefits for the consumer and the economy (efficiencies). This has resulted in lack of confidence in the competition authority requiring it to devise a system in which decisions are made within a reasonable period of time providing the necessary redress.

2.2.8 Cartels

Cartels are usually *per se* illegal in most jurisdictions as they are considered to be a conspiracy against the public to subject consumers to high fixed prices, market allocation, bid-rigging, etc which all prevent effective competition (i.e. the critical

rivalry that brings about a competitive outcome) amongst competitors. Such conduct would also result in preventing effective market participation of any enterprises that may not be part of the cartel as cartel members act as a *concealed* “monopoly” undertaking in effect.

Cartel activities in all jurisdictions are per se prohibited, as they do not benefit anyone apart from the companies involved in the cartel activity. Cartel activities usually result in economic conspiracy against the government and consumers in fixing prices, markets allocation, production and sales quotas and concerted refusals to deal. Governments can be susceptible to cartels in state contracts by public tender. Unfortunately, cartels involving bid rigging usually are a huge cost on Government and tax payer’s money. The cartel cases are criminal in nature and attract stiff punitive measures.

In certain circumstances involving small businesses, cartel activity may be beneficial to SMEs, as it increases their ability to bargain with large dominant firms. For instance, small farmers may form a cooperative to sale farm produce at more favourable prices than they would receive in the absence of the cooperative (they may equally enjoy discounts for bulk purchases e.g of fertiliser).

Cartel activity could be domestic or international in nature. International cartels are difficult to detect. There is no meaningful comity with other competition authorities to prosecute cartels. Although Zambia is a member of the International competition Network and the Southern and East African Competition Forum there are no agreements with these bodies to share or exchange confidential information which may lead to the prosecution of a cartel. On its’ own Zambia cannot successfully fight international cartels. The competition authority in cooperating with other authorities in other countries should take into account not to disclose confidential information of Zambian firms.

2.2.9 Trade and Professional Associations

Trade and professional associations are established to serve their members in maintaining standards and ethics. Trade Associations are associations of similar businesses in the same trade such as the Millers Association of Zambia (MAZ) or the Computer Association of Zambia. Professional Associations are associations of persons of the same profession such as lawyers, accountants and doctors.

The standards and ethics developed and agreed by these associations help in the service delivery to the general public and are generally seen as benefits to society and the economy. In Zambia, trade and professional associations set prices or conditions of sale for their services or products for their members. Further, some professional associations in Zambia established under Acts of Parliament, are allowed to fix prices for their members. In doing so the trade or professional association would in effect have the same effect as a cartel.

2.2.10 Non application of the Competition and Consumer Legislation

The current competition legislation provides a scope in which it can be applied. The current exemptions extend to the following:

- (a) activities of employees for their own reasonable protection as employees;
- (b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;
- (c) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members;
- (d) the entering into an agreement in so far as it contains a provision relating to the use, licence or assignment of rights under, or existing by virtue of, any copyright, patent or trade mark;
- (e) any act done to give effect to a provision of an agreement referred to in paragraph (d);
- (f) activities expressly approved or required under a treaty or agreement to which the Republic of Zambia is a party;
- (g) activities of professional associations designed to develop or enforce professional standards reasonably necessary for the protection of the public; and
- (h) such business or activity as the Minister may, by statutory instrument, specify.

In particular, ZCC has not been able to implement the law equitably where State owned enterprises (SOEs) operate in liberalised markets in competition with private firms. By express or implied exemption under the current competition legislation, SOEs (which are usually dominant firms or monopolies) are not subjected to same enforcement rules for competition as would be applied to private enterprises. This has at times resulted in some SOEs creating market disparities to the detriment of the competition process.

2.3 State of Consumer Welfare and Protection

The framers of the Competition and Fair Trading Act, Cap 417 of the Laws of Zambia took cognisance of the need for the Act to address the issues of having competitive market structures and the protection of consumers. This is in view of the fact that at a fundamental level competition law and consumer protection policies are complementary and mutually reinforcing both being elements of the framework of social welfare. To this effect, the Act has two principal objectives that reflect the duo functions of the Commission:

- To prevent anti- competitive conduct thereby ensuring competition and efficiency in business, resulting in the greater choice for consumers in price, quality and service.
- To ensure the interests and welfare of consumers are adequately protected in their dealings with producers and sellers.

