CUTS INTERNATIONAL 7UP3 PROJECT

NATIONAL TRAINING WORKSHOP ON COMPETITION POLICY AND LAW

COMPETITION POLICY AND CONSUMER PROTECTION[1]

INTRODUCTION

The topic of competition policy and consumer protection is a very interesting one since it goes to the very core of the need and purpose of competition law and policy. It has correctly been said that the ultimate objective of the implementation of competition policy and law is consumer welfare. It has also been found that consumer satisfaction arising from the implementation and protection of competition policies and laws enhances appreciation and acceptance of the policy and law for the purposes of building a healthy culture of competition in any society.

In dealing with the topic of competition policy and consumer protection, this paper will therefore first analyse the very concept of competition and its socio-economic effects before exploring how competition promotes consumer welfare and protection. It will then discuss the hybrid laws and agencies dealing with competition and consumer protection, and end with a discussion of a real-life competition case in Zimbabwe that was directly related to consumer protection.

COMPETITION AND ITS SOCIO-ECONOMIC EFFECTS

Competition is the process by which sellers strive to gain the patronage of buyers in achieving their primary objectives of sales, market share and profit. Sellers are more likely to be successful if the quality of their goods or services is higher, and the prices of the goods or services is lower, than those of their rivals, or if their products offer new features, because these are the elements that attract the attention of buyers, or consumers.

Vigorous competition between firms is the lifeblood of strong and effective markets. Competition helps consumers to get a good deal. It encourages firms to innovate by reducing slack, putting downward pressure on costs, and providing incentives for the efficient organisation of production. As such, competition is the central driver for productivity growth in the economy. When working effectively, competition involves a process of rivalry between firms that strive to win customers' business by achieving the lowest level of costs and prices, developing new products or services or exploiting particular strengths, skills or other advantages to meet customer needs more efficiently and effectively than competitors.

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Competition forces firms to become efficient and to offer a greater choice of goods and services at lower prices. In a competitive market economy, price signals tend to be free of distortions and create incentives for firms to redeploy resources from lower to higher-valued uses. The benefits that flow from competition therefore include increased economic efficiency, innovation, and consumer welfare. Economic efficiency generated by competition includes both 'productive efficiency' (i.e., producing without waste) and 'allocative efficiency' (i.e., producing the goods and services that society values most highly).

The clearest demonstration of the benefits of competition is to contrast perfect competition with monopoly. Perfect competition means that there are a large number of small suppliers, each being unable individually to influence the market price, while monopoly means that there is only one supplier. Perfect competition should therefore result in lower prices, better products, a wider choice and greater efficiency than monopoly. If competition is limited there will often be a diminution of innovation. That is, if a monopoly is comfortable with its existing market position, it will not have much incentive to explore product improvement, or the introduction of new products.

Firms however also have incentives to acquire market power, that is, to obtain discretionary control over prices and other related factors determining business transactions. Such market power may be gained by limiting competition through: (i) the erection of barriers to commerce; (ii) the conclusion of collusive agreements and arrangements to restrict output and increase prices; and (iii) the engagement in other anti-competitive business practices. This imperfect competition is generally viewed as market failure that results in inefficient allocation of resources, and adversely affect industry performance and economic welfare. Such market failures enable sellers to deliberately reduce output and charge higher prices at the expense of consumers and society in general, hence the need for regulation in the form of competition law.

Viewed broadly, there are various ways in which firms can act to restrict competition, including the following:

- a group of competitors can agree on key elements of trade, such as the prices they will charge, the quantities they will offer for sale, and the geographic localities in which they will supply their product ('cartels');
- a group of competitors can collectively take action that will prevent a competitor who is undercutting them on price from getting supplies for resale ('boycotts');
- a single firm that dominates a market can use its market power to prevent existing firms from competing, or to prevent new firms from entering the market ('abuse of dominant position'); and
- a firm can eliminate a competitor from the market by taking it over ('anti-competitive merger').

