Zambia❖

Zambia, a landlocked country in Southern Africa, shares border with eight countries, viz., Angola, Botswana, Democratic Republic of Congo (DRC),Malawi, Mozambique, Namibia, Tanzania, and Zimbabwe. In the recent years, the country has been working towards transforming Zambia into a land liked country and turn its geographical position which for a long time has been looked at as a curse into a blessing by enhancing growth of the economy through more trade with its neighbours. There has been significant progress in this area as attested by the World Bank (2014), which says the country is now trading more with its regional partners, including through informal channels

PROFILE	
Population:	14.2million***
GDP (Current US$):	23.1 billion***
Per Capita Income: (Current US$)	1,621.899 (Atlas method)***
Surface Area:	752.6 thousand sq. kms
Life Expectancy:	48.9 years
Literacy (%):	71.2 (of ages 15 and above)
HDI Rank:	163

Sources:
- World Development Indicators Database, World Bank, 2005
- Human Development Report Statistics, UNDP, 2004

(***) Based on the 2013 IMF estimate

Economy

Since its independence in1964, Zambia depended largely on mining. Generally, ores and metals exports accounted for over 97 percent of merchandise exports. Copper and cobalt