These principal objectives have driven the enforcement vision of competition in Zambia to ensure that interests and welfare of consumers in their dealings with sellers in the market place are taken care of. This is because there is no separate comprehensive legislation for consumer protection in Zambia.

2.3.1 Global Context

Globally, consumers have become an important and powerful movement, which ensures that consumers worldwide are protected from the effects of globalisation such as the supply of unsafe and defective products. The consumer movement recognises that it has become increasingly difficult to prosecute the multinational corporations that have many registered nationalities.

The 1985 United Nations Guidelines for Consumer Protections have challenged Governments to take into account the interests and needs of consumers (particularly those in developing countries), recognizing that consumers often face imbalances in economic terms, educational levels, and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the importance of promoting just, equitable and sustainable economic and social development, these guidelines for consumer protection have the following objectives:

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the developing of independent consumer groups;
- (f) To further international co-operation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices.

The Guidelines have further proposed that they should apply both to home-produced goods and services and to imports to include issues of:

- (a) Physical Safety
- (b) Promotion and protection of consumers' economic interests
- (c) Standards for the safety and quality of consumer goods and services
- (d) Distribution facilities for essential consumer goods and services
- (e) Measures enabling consumers to obtain redress
- (f) Education and information programmes, which should cover such important aspects of consumer protection as the following:
 - (i) Health, nutrition, prevention of food-borne diseases and food adulteration;
 - (ii) Product hazards;
 - (iii) Product labelling;
 - (iv) Relevant legislation, how to obtain redress, and agencies and organizations for consumer protection;
 - (v) Information on weights and measures, prices, quality, credit conditions and availability of basic necessities; and

(vi) As appropriate, pollution and environment.

- (g) Measures relating to specific areas such as product quality control, the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organization of the United Nations and the World Health Organization Codex Alimentarius or, in their absence, other generally accepted international food standards. Governments should maintain, develop or improve food safety measures, including, *inter alia*, safety criteria, food standards and dietary requirements and effective monitoring, inspection and evaluation mechanisms extending to water, pharmaceuticals, etc

From the above, notable “consumer rights” have been derived by consumer advocacy groups. These are:

- (i) the right to information
- (ii) the right to choice
- (iii) the right to safety
- (iv) the right to education
- (v) the right to a clean environment
- (vi) the right to basic consumer goods
- (vii) the right to be heard, and
- (viii) the right to redress

2.3.2 National Context

Locally, consumers have for a long time been complaining of being subjected to various product deficiencies such as substandard products and services offered by the business community, but the relevant agencies and the business community have provided no adequate or sufficient recourse or corrective measures. In addition, the problem has been compounded by the inability of most consumers to make informed decisions regarding product choice. It would appear that consumers are not well informed of their rights and relevant institutions such as the Ministry of Local Government – Public Health Departments, Food and Drugs Laboratories, the Energy Regulation Board, and the Zambia Bureau of Standards have been challenged to do more to inform consumers of these rights and obligations.

Other institutions that deal with consumer protection matters include the Communications Authority of Zambia, Zambia Weights and Measures Agency, National Water and Sanitation Council and the Zambia Competition Commission. Business enterprises also do not do enough to inform consumers on product information and have taken advantage of the ignorance of consumers’ rights. Further, Government does not have a definitive mechanism to provide consumers with information.

2.3.3 Hoarding or withholding of goods

Hoarding is the practice of withholding of goods or services to create an artificial shortage with the aim of bringing about a price increase – such a situation may

also trigger an unnecessary “black-market” and reduce consumer welfare through higher prices.

The practice of hoarding has been presumed to be used in monopoly controlled industries in Zambia, with at production level, or at distribution level. Sometimes this action has been used by firms to successfully put Government to ransom for tax negotiations, the result of which is that prices of relevant products goes up during such a period and never significantly reduces once the hoarding has been discontinued. This conduct leads to a reduction in consumer welfare and creates artificial shortages sometimes leading to civil strife. This is particularly true in the supply of essential foodstuffs.

2.3.4 Product Safety

Product safety is a critical factor in all goods and services that are produced, distributed and consumed in the economy. It is thus critical that the provision, distribution and storage of goods and services should not have any actual or likely detrimental effects on the wealth and health of a consumer.

Consumers in Zambia are sometimes exposed to various types of unsafe products, especially foodstuffs. This aspect has not received the attention it deserves. The result is that Zambians are subjected to injury and this has negatively affected their well-being. This should not be allowed.

