

Competition Policy in Zambia.

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Introduction

The establishment of the Zambia Competition Commission in May 1997 through the enactment of the 1994 Competition and Fair Trading Act which came into force in February 15, 1995 was largely as a consequence of the conditionality set by the International Monetary Fund and the World Bank. Until the advent of full fledged Structural Adjustment Programme (SAP), about 80 percent of the Zambian industries, transport and energy companies were under state control and management.ⁱ The economic policy was that of a mixed economy with social welfare as the main objective. It is quite obvious that nobody could feel the need of a competition law in such a scenario.

However, privatisation of state enterprises and liberalisation in the wake of the structural adjustment programme, drastically changed the scenario. This established the conditions which necessitated the creation of a competition policy. This subsequently led to the enactment of the Competition and Fair Trading Act in 1994.

Objectives & Scope

The Competition and Fair Trading Act (the Act) was adopted in Zambia with the following objectives:

- Encouraging competition in the economy by prohibiting anti-competition trade practices.
- Regulating monopolies and concentration of economic power so as to protect consumer welfare.
- Strengthening the efficiency of production and distribution of goods and services.
- Securing the best possible conditions for the freedom of trade and expansion of entrepreneurship base.

The Act applies to all economic agents in relation to the supply and demand of all goods and services. However, there are a number of exceptions:

- Treaty or agreement to which the state is a party.
- Activities of employees or associations for their own protection.
- Arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment.
- Agreements relating to the use of Intellectual Property Rights.
- Such business or activity as the Minister of Commerce, Trade and Industry may, by statutory instrument, specify.

Institutional Arrangement

The Zambia Competition Commission (ZCC) that came into being in May 1997 is the agency responsible for enforcing the competition law in the country. The ZCC consists of 13 members (known as Commissioners). The Ministries of Finance and Economic Development, and Commerce, Trade and Industry are represented by one Commissioner each. There is also one representative from a statutory Government Department, the Zambia Bureau of Standards. The rest of the commissioners (10) represent Non Governmental Organisations (NGOs) as follows: Zambia Chamber of Commerce and Industry (2), Law Association of Zambia (1), Zambia Federation of Employers (1), Zambia Congress of Trade Unions (1), Consumer Interest Representatives (2), Engineering Institute of Zambia (1), Accounting Profession Representative (1) and Economics Association of Zambia (1).

The Board consists of all the 13 Commissioners and two ex-officio members, the Executive Director and the Secretary. The Commissioners appoint their own chairperson and vice-chairperson among the 10 members representing NGOs. The decision of the Commission is taken by majority vote of the board.

The chief executive of the ZCC is the Executive Director who is responsible for the day-to-day administration of the Commission. The Executive Director is assisted by a total of 25 members of staff of whom 5 constitute the management. These are the Commission Secretary and four Directors (Economics, Consumer Welfare, Finance and Administration, and Legal). There is a provision for 15 professional staff and five support staff on the organisation chart.

The ZCC is empowered through the Act to monitor, control and prohibit acts or behaviour likely to adversely affect competition and fair trading in the country.

The Commission takes decision in a case using any of the procedures below:

- Carry out, on its own initiative or through request of any person, investigations in relation to the conduct of business, including dominant position on the extent of anti-competitive trade practices, if any.
- Carry out investigations, on its own initiative or through request of any person who may be adversely affected by a merger, and
- Take any necessary action to prevent or redress the creation of a merger or abuse of dominant position.
- Make, with approval of the Minister of Commerce, Trade and Industry, regulations expedient for efficient and effective carrying out of its functions, through a statutory instrument.

The ZCC is also empowered to:

- Provide business houses and consumers information regarding their rights under the Act.
- Undertake studies and provide public reports on the operation of the Act.
- Co-operate with and assist anybody who develops or promotes the observance of the standards of conduct in order to ensure compliance with the provisions of the Act.

