



REPUBLIC OF ZAMBIA

DRAFT

**COMPETITION
AND
CONSUMER
PROTECTION
POLICY**

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

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FOREWORD

In Zambia, competition and consumer protection enforcement mechanism has been in existence since 1997. The primary purpose of such a system has been to ensure that individuals and businesses comply with the competition, fair-trading and consumer protection law. The process has however been marred by lack of a distinct policy on these issues. As a consequence, Government support to competition and consumer issues has not been focussed enough.

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 and transparent, devoid of underhand methods and other secret deals that would likely disadvantage those that are not privy to such secret dealings. In addition, it is part of total service delivery by Government to ensure that citizens' welfare is enhanced and protected through assurance of quality goods and services. My Ministry will ensure that any category of agreements, decisions or concerted practices that have the object and effect of preventing, restricting or distorting competition in any market or transaction are monitored, controlled and prohibited.

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

This policy sets out Government's vision and mission in developing competitive and fair markets that will lead to industrial and economic growth and development and protect consumers. 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. I also make another assurance that 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 collaborative 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. Buleti G. Nsemukila

Permanent Secretary

MINISTRY OF COMMERCE, TRADE AND INDUSTRY

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WORKING DEFINITIONS

“Acquiring firm” means a firm-

- (a) that, as a result of a transaction 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) that a business is directly or indirectly controlled by a firm contemplating 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;

“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;

“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;

“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;

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

“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 Minister 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;

“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;

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

“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;

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

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

“Unconscionable conduct” unreasonable conduct that is against good conscious

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 liberalisation and privatisation. 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 centralised economic system.

However, the potential benefits of a shift towards a more market-oriented economy may not be realised unless business firms are prevented from imposing restrictions on competition. Further, consumers should enjoy the benefits of increased competition such as quality goods and services, better prices and more choices. Government thus enacted legislation which established a regulatory and institutional framework for competition and consumer protection. Prior to this policy there was no distinct national policy document to guide Government and other stakeholders on competition and consumer issues. Instances of some reference to these matters have implicitly or explicitly appeared in a number of documents such as the commercial, Trade and Industrial Policy and the Fifth National Development Plan.

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, provide adequate supplies of goods and services and improved choice for consumers.

The market reforms undertaken by Zambia from 1991 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 it does not provide for efficient and cost effective redress.

1.1 Scope of the Policy

This document begins with a brief background of competition law and policy on the global and national context. It then takes an in-depth look at the prevailing conditions, the vision and the rationale of the Competition and Consumer Protection 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 framework.

CHAPTER TWO

2.0 SITUATION ANALYSIS

2.1 General Overview

Zambia's long term vision is to become a middle income country by 2030. In order to achieve this vision, the country has to improve the productivity and competitiveness of firms, private and public institutions. However, the small size of the Zambian market makes it susceptible to 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 playing field in the market place. This tends to frustrate other prospective and thriving entrepreneurial activities in the economy.

2.2 State of Competition

2.2.1 Global Context

In the late 1990s, the world witnessed unprecedented economic liberalisation, and privatisation leading to free market economies. This resulted in an ever-increasing integration of global and regional economies. This process has facilitated an increase in the flow of international capital through foreign direct investment principally by multinational corporations.

In most countries that embarked on economic reforms, there was recognition for the need to regulate the markets and hence, introduced competition policy and law. In that regard, competition policy is no longer a preserve of developed countries, but an important public policy even for developing countries to promote industrial development.

Governments have realised 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 a comprehensive policy and law.

2.2.2 National Context of Competition

Spurred by international political and economic changes, Zambia undertook economic reforms to transform the state planned and controlled 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 liberalisation of the economy in the early 90s made the private sector become the driver of economic growth in order to ensure efficiency and innovation. However, to ensure that the fruits of liberalisation did not just accrue to firms but passed to the consumers, and also that there was fair play among the players in the economy; Government enacted the Competition and Fair Trading Act.