As stated in a CUTS Monograph on Investment and Competition Policy (2000)[2], the main objective of competition policy is to preserve and promote competition as a tool to ensure efficient allocation of resources in an economy. This would result in the maximisation of real income of the economy. Further, from the consumers' perspective, it would result in the best possible choice of quality,

[2] CUTS Monograph on Investment and Competition Policy #6, *All About Competition Policy & Law For the Advanced Learner,* CUTS Centre for International Trade, Economics & Environment, Jaipur, 2000.

reasonable prices and adequate supplies. The pursuit of these objectives would lead to controlling the concentration of economic power, encouraging innovation, protecting and promoting social welfare and in particular the interests of consumers. Competition laws of most countries deal with enterprise behaviour by prohibiting such restrictive business practices as competition-restricting horizontal agreements, acquisitions and abuse of dominant position.

Consumer welfare is thus one of the main goals of competition policy and law, together with economic efficiency and check on concentration of economic power.

COMPETITION AND CONSUMER WELFARE

In most countries that have adopted competition policy and law, the objectives of such policies and laws are aimed at consumer welfare. The common objectives of competition policy and law include: (i) prohibiting restrictive business practices; (ii) controlling monopolies and concentrations of economic power; (iii) regulating mergers and acquisitions; (iv) strengthening the efficiency of production and distribution of goods and services; (v) ensuring the best possible conditions for the freedom of trade; and (vi) encouraging innovation. In one way or another, these are all aimed at facilitating or maximising consumer welfare.

Free and open competition benefits consumers by ensuring lower prices and new and better products. In a freely competitive market, each competing business generally will try to attract consumers by cutting its prices and increasing the quality of its products or services. Competition and the profit opportunities it brings also stimulate businesses to find new, innovative and more efficient methods of production.

Competition among enterprises directly benefit consumers whether it comes in the form of *price competition* or *non-price competition.* Price competition is a form of rivalry among suppliers that involves an attempt to win customers by offering them a product at a lower price than the competitors. The consumer therefore benefits from lower prices. Under non-price competition, firms go for sales promotion, advertising, quality upgradation, offer after-sales service and the like to increase their share of the market. Again, consumers benefit from better quality products and after sales service. Consumers thus benefit from competition through lower prices, better products and services.

In addition to consumer welfare, competition policy and law also directly contributes to consumer protection. In this regard, it is noted that consumers are the main losers of anti-competitive activities in a market since they are most vulnerable to the abuses of big business because of their atomistic nature. Even where consumer watchdogs exist, most of these do not have the necessary adequate teeth backed by legislation. Consumers therefore require the protection of competition law the most.

Competition laws protect the process of competition. This makes competition law a very important consumer protection law. The objective of competition laws is to prohibit business practices that unreasonably deprive consumers of the benefits of competition, resulting in higher prices for inferior products and services. Some competition laws also prohibit some other practices that mislead or deceive consumers, and include provisions relating to product safety and product information and unconscionable (or grossly unfair) conduct.

Businesses will sometimes be tempted to ensure increased profits by restricting the process of competition. When competitors agree to fix prices, rig bids or allocate customers, consumers lose the benefits of competition because they have no effective ability to shop around and freely choose the products and businesses that best meet their needs. The prices that result when competitors agree in these ways are artificially high. Such prices do not accurately reflect cost production and distribution, and therefore distort the allocation of society's resources. The result is a loss not only to individual consumers but also to national economies.

All types of restrictive business practices (RBPs) that are prohibited or controlled by competition law have adverse effects on consumer welfare. These, and their effects on consumer welfare, are described in the Table below:

Type of RBP	**Description and Effect**
Horizontal Agreements	Horizontal agreements refer to explicit and implicit agreements between firms in the same market to stop competing with each other and/or to eliminate potential new entrants into the market. Such collusive agreements or arrangements are usually referred to as cartels. Collusive horizontal agreements come in different forms and types, including the following: • *Price-fixing agreements,* aimed at eliminating price competition between the colluding firms. At a minimum, cartels generally set prices above those of the least efficient producer in the market. If consumers have no alternatives to the cartelised product, they are forced to pay artificially high prices. • *Market-sharing agreements,* between two or more firms to allocate markets among them, i.e., who shall deal where and with whom in order to avoid competition among them. The colluding firms operate as monopolies in their respective allocated markets, with resultant adverse effects such as excessive prices and/or output reductions that harm consumers. • *Bid-rigging agreements*, aimed at subverting the competitive process of promoting fairness and ensuring the lowest possible prices on large procurements. The consumer is the ultimate loser from such arrangements
Vertical Restraints	Vertical restraints are those restrictions than an upstream firm, often in a dominant position, places on a downstream firm. They include: • *Exclusive dealing arrangements,* whereby a downstream firm receives the exclusive rights, frequently within a designated territory, to buy, sell or resell another firm's goods or services. Often as a condition for such exclusive rights, the distributor is required not to deal in, or manufacture competing goods. • *Resale price maintenance,* which involves specifying the minimum price at which a product must be resold to customers.
Abuse of Dominance	A firm enjoying dominant position in the market gets certain advantages similar to those of a monopolist. The dominant firm may abuse its market power by forcing its suppliers or distributors (and customers) to accept certain restrictions. Two broad types of business conduct of dominant firms have traditionally been recognised as abusive by competition authorities: • *Exploitative abuses,* in which a firm takes advantage of its market power by charging excessively high prices to its customers, discriminating among

	customers, or paying low prices to suppliers. • *Exclusionary abuses,* in which a firm attempts to suppress competition, by refusing to deal with a competitor, raising competitors, costs of entering a market, or charging predatory prices.
Anti-competitive Mergers	The reasons why firms merge are many and diverse. They include: (i) the need to achieve economies of scale and scope, and other operational efficiencies such as functional synergies, and research and development); (ii) the creation of national champions; (iii) reduction of management inefficiencies; and even just (iv) empire building. While most mergers pose little or no serious threat to competition, and may actually be pro-competitive and generate significant efficiencies that positively contribute to consumer welfare, other mergers seriously harm competition by increasing the probability of exercise of market power. In this regard, concerns about vertical restraints and abuse of dominance come to the fore. Mergers can also sometimes produce market structures that are anti-competitive in the sense of making it easier for a group of firms to cartelise a market, or enabling the merged entity to act more like a monopolist. All the three types of mergers can be harmful to competition, and therefore to consumer welfare: • *Horizontal mergers* (i.e., those that take place between directly competing firms in the same product market and at the same level of the production or distribution cycle) present the greatest danger to competition by the mere fact that they reduce the number of competing firms in the relevant market, and therefore lead to market concentration. • *Vertical mergers* (i.e., those between firms with actual or potential buyer-seller relationships) also have harmful effects on competition if they give rise to risk of markets becoming foreclosed to third parties. • *Conglomerate mergers* (those that bring together firms that do not compete with each other in any product market and do not have vertical integration) present the least danger to competition since there is no functional link between the merged firms. They can however be potentially anti-competitive if they are considered in the context of additional financial strength (or 'deep pockets') they give to the parties involved, which the parties can use against actual or potential competitors in the respective relevant markets through cross-subsidisation.

Competition law however also recognises that certain arrangements between firms, such as competitors cooperating to perform joint research and development projects, may benefit consumers by allowing the firms that have agreed on such arrangements to compete more effectively against other firms. Most competition laws have therefore been drafted in such ways as to include sufficient flexibility so that beneficial agreements between otherwise competing firms are not prohibited.

It has also been observed that businesses will have less incentive to trade fairly when competitors can obtain short term advantage by misleading consumers, supplying unsafe goods or acting in a grossly unfair way. The costs of such short term advantages will fall on both consumers and legitimate traders, often to the long term detriment of consumers as the increased risks of doing business discourages changes to entrenched buying and investing behaviour.

Consumers are indeed the biggest beneficiaries from competition, mainly in terms of lower prices, better quality of goods and services, and greater choice of goods and services that result from competition-induced economic efficiency and innovation, and from the protection that they get from the effective enforcement of competition law.