The legal framework is fragmented, which makes it difficult for consumers to have recourse. Isolated and inconsistent interventions by Government agencies based on unclear and fragmented laws and well articulated funded programmes would not achieve intended results.

2.3.5 Defective and Sub- standard Products

There has been a general public concern over the high levels of both locally produced and imported goods and services in so far as standards are concerned. Defective and sub standard products are products that produced with factory faults such that they cannot be used to the benefit of the consumers or their welfare, even when properly applied.

Companies sometimes sell and supply defective or sub- standard products with the full knowledge or otherwise of the condition or status of their products. Consumers on the other hand do not have appropriate redress by way of replacement, return, and refund or in some other form.

2.3.6 Unconscionable conduct

There has been a growing concern over the use of unconscientious methods of dealing with either small businesses and consumers. Such conduct may not easily be identifiable but may be inferred from the result and/or the circumstances in a particular business environment. Unconscionable conduct is unfair or

unreasonable conduct in business transactions that goes against good conscience. This can occur in transactions between businesses or in transactions between businesses and consumers

Manufacturers and suppliers of products usually have more information regarding their products than consumers that use them and this may lead to exploitation. In Zambia where illiteracy levels are still high this form of consumer abuse thrives.

2.3.7 Misleading or deceptive conduct

Misleading or deceptive conduct is conduct where a business deliberately omits, or fails to inform a customer of any material fact about a product or the conditions attached to the purchase of the product.

Manufacturers and traders do at times engage in misleading or deceptive conduct, which may involve written or oral misrepresentations, or omissions of material information. A large number of counterfeit goods such as watches, radios, television sets and other electrical and electronic products are being sold on the Zambian market. Deception may also occur in other forms of conduct associated with a sales transaction.

2.3.8 Warranties and guarantees

Warranties and guarantees are assurances that companies give consumers that the products on the market are of a certain quality standard and that should there be a factory fault the goods will either be replaced or repaired and or the consumer will be refunded.

Some manufacturers and traders do not give warranties or guarantees on products thereby disadvantaging consumers. In some cases the conditions of the warranties and guarantees limit the application of the warranty or guarantee to a geographic area, and in other cases the warranty/guarantee may falsely represent that the products are of a certain style, model or origin. This form of cheating is rampant in Zambia. The pretext is that most goods are manufactured outside the country and sellers are unable to offer warranties and guarantees.

2.3.9 Advocacy Programmes

Advocacy is a critical component in dealing with promulgation of policy as well as the implementation process. Advocacy programmes are activities aimed at publicizing the work and role of the enforcement content and strategies for competition and consumer protection in the economy to all stakeholders.

Advocacy is an important non-enforcement supplementary mechanism to promote a competitive environment in the economy. This process is important to cultivate a culture of competition and consumer welfare in the economy. The Government has not done enough in this area. There is a little understanding by relevant stakeholders of the importance of competition and consumer welfare in the economy.

Advocacy should result in consumers having relevant and reliable information to make informed decisions about available products and further to be informed about the regulatory bodies that can address their grievances. This can be done by advising Government bodies and ministries on competition matters, radio and television programmes, having drama groups in rural and peri-urban areas, participating in national debates on economic issues and participating at trade and commercial fairs.

2.3.10 Enforcement mechanism

In regulatory regimes, resolution of disputes is a necessity and therefore, the establishment of legal and administrative systems that are fair, timely and cost effective and accessible is important to provide redress. Currently the resolution of disputes is not timely and cost effective thereby disadvantaging the already aggrieved firms and consumers alike.

The current Act does not give power to ZCC to impose administrative fines on blatant violations of the Act without taking the parties to Court. For most consumer cases with small claims the court process is usually an expensive undertaking.

The enforcement system lays the burden of litigation on the Commission where persons refuse to supply information or where they give false or misleading information.

2.3.11 Inter-institutional Arrangements

The current legislation and measures relating to consumer welfare are fragmented and sometimes contradictory. This makes enforcement and implementation of the legal provisions difficult.

CHAPTER THREE

3.0 VISION

To develop and facilitate an enabling national growth environment which is transparent, equitable, efficient and provides for procedural fairness and for the protection of the competitive process and consumers.

CHAPTER FOUR

4.0 RATIONALE

Clearly there is need for Zambia to put in place a National Competition and Consumer policy to address the challenges with regard to competition and consumer welfare and protection.