This legislation set 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. This was based on the principle that, competition law is a developmental tool which should be used to address issues of national interest such as poverty reduction.

2.2.3 Mergers and Acquisitions

Mergers, takeovers and acquisitions are arrangements that many businesses including multinational corporations do engage in to either add more value to the market process or create barriers to effective competition.

Regulations for mergers are 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

receive considerable attention especially where international mergers result in market concentration within Zambia.

The competition law (1994 Act) requires mandatory notification for all mergers that are consummated in Zambia. The rationale is to ensure that all mergers are notified in view of inadequate regulations and little knowledge of the competition law by the private sector. It is worth noting, however, that not all mergers raise competition concerns and therefore mandatory notification may not be the best.

The country has also witnessed multinational corporations carry out mergers and acquisitions at international level, which in some instances pose a threat to the local industry. 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. The regional business rationalisation may make economic sense to a multinational but may have adverse effects on the domestic industry or the economy in general.

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 those assets to small and medium scale companies. Where a multinational corporation invests in Zambia through a merger or acquisition, it is likely that it may opt to have business transactions with companies from its country of origin ignoring the local companies. Where such a position exists merger regulation may be used to remedy this situation by ensuring through the provision of undertakings that the multinational provides equal opportunity to the local companies as well.

2.2.1 Dominance

Dominance refers to a situation where a firm or firms possess market power which allow(s) it to act independently of its competitors, customers or suppliers. The Zambian economy has been heavily characterized by dominant or monopoly firms whose ownership changed from public to private hands in the 1990s. The Zambian competition law does not prohibit the existence of monopoly or dominant position in the market.

Firms by their nature want to make profits and expand 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, they should not be punished for obtaining a dominant position or even a monopoly position in a market if it is achieved through innovative and efficient means. Such punishment would actually discourage investment and innovation and may result in reduced competitiveness and economic growth.

2.2.2 Abuse of Dominance

Abuse of dominance occurs in instances where a 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. 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. The welfare of consumers is affected through price increases, poor quality of products and services, reduced consumer choice, and erection of barriers to entry.

2.2.3 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, electricity transmission lines, telephone lines, fibre optic cables, network facilities, raw materials, as well as compulsory licensing of Intellectual Property Rights.

The existence of an essential facility 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.

The competition and fair trading law does not explicitly deal with matters of an essential facility and what measures competitors have to undertake to access the facility.

Consequently, no obligation is imposed on firms running essential facilities to deal with competitors; as such it has been difficult to combat abusive or unsatisfactory monopoly situations in the public interest.

2.2.4 Anti-Competitive Trade Practices

Anti-competitive trade practices or restrictive business practices are acts or behaviours that prevent, restrict or distort competition. Due to an inadequate competition culture in the economy, many anti-competitive cases go unreported. Those that are reported are not dealt with sufficiently because of inadequate enforcement provisions. 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 to provide the necessary redress.

Anti-competitive trade practices include business conduct between competitors (horizontal) and business arrangements between firms on different levels of production (vertical restraints). The *rule of reason* approach is sometimes used in handling vertical restraints and some horizontal arrangements which may have benefits for the consumer and the economy.

2.2.5 Cartels

Cartels are usually *per se* illegal in most jurisdictions as they are considered to be a conspiracy against the public. They subject consumers to high fixed prices, market allocation and bid-rigging, among other anti competitive practices which all prevent effective competition amongst competitors. Such conduct would also result in preventing effective market participation of any enterprise that may not be part of the cartel as cartel members act as a *concealed* “monopoly”.

Government 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 small and medium enterprises, as it increases their ability to bargain with large dominant firms. For instance, small farmers may form a cooperative to sell farm produce at more favourable prices than they would receive in the absence of the cooperative (they may equally enjoy discounts for bulk purchases such as fertiliser). This type of cartel is justifiable and is exempted under the law.