RELEVANT LAWS AND AGENCIES

There is a hybrid of laws and agencies that deal with competition and consumer protection. Having an effective competition law does not mean that there is no need for other consumer protection legislation or regulation. Governments have many policy objectives, so there will always be other consumer protection regulation. For example, a Government may wish to ensure consumer protection welfare outcomes that will not be generated by competitive forces. Some consumer regulation may also be too detailed or specialised to be included in a competition law of general application.

A number of countries worldwide have laws and agencies that deal with competition and consumer protection. The country that has the most comprehensive law in this regard is probably Australia. Australia's Trade Practices Act 1974, which is administered by the Australian Competition and Consumer Commission (ACCC), is the country's competition and consumer law. The Act promotes efficient markets and fair-trading practices which seek to maximise consumer welfare. Its stated object is "to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection". The object of the Act recognises its dual role of promoting competition and efficiency together with consumer protection.

The Trade Practices Act of Australia has provisions on 'restrictive trade practices', which are "contracts, arrangements or understandings that restrict dealings or affect competition"[3]. These practices include *price fixing arrangements* (between competitors which have the purpose or effect of fixing, controlling or maintaining prices for goods and services supplied or acquired by the parties), *exclusionary provisions* (also known as collective boycotts, which are arrangements between two or more persons who are competitive with one another where the arrangement has the purpose of restricting the supply of goods or services to or the acquisition of goods or services from particular persons or classes of persons, or the supply of goods or services to or the acquisition of goods and services from particular persons or classes of persons in particular circumstances or on particular conditions), and *anti-competitive agreements* (or arrangements, which have the purpose or effect of substantially lessening competition in a market).

The Act also has provisions on the prohibition of unconscionable conduct, and a whole Part on consumer protection, whose object is to protect the cosumer by eliminating unfair trade practices. Unfair trade practices include *misleading or deceptive conduct* (conduct aimed at misleading or deceiving consumers), *unconscionable conduct* (conduct that can be seen in accordance with the ordinary concepts of mankind to be so unfair as to be against conscience), *false or misleading representations* (on the quality, value, condition or grade of goods, etc), *bait advertising* (advertising for supply of goods and services knowing that the firm would not be able to supply the goods and services), *harassment and coercion* (using physical force or undue harassment or coercion in connection with the supply or possible supply of goods or services, and *pyramid selling* (e.g., purchase of certificates for a particular dollar value, with the newest entrant starting at the bottom of the pyramid and obliged to sell the certificates to progress up the pyramid).

3 Ray Steinwall, *Annotated Trade Practices Act 1974,* 2002 Edition, Butterworths, Australia, 2002.

In the Eastern and Southern African region, an increasing number of countries are also having laws and agencies that deal with competition and consumer protection. The situation in some of these countries is briefly outlined in the Table below:

Country	Competition-Consumer Protection Laws and Agencies
Kenya	The objective of the Restrictive Trade Practices, Monopolies and Price Control Act Chapter 504 is "to encourage competition in the economy by prohibiting restrictive trade practices, controlling monopolies, concentrations of economic power and prices and for connected purposes". The Act provides for the appointment of the Monopolies and Prices Commissioner for its administration. The Act has provisions on the control of monopolies and concentrations of economic power, including mergers and takeovers. Prohibited restrictive trade practices include agreements or arrangements: (i) hindering or preventing the sale or supply of goods and services; (ii) restricting the terms and conditions of sale or supply; (iii) fixing prices; and (iv) limiting or restricting the output or supply of goods. It also has provisions relating to the control and display of prices.
Malawi	The objective of the Competition and Fair Trading Act (Cap. 48.09) is "to encourage competition in the economy by prohibiting anti-competitive trade practices; to establish the Competition and Fair Trading Commission; to regulate and monitor monopolies and concentrations of economic power; to protect consumer welfare; to strengthen the efficiency of production and distribution of goods and services; to secure the best possible conditions for the freedom of trade; to facilitate the expansion of the base of entrepreneurship and to provide for matters incidental or connected therewith". The Act prohibits "any category of agreements, decisions and concerted practices which are likely to result in the prevention, restriction or distortion of competition to an appreciable extent in Malawi or in any substantial part of it". Abuse of dominance practices prohibited include: (i) predatory behaviour towards competitors; (ii) discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods and services; (iii) making the supply of goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods; and (iv) resale price maintenance. Trade agreements and arrangements prohibited include: (i) colluding in settling uniform prices in order to eliminate competition; (ii) collusive tendering and bid-rigging; (iii) market or customer allocation; (iv) allocation by quota as to sales and production; (v) collective action to enforce arrangements; (vi) concerted refusals to supply goods or services to potential purchasers; and (vii) collective denials of access to an arrangement or association which is crucial to competition. The need to enact consumer protection legislation to work hand in hand with Malawi's competition legislation under the administration of the competition authority was recognised early in Malawi. Accordingly, a Consumer Protection Bill was drafted in 2001 to address the specific interests and needs of consumers[4]. The Bill was sponsored and promoted by Consumers Association of Malawi (CAMA), and provided for the

[4] *Why is a Competition Law Necessary in Malawi?,* CUTS Centre for Competition, Investment & Economic Regulation, Jaipur, 2003.

	establishment of a Consumer Protection Council whose functions include the identification of price mechanisms and the determination of whether the quality and prices of goods and services are justifiable. The Council would also carry out, promote or participate in consumer education programmes and activities and disseminate consumer information to the public. The Bill also provided for the establishment of Small Claims Courts.
South Africa	The Competition Act No.89 of 1998 has the object "to provide for the establishment of a Competition Commission responsible for the investigation, control and evaluation of restrictive practices, abuse of dominant position, and mergers; and for the establishment of a Competition Tribunal responsible to adjudicate such matters; and for the establishment of a Competition Appeal Court; and for related matters". The Act has provisions prohibiting restrictive practices (both horizontal and vertical restrictive practices) and abuse of dominance. It also has substantial merger control provisions. In March 2006 a draft Consumer Protection Bill was published for consultation. The Bill aims to provide a broad framework for consumer protection in South Africa and to promote consistency, coherence and efficiency in the implementation of consumer laws. The objectives of the Bill are to: • promote: (i) a fair, accessible and sustainable market place for consumer products and services, (ii) responsible consumer behaviour, and (iii) a consistent enforcement framework relating to consumer transactions and agreements; • prohibit certain unfair marketing and business practices; and • provide for: (i) improved standards of consumer information; (ii) harmonisation of laws relating to consumer transactions and agreements, and (iii) the establishment of a National Consumer Commission. Under the Bill, consumer protection law in South Africa would continue to be separate from the competition law.
Tanzania	According to a consultants' report on a competition policy model for the SADC region[5], the Fair Competition Act of Tanzania prohibits anti-competitive agreements that have the effect of preventing, restricting or distorting competition in Tanzania. It is prohibited for a business in a dominant position to use its dominance with the object or effect of preventing, restricting or distorting competition. A merger which creates or strengthens a dominant position is prohibited but can be approved if benefits attributable to it more than offset any adverse effects. The Act established the Fair Trade Commission as an independent unitary competition authority. It also establishes the National Consumer Advocacy Council to represent the views of consumers to the Fair Trade Commission (as well as to Government Ministries and other regulatory authorities).
Zambia	The objectives of the Competition and Fair Trading Act Chapter 417 are "to encourage competition in the economy by prohibiting anti-competitive trade practices; to regulate monopolies and concentrations of economic power; to protect consumer welfare; to strengthen the efficiency of production and distribution of goods and services; to secure the best possible conditions for the freedom of trade; to expand the base of entrepreneurship; and to provide for matters connected with or incidental to the foregoing". The Act is administered by the Zambia Competition Commission (ZCC).