The need for a competition and consumer protection policy has arisen due to a number of reasons such as outlined below:

General

- (i) Inadequate legal framework and agencies to deal with the various challenges faced by businesses and consumers.
- (ii) Unequal treatment of quasi-government enterprises that render services their counterparts and competitors under the competition legal framework.
- (iii) Lack of an effective and efficient means of resolving complaints
- (iv) Lack of wide recognition, acceptance, and awareness of ZCC by the public.

Competition

- (i) The need to regulate, monitor and control economic activities to ensure that anti-competitive practices are not the norm and to discourage abuse of market power
- (ii) The need for coherence between competition guidelines and other policies aimed at promoting development as the former has been absent
- (iii) The need to establish thresholds to capture only mergers that raise competition concerns
- (iv) The need for a competition policy that would protect small and medium businesses in their dealings with large enterprises with greater bargaining power

Consumer Protection

- (i) The existing legal framework does not put consumer welfare interests at the core
- (ii) Most consumers have negatively benefited from increased competition currently pertaining in the economy in that they are getting unfair and unjust deals as they are provided with goods and services of unacceptable quality unreasonable prices, getting unfair and unjust deals

CHAPTER FIVE

5.0 GUIDING PRINCIPLES

The competition and consumer protection policy is founded on the principles of transparency, accountability and due process. The following shall also be taken into account as key guiding principles:

- (a) **Equity** – This policy is designed to ensure that state owned enterprises and private sector enterprises are treated equitably under the competition law using the rule of reason approach.
- (b) **Stakeholder Participation** – in order for this policy to make an appreciable impact on Zambia’s social and economic development, there is need for wide participation in its implementation.
- (c) **National Treatment** – This policy shall treat foreign and local firms equally.
- (d) **Market regulation** – This policy will ensure that business firms are prevented from imposing restrictions on competition.

CHAPTER SIX

6.0 FOUNDATIONAL PILLARS

6.1 This policy is founded on the following economic and social pillars

- (i) **Economic Growth** – That the policy recognizes the importance of economic growth for the well being of Zambians.
- (ii) **Poverty Reduction**– that the policy also recognizes that in order to alleviate and reduce poverty there should be employment creation.
- (iii) **Quality Products**- that the policy recognizes the need to have quality products on the Zambian market.
- (iv) **Research & Development** – that the policy recognizes the importance of research and development in order for Zambian companies to be competitive.
- (v) **Trade policy** – That the policy recognizes the role of international trade in development.
- (vi) **Promotion of Micro, Small and Medium Enterprises** – that the policy recognizes the importance of micro, small and medium enterprises in employment creation and poverty reduction.
- (vii) **Reduction of Barriers to entry** – That the policy recognizes the existence of structural barriers in many of the sectors of the economy, which act as impediments to business entry and frustrate the small scale businesses and government efforts at reducing poverty.
- (viii) **Education and information** – That the policy further recognizes that an educated and well informed private sector and consumers results in better enforcement of the competition and consumer law.

CHAPTER SEVEN

7.0 POLICY OBJECTIVES AND STRATEGIES

7.1 Mergers and Acquisitions

To prevent the creation of a market structure that can lead to a likely substantial lessening of competition and/or abuse of dominance.

Measures

- (i) Theca shall provide proper merger notification guidelines to ensure that only mergers likely to adversely affect competition notify
- (ii) The ZCC shall ensure that all notifiable mergers are assessed in a transparent and efficient manner
- (iii) The ZCC shall consult stakeholders in merger assessment.
- (iv) The final authority for consummating all mergers shall be the preserve of the ZCC.

7.2 Abuse of dominance

To prevent likely and remedy existing abuse of dominant position of market power.

Measures

- (i) Undertaking research studies and using appropriate analytical tools to identify abuse of dominance and make informed decisions
- (ii) Put in place enforcement mechanisms that would deter the persons from abuse of dominant position of market power

7.3 Essential Facilities

To ensure equitable and affordable access to the facility by potential and actual users

Measures

- (i) Publication of access guidelines such as minimum cost, timetable for access to the facility, timeframe be more specific.
- (ii) The ZCC should regularly monitor the implementation of the guidelines

7.4 Restrictive Business Practices

To monitor, control and prohibit business conducts that are likely to prevent, restrict or distort competition in Zambia.