Cartel activity could be domestic or international in nature. International cartels are difficult to detect. There is no meaningful cooperation with other competition authorities to prosecute cartels. Although Zambia is a member of various regional and international competition bodies such as 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. There are no countries that can successfully fight international cartels on their own without some level of cooperation with other countries. In cooperating with other authorities in other countries, the competition authority should be mindful of the need not disclose confidential information of Zambian firms.

2.2.6 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 those in the milling or computer sectors. Professional associations are those 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, some trade and professional associations set prices or conditions of sale for their services or products for their members as they are exempted by the law. Further, some professional associations in Zambia established under Acts of Parliament, are allowed to fix prices or fees for their members though they may have the same effect as a cartel.

2.2.7 Non-application of the Competition and Consumer Legislation

The current competition legislation provides a scope of exemptions in which it cannot 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.

While most of the exemptions are general, the matters pertaining to State commercial activities and professional association standards have brought ambiguous results. For instance, the law has not been implemented equitably where state owned enterprises operate in liberalised markets in competition with private firms. By express or implied exemption under the law, state owned firms (which are usually dominant firms or monopolies) are not subjected to the same enforcement rules for competition as would be applied to private enterprises. This has at times resulted in some of them creating market disparities to the detriment of the competition process. On the part of professional associations, the extent to which they can fix prices or fees of their services has been a source of concern and competition law intervention in a number of countries.

2.3.0 State of Consumer Welfare and Protection

Government took cognisance of the need for the law to address the issues of competition and consumer protection. This is in view of the fact that at a fundamental level competition law and consumer protection policies are complementary and mutually reinforcing. They are both elements of the framework of social welfare. To this effect, the law has two principal objectives:

- 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 unsafe and defective products. The consumer movement recognises that it has become increasingly difficult to prosecute multinational corporations that have many registered nationalities.

The 1985 United Nations Guidelines for Consumer Protection have challenged Governments to take into account the interests and needs of consumers (particularly those in developing countries). This is in recognition of the fact 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.

2.3.2 National Context

Locally, consumers have for a long time been raising concerns of being subjected to various substandard products and services. However, the relevant agencies have provided no adequate or sufficient recourse. In addition, the problem has been compounded by the inability of most consumers to make informed decisions regarding product choice. In that regard, relevant institutions such as the Ministry of Public Health Departments of local authorities, Food and Drugs Laboratories, the Energy Regulation Board, and the Zambia Bureau of Standards have been challenged to do more to inform consumers of their 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 Commission. Business enterprises also do not do enough to inform consumers on product information and have taken advantage of the ignorance of consumers.

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, at production and distribution levels. This results in price increases of products during hoarding period and never significantly reduces once the hoarding has been discontinued. The conduct leads to a reduction in consumer welfare and creates artificial shortages. Instances of hoarding have been suspected in monopoly industries such sugar and cement and also in seemingly competitive markets such in mealie meal.

2.3.4 Product Safety

Product safety is a critical factor in all goods and services. 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 health of a consumer.

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

The problem is compounded by the fragmented legal framework, which makes it difficult for consumers to have recourse. In such a scenario even well articulated and 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 substandard products of both imported and locally produced goods. Defective and substandard products are products that are produced with factory faults such that they cannot be used to the benefit of the consumers, 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 small businesses and consumers. Such conduct may not easily be identifiable but may be inferred from the result 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 where the selling party is using complicated language in the course of sale, or omitting to disclose vital information in simple language which may be decisive to a sale or contract.

Manufacturers and suppliers of products usually have more information regarding their products than consumers 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 and 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

Advocacy refers to activities aimed at publicising work and strategies for competition and consumer protection to all stakeholders. Advocacy is a critical component in dealing with formulation of policy as well as the implementation process.

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. There is little understanding by relevant stakeholders of the importance of competition and consumer welfare.

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.