Major Provisions

Any category of agreements, decisions and concerted practices whose objective is to prevent, restrict or distort competition in the country or any substantial part of it are declared anti-competitive trade practices and are prohibited by the Act. The main elements of the competition law relate to:

- Restrictive Trade Practices
- Abuse of dominant position.
- Mergers & Acquisitions.

Dealing with Restrictive Trade Practices

Restrictive trade practices can be of two types: horizontal restraints and vertical restraints to competition. Horizontal arrangements are agreements between firms competing with identical/similar commodities in a common market. Such arrangements manifest themselves in price fixing, collusive tendering, market or customer allocation, sales/production, refusal to supply and collective denials of access to an arrangement.ⁱⁱ

Vertical arrangements refers to a situation where a firm buys or sells another firm's product. Such firms are said to have a vertical relationship. This arrangement portrays themselves in discriminatory pricing, exclusive dealing, bundling and tying arrangements and resale price maintenance. However, some of these practices are common commercial undertakings. The ZCC can allow them provided the parties concerned submit the necessary application and in the Commission's view, their use won't restrict competition.

The Act also restrains entities from undertaking acts or behaviour that limit access to the market or otherwise inhibit competition, and which are likely to adversely affect trade or the economy in general.

Dealing with Dominant Market Position

Restraining the abuse of dominant market position is one of the most important elements of the Act. A firm is said to have a dominant position if it substantially controls business throughout the country or a substantial part of it. The position is abused if such a firm is engaged in limiting access to markets by other entities or unduly restrain competition or involved in any other act that could adversely affect trade or the economy in general.

Dealing with Mergers and Acquisition

The law prohibits any merger or take-over without prior authority from the ZCC. Such action relate to:

- A merger between two or more independent enterprises engaged in the manufacture or distribution of substantially similar goods or providing substantially similar services.
- A take over of one or more such enterprises by another or person who controls another such enterprise.

The essence of regulating mergers/take-overs or indeed of prohibition of anti-competition practices is to ensure efficiency and fairness in the business environment. The Act sets a threshold of 50 percent for unilateral and concentrated market share. The following aspects are taken into consideration in arriving at a decision:

- What is being acquired?
- The relevant markets that may be affected by the acquisition.
- Any barriers to entry that may be created.
- Motives and objectives of the concerned parties and
- The expected effect of the proposed acquisition on competition in each relevant market.

Approach to Cross-Border Abuses

An entity that enters into agreement as a consequence of provisions in respect to the use, licence or assignment of rights under, or existing by virtue of, any copyright, patent or trade is protected by the Act.

On a wider regional basis, the Common Market for Eastern and Southern Africa (COMESA), and the Southern Africa Development Community (SADC), to both of which Zambia is a founder member, recognise the need for protection and promotion of fair competition in its area. However, COMESA and SADC are yet to develop any regional competition policy or framework.

The Challenges

Competition and the competition law are still in their infancy in Zambia. The Commission suffers from an acute short-fall of financial and human resources which have severely limited the scale of its operations and advocacy efforts. The level of understanding and awareness on competition law, procedure and remedial action among the consumers and business concerns is quite low. Although ZCC's performance seems to be quite impressive despite the constraints, building its capacity as envisaged in the Act remain important challenges.

In the present era of globalisation cross-border issues are becoming increasingly important in all countries. Zambia is no exception. Moreover, the current trend shows that the trans-national corporations are restructuring and integrating at regional level which is aimed at controlling the region rather than any particular country. This may lead to monopolisation of the regional market and foreclosing other potential investment inflows into the region. Zambia alone cannot tackle the challenge. Without a strong and coordinated regional competition policy, it will be difficult to maintain competition in the entire region including Zambia.

ⁱ UNCTAD (1999) - *Competition Policy, Trade and Development in the Common Market for Eastern and Southern Africa* - UNCTAD Series on Issues in Competition Law and Policy, Geneva.

ⁱⁱ Lipimile G. K. (1998)- *Addressing Anti-Competitive Practices of Enterprises in a Developing Country Setting: The Case of Zambia* - Symposium on Competition Policy and the Multilateral Trade System, WTO, Geneva.