Measures

- (i) Put in place adequate enforcement mechanisms that will enable the relevant authorities prohibit and deter restrictive business conduct.

- (ii) Sensitisation of consumers and businesses regarding their rights and obligations under relevant legislation
- (iii) Undertaking research studies and using appropriate analytical tools to identify abuse of dominance and make informed decisions

7.5 Cartels

To identify, prevent and eliminate the formation of cartels

Measures

- (i) Undertake periodic research to ascertain the existence of cartels in the economy
- (ii) Expose cartels to the public (name and shame)
- (iii) Relevant authority to establish close relationships with competition authorities in other countries and collaborate in investigation and prosecution of cartels
- (iv) Collaborate with internal security wings in cartel identification and investigations
- (v) Establish a mechanism to encourage informers and provide for their protection
- (vi) Put in place enforcement mechanisms that will deter persons from cartelistic behaviour such as stiffer penalties

7.6 Trade and Professional Associations

To prevent and prohibit restrictive practices by trade and professional associations.

Measures

- (i) Periodic review of activities and legal framework of trade and professional associations to ensure that they do not engage in restrictive business practices
- (ii) Put in place enforcement mechanisms that will deter trade and professional associations from engaging in restrictive practices

7.7 Non application of the Competition and Consumer Legislation

To allow for exemptions only insofar as they do not foster the creation of an anti-competitive environment.

Measures

- (i) Establish a mechanism for periodic review of exemptions
- (ii) Provide advisory opinions to Government and stakeholders based on findings.

7.8 Consumer Protection Objectives

7.8.1 Hoarding of products

To ensure that there is no artificial shortage in the supply of products aimed at increasing the price .

Measure

- (i) Assess reasons for market shortages as and when they arise
- (ii) Establish a surveillance mechanism with other relevant public and private sector organisations
- (iii) Put in place adequate enforcement mechanisms that will deter the persons from hoarding products

7.8.2 Product safety

To ensure that consumers are not exposed to unsafe products.

Measures

- (i) To ensure that the products supplied are subjected to mandatory or voluntary testing by relevant authorities
- (ii) Expose defaulting companies to the public (name and shame)
- (iii) Put in place adequate enforcement mechanisms that will deter the persons from supplying unsafe products

- (iv) Encourage relevant authorities to cooperate with counterparts in originating countries of unsafe products.

7.8.3 Defective and sub standard products

To ensure that consumers are not exposed to defective and sub-standard products.

Measures

- (i) To ensure that the products supplied in the Zambian market are subjected to acceptable standards and testing recognised by Zambian laws. ...
- (ii) Expose defaulting companies to the public (name and shame)
- (iii) Put in place enforcement mechanisms that will deter the persons from supplying defective and sub standard products
- (iv) Put in a framework for cooperation with counterparts in originating countries of unsafe products.

7.8.4 Unconscionable conduct

To protect consumers and businesses from unreasonable and/or unfair business transactions that go against good conscience.

Measures

- (i) Promote ethical business practices
- (ii) Put in place enforcement mechanisms that will deter person from engaging in unconscionable conduct
- (iii) Compel manufacturers and suppliers to provide adequate and necessary product information through legal provisions.

7.8.5 Misleading and Deceptive conduct

To protect consumers from misleading and deceptive conduct by manufacturers and traders.

Measures

- (i) Promote ethical business practices
- (ii) Put in place enforcement mechanisms that will deter the persons from misleading and deceptive conduct
- (iii) Encourage manufacturers and suppliers to provide adequate and necessary information about their commercial practices.

7.8.6 Warranties and Guarantees

To ensure that consumers are provided with reasonable and enforceable terms for warranties and guarantees

Measures

- (i) Put in place minimum benchmark standards for product warranties and guarantees.
- (ii) Compel manufacturers and suppliers to provide adequate and necessary warranties and guarantees through legal provisions.

7.8.7 Advocacy Programmes

Advocacy and other promulgation efforts are a critical part to the success of the Policy. The media is the evident outlet for communicating the policy and its implementation through the various implementing agents. Through a deliberate and sustainable awareness programme, the business and consumer community would be able to offer the necessary support feedback into the policy goals.

To create a culture of competition and consumer welfare among consumers, business community, policy makers and other stakeholders.