2.4 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 Act of 1994 did not provide for the imposition of 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. Hence, Government established the Small Claims Court to help solve this problem.

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.

2.5 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. There is no mandatory or formal institutional cooperation amongst Government agencies engaged in consumer welfare or protection efforts.

CHAPTER THREE

3.0 VISION AND RATIONALE

3.1. VISION

To develop and facilitate an enabling national growth environment which is transparent, equitable, efficient and provides for procedural fairness and for business and consumers.

3.2 RATIONALE

International instruments have promulgated competition law as early as the Havana Charter of 1948 (Chapter V) and the United Nations set of principles for competition. At regional levels, Articles 55 and 25 of the COMESA and SADC Trade Protocols call on member states to put in place mechanisms to deal with anti-competitive trade practices that could frustrate trade amongst member states.

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

The need for a competition and consumer 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) Lack of an effective and efficient means of resolving complaints
- (iii) Lack of wide recognition, acceptance, and awareness of institutions responsible for competition and consumer issues 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 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 not 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 FOUR

4.0 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:

- (i) **Promotion of economic growth** – recognition of the importance of economic growth for the well being of Zambians.
- (ii) **Poverty reduction** – recognition of the need to reduce poverty through employment creation.
- (iii) **Equity** – ensuring that state owned enterprises and private enterprises are treated equitably under the competition law using the rule of reason approach.
- (iv) **National treatment** – treatment of foreign and local firms equally.
- (v) **Market regulation** – ensuring that business firms are prevented from imposing restrictions on competition.
- (vi) **Promotion of quality products** - recognition of the need to have quality products on the Zambian market.
- (vii) **Promotion of research & development** – recognition of the importance of research and development in order for Zambian companies to be competitive.
- (viii) **Promotion of micro, small and medium enterprises** – recognition of the importance of micro, small and medium enterprises in employment creation and poverty reduction.
- (ix) **Reduction of barriers to business entry** – recognition of 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.

- (x) **Education and information** – recognising that an educated and well informed private sector and consumers results in better enforcement of the competition and consumer law.

CHAPTER FIVE

5.0 POLICY OBJECTIVES AND STRATEGIES

5.1 Competition Objectives

5.1.1 Mergers and Acquisitions

Objective: to prevent the creation of a market structure that can lead to a likely substantial lessening of competition or abuse of dominance.

Measures

- (i) Government shall put in place proper pre-merger notification guidelines and thresholds to ensure that all mergers likely to adversely affect competition are notified.
- (ii) Government shall ensure that all notifiable mergers are assessed in a transparent and efficient manner
- (iii) Government shall consult stakeholders in merger assessment.

5.1.2 Abuse of Dominance

Objective: to prevent likely and remedy existing abuse of dominant position of market power.

Measures

- (i) The competition authority shall undertake research studies and using appropriate analytical tools to identify abuse of dominance and make informed decisions
- (ii) Government shall put in place enforcement mechanisms that would deter persons from abuse of dominant position of market power

5.1.3 Essential Facilities

Objective: 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, and specific timeframe for use.
- (ii) The Government should regularly monitor the implementation of the access guidelines for essential facilities.

5.1.4 Restrictive Business Practices

Objective: to monitor, control and prohibit business conducts that are likely to prevent, restrict or distort competition.

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

5.1.5 Cartels

Objective: to identify, prevent and eliminate the formation of cartels

Measures

- (i) The competition authority shall undertake periodic research to ascertain the existence of cartels in the economy
- (ii) Exposure of cartels to the public (name and shame)
- (iii) Establishment of close relationships with competition authorities in other countries and collaborate in investigation and prosecution of cartels
- (iv) Collaboration with internal security wings in cartel identification and investigations
- (v) Government will establish a mechanism to encourage informers and provide for their protection
- (vi) Government will put in place enforcement mechanism such as stiffer penalties that will deter persons from forming cartels.