5 *A Competition Policy Model for the Southern African Development Community,* a report by Dr Arthur Pryor and Dr Martin Howe, consultants to the Commonwealth Secretariat, 2006

	The Act has provisions on anti-competitive agreements, abuse of dominance and anti-competitive mergers. It also has provisions directly aimed at protecting consumers. In this regard, it prohibits: (i) withholding or destroying producer or consumer goods with the aim of bringing about a price increase; (ii) excluding liability for defective goods; (iii) making false and misleading representations; and (iv) supplying products which are likely to cause injury to health or physical harm to consumers.
Zimbabwe	The Competition Act [*Chapter 14:28*] has the object "to promote and maintain competition in the economy of Zimbabwe; to establish an Industry and Trade Competition Commission and to provide for its functions; to provide for the prevention and control of restrictive practices, the regulation of mergers, the prevention and control of monopoly situations and the prohibition of unfair trade practices; and to provide for matters connected with or incidental to the foregoing". Like in most other countries' competition legislations, anti-competitive practices prohibited in the Act include restrictive horizontal and vertical agreements (price-fixing arrangements, market-sharing agreements, bid-rigging, resale price maintenance, etc.), abuse of dominant position (predatory pricing, tied and conditional selling, exclusive dealing, etc.), and anti-competitive mergers (covering horizontal, vertical and conglomerate mergers). The Act also has provisions directly aimed at consumer protection. These provisions prohibit unfair trade practices such as *misleading advertising, false bargains,* and *distribution of commodities or services above advertised price.* Besides the Competition Commission, Zimbabwe has an autonomous Consumer Council of Zimbabwe (CCZ), which is directly involved in consumer welfare and protection matters. Unlike the Competition Commission, however, the Consumer Council does not have the necessary legal force to enforce adherence to consider welfare and protection principles. It therefore works very closely with the competition authority. The Ministry of Industry and International Trade also acts as a consumer protection agency. The Ministry in particular administers the Consumer Contract Act [*Chapter 8:03*], which aims "to provide relief to parties to consumer contracts where the contracts are unfair or contain unfair provisions or where the exercise or non-exercise of a power, right or discretion under such a contract is or would be unfair". In terms of that Act, a consumer contract may be found to be unfair if the consumer contract: (i) as a whole results in an unreasonably unequal exchange of values or benefits; (ii) is unreasonably oppressive in all the circumstances; (iii) imposes obligations or liabilities on a party which are not reasonably necessary to protect the interests of any other party; (iv) excludes or limits the obligations or liabilities of a party to an extent that is not reasonably necessary to protect his interests; (v) is contrary to commonly accepted standards of fair dealing; and (vi) in the case of a written contract, it is expressed in language not readily understood by a party. Relief against unfair consumer contracts include: (i) cancelling the whole or any part of the contract; (ii) varying the contract; (iii) enforcing part only of the contract; (iv) declaring the contract to be enforceable for a particular purpose only; (v) ordering restitution or awarding compensation to a party or reducing any amount payable under the contract; and (vi) annulling the exercise of any power, right or discretion under the contract or directing that any such power, right or discretion should be exercised in a particular way.

At the regional level, countries in Eastern and Southern Africa who belong to the Common Market for Eastern and Southern Africa (COMESA) have agreed on the formulation and adoption of a regional competition policy and law to deal with competition and consumer concerns with a cross-border dimension.

The COMESA competition law prohibits as incompatible with the Common Market all agreements between undertakings, decisions by associations and concerted practice which may affect trade between member States and which have as their object or effect the prevention, restriction or distortion of competition within the Common Market. Collusive agreements such as price-fixing, market-sharing and bid-rigging are prohibited *per se.* Exploitative and exclusionary abuses of dominant firms are also prohibited. Merger control is also comprehensively provided for in the law.

The regional competition law also deals extensively with consumer protection, since it was recognised that competition law and consumer protection law are complementary in that they deal with different kinds of market failure. A variety of practices that can be detrimental to the consumers are prohibited. These include *false or misleading representation of goods or services, unconscionable conduct in consumer and business transactions,* and *supply of unsafe goods.* Product safety and product information is also of primary concern in the law.