Measures

- (i) Carry out information dissemination activities
- (ii) Inform consumers about the regulatory bodies that can address their grievances
- (iii) Engage the media in the sensitisation process by promoting competition and consumer programmes in electronic and print media

7.8.8 Resolution of disputes

To ensure that consumers have recourse to formal or informal procedures that are expeditious, fair and inexpensive.

Measures

- Establish legal and institutional framework and clear administrative procedures.

7.8.9 Inter- Institutional Linkages

To harmonise the activities and legal framework of relevant institutions involved in competition and consumer welfare matters.

Measures

- (i) Review of current legislation and amendment or repeal where necessary.
- (ii) Encourage relevant authorities to cooperate with counterparts
- (iii) Create clear inter-institutional mechanisms for synergy identification and collaboration of activities

CHAPTER 8

8.0 IMPLEMENTATION FRAMEWORK

8.1 Institutional arrangements

The institutions that will be important in the implementation of this policy include the Commission, sector regulators and the Judiciary. The implementation of this policy will require working in close collaboration with other stakeholders.

8.1.1 Zambia Competition Commission

The primary institution mandated to implement the competition and consumer welfare policy is the ZCC. The ZCC will monitor, control and prohibit acts or behaviour, which are likely to adversely affect competition, fair-trading and consumer welfare in Zambia. Furthermore, the ZCC should be empowered to address such market disputes through effective enforcement of competition and consumer law. In addition A Competition and Consumer Tribunal should be established to allow for due process.

In order for ZCC to effectively implement the law, it should be accessible country wide, thus the need to decentralise its operations.

8.1.2 The Judiciary

The Judiciary through the court system shall play an important role in enhancing the enforcement mandate of the Competition and Consumer Authority.

In this regard the Small Claims Court shall provide timely and cost effective resolution of disputes for small claims. The relevant authority and other institutions that deal with consumer protection shall refer appropriate cases to the Small Claims Court. The relevant authority and/or statute creating its existence shall develop an institutional coordination mechanism with the Small Claims Court for the purposes of identifying cases that may need the attention of either institution.

8.1.3 Sector regulators

Sector regulators will play a key role in competition and consumer protection enforcement through institutional linkages and coordination with the relevant authority. The sector regulators and the ZCC shall enter into memoranda of understanding to ensure coordinated implementation and enforcement of the legal framework. The following regulators need to coordinate with the competition authority:

- (i) Energy Regulation Board
- (ii) Communications Authority of Zambia
- (iii) Patents and Companies Registration Office

- (iv) Zambia Development Agency
- (v) National Water Supply and Sanitation Council
- (vi) Pharmaceutical Regulatory Authority
- (vii) Zambia Bureau of Standards
- (viii) Zambia Weights and Measures Agency
- (ix) Bank of Zambia
- (x) Securities and Exchange Commission
- (xi) Pensions and Insurance Authority
- (xii) Zambia Revenue Authority
- (xiii) Zambia Wildlife Authority, etc

i.

8.1.4 Law Enforcement Agencies

The various law enforcement agencies shall coordinate and cooperate with the ZCC in the implementation and enforcement of the competition and consumer legislation.

8.1.5 Legal and Regulatory framework

A comprehensive and complementary legal framework facilitates easy enforcement of competition and consumer provisions of the law. However, the Zambian legal framework is comprehensive but fragmented on consumer provisions making implementation and enforcement difficult. To ease the operations of the relevant implementing agency the following legislations play an important role:

- (i) Telecommunications Act which provides regulation of Information Communication Technology sector;
- (ii) Public Health Act provides for public health and safety;
- (iii) Food and Drugs Act which provides for standards for food and drugs

8.1.6 Resource mobilization and financing

The principal responsibility of the central Government in the implementation of the policy will be to mobilise both internal and external sources of finances and provide the relevant agency with necessary financial resources to ensure that the competition and consumer authority successfully implements the proposed Government strategies and activities. A direct appropriation from Parliament would be an ideal process.

CHAPTER 9

9.0 Monitoring and Evaluation

The Ministry responsible for Commerce, Trade and Industry shall provide political support and facilitate the monitoring of the implementation process and be responsible for evaluating policy benchmarks herein. The Ministry shall conduct periodic monitoring exercises to assess adherence to the provisions of the policy and to determine whether intervention activities are contributing towards the policy vision and its outlined objectives.

In monitoring the implementation of this policy the ZCC or successor institution shall take the lead implementation agent role.