5.1.6 Trade and Professional Associations

Objective: 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

5.1.7 Non application of the Competition and Consumer Legislation

Objective: 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.

5.2 Consumer Protection Objectives

5.2.2 Hoarding of Products

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

Measures

- (i) Assess reasons for market shortages as and when they arise
- (ii) Put in place mechanisms that will discourage persons from hoarding products.

5.2.3 Product Safety

Objective: 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.

5.2.4 Defective and Sub-standard Products

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

Measures

- (i) Ensure that products supplied on the 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 place a framework for cooperation with counterparts in originating countries of unsafe products.

5.2.5 Unconscionable Conduct

Objective: to protect consumers and businesses from unreasonable or unfair business transactions that go against good conscience.

Measures

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

5.2.6 Misleading and Deceptive Conduct

Objective: 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.

5.2.7 Warranties and Guarantees

Objective: 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.

5.2.8 Advocacy Programmes

Objective: 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, and sensitise consumers about their rights and the recourse available to them in the event their rights violated.
- (ii) Engage the media in the sensitisation process by promoting competition and consumer programmes in electronic and print media

5.3 Resolution of Disputes

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

Measure

Establish legal and institutional framework and clear administrative procedures.

5.4 Inter-Institutional Linkages

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

Measures

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

CHAPTER SIX

6.0 IMPLEMENTATION FRAMEWORK

6.1 Institutional Arrangements

The institutions that will be important in the implementation of this policy include the Zambia Competition Commission or its successor, sector regulators and the Judiciary, in collaboration with other stakeholders such as consumers and the business community.

6.1.1 Institution Responsible for Competition and Consumer Protection

The primary institution mandated to implement the competition and consumer welfare policy is the Zambia Competition Commission or its successor. This Commission will monitor, control and prohibit acts, behaviour, conduct or arrangement that is likely to adversely affect competition, fair-trading and consumer welfare in Zambia. Furthermore, such Commission should be empowered to address market disputes through advocacy and enforcement of the legal framework implementing this policy. In addition, a specialised tribunal should be established as a faster mechanism to deal with disputed claims from and by the enforcement agency before matters are escalated into the common court system. Appearance before a tribunal shall be as less strenuous as possible in terms of process cost and professional legal services.

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

6.1.2 The Judiciary

The Judiciary through the court system shall play an important role in providing checks and balances to the Commission and the Tribunal. This may be through appeals and not necessarily process review as this shall be handled at Commission and Tribunal stage.

Further, the Small Claims Court system may be synchronised with applicable processes to 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 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.

6.1.3 Sector Regulators

Sector regulators shall play a key role in competition and consumer protection enforcement through institutional linkages and coordination with the relevant authority. Where the legal mechanism is silent, the sector regulators and the Competition authority 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,
- (xiv) Environmental Council of Zambia
- (xv) Zambia Public Procurement Authority (ZPPA)
- (xvi) Law Association of Zambia

6.1.4 Law Enforcement Agencies

The various law enforcement agencies shall coordinate and cooperate with the competition and consumer authority, and sector regulators in the implementation and enforcement of the competition and consumer legislation. Among others, these include the Anti-Corruption Commission; the Drug Enforcement Agency and the Zambia Police Service.

6.2.0 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
- (iv) The Energy Regulation Act
- (v) The Bank and Financial Services Act
- (vi) The Standards Act
- (vii) The Weights and Measures Act

While all these have components of consumer protection, there should be a central or focal point through which to have a coordinated approach to realising higher benefits for the consumer from all these laws.

6.3.0 Right of Private Action

It may not be practical for the implementing agency to deal with all matters before it is judicially as possible. Natural and corporate citizens with sufficient interest in a matter must be to use the appropriate legal framework to move the Tribunal or court system to hear them.

6.4.0 Resource Mobilisation 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 SEVEN

7 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 Competition and consumer authority shall take an active role.