A CASE STUDY

As mentioned above, Zimbabwe's competition legislation has provisions which prohibit certain practices that directly harm consumers. These practices, which are investigated by the competition authority just like any other competition case, include misleading advertising, false bargains, and distribution of commodities or services above advertised price.

The competition authority of Zimbabwe is increasingly receiving and investigating complaints of misleading advertising, and one of the completed cases is outlined in the Box below:

Investigation into Suspected Unfair Business Practices in the Cooking Aids Industry

In September 2005, the Commission responded to advertisements placed in the national newspapers by Nestle Zimbabwe (Pvt) Limited warning the public of the appearance on the market of some relish mix (cookings aids) packaged in packets purportedly as those originating from the company by undertaking an investigation into the matter. In its advertisements Nestle Zimbabwe indicated that the fake product was of a poor quality not suitable for human consumption, and could therefore be harmful to health. The packets used for packaging the product, while bearing Nestle's *Maggi Relish Mix* logo, were also of a small size, 15g packets, instead of the original *Maggi Relish Mix* package of 75g.

The Commission investigated the complaint as constituting a restrictive practice as defined in the Competition Act [*Chapter 14:28*], particularly as 'misleading advertising', an unfair business practice that is *per se* prohibited under the Act and attracts a fine and/or imprisonment.

In its investigation the Commission found that the packaging in question was indeed Nestle Zimbabwe's, but the contents were fake and not a genuine Nestle product. Nestle Zimbabwe had stopped packaging its product in the particular 15g packets in 2003. The 15g packets in stock had been sent for incineration in June 2005. Soon after that in August 2005 the fake products in the 15g packets started appearing on the market.

It was also found that a woman had been arrested by the Police following a tip-off from some food vendors in connection with the production and distribution of the fake product. The woman, who resided in one of Harare's high-density suburbs, confessed that she packed the fake products from her house using Nestle Zimbabwe's *Maggi Relish Mix* packets that she had bought in reels from the streets. The fake product had been distributed in other towns throughout the country. The woman was released after paying an Admission of

Guilt fine but was rearrested when she continued with the practice.

During the Commission's investigation, another woman was also arrested in October 2005 for packing and selling the same fake relish mix. She was charged under the Brands Act.

The Commission concluded from that the investigated practice indeed constituted misleading advertising as defined in the Competition Act. The perpetrator had admitted to packing her own version of relish mix into Nestle Zimbabwe's packaging with the intention of misleading the public into believing that the product was a genuine Nestle product.

Penalties for engaging in misleading advertising under the Competition Act were harsher than those under the Brands Act and involved fines and/or imprisonment. The Commission therefore submitted its findings, and the evidence gathered during the investigation, to the Attorney General's Office to strengthen the cases against the perpetrators of the practice.

The misleading advertising case investigated by the Competition Commission had direct relevance to consumer protection and welfare. The practice investigated harmed consumers not only in terms of poor quality product (and not therefore value for money) but also, more seriously, in terms of threats to human health. Even if the Consumer Council of Zimbabwe had investigated the matter instead of the Competition Commission, the Council's remedial action would not have been as potent as the Commission's in terminating the practice because of its lack of the necessary legal powers.

The categorisation of consumer abuses as *per se* prohibited practices in the Zimbabwean competition legislation speedied up the conclusion of the case, to the benefit of consumers, since all what was required was to prove the existence of the practice and not to assess its pros and cons.

CONCLUSION

This paper has attempted to show the positive interface between competition policy and consumer protection. While emphasis has been on how consumer welfare and protection depends and benefits from competition policy and law, the two sets of elements are mutually enhancing and reinforcing. The effective implementation and promotion of competition policy and law also depends on consumer acceptance and satisfaction of the benefits derived from competition. In developing countries, consumers are a much stronger lobby to Government, politically-wise, than the business community and therefore can make or break competition authorities in the eyes of public makers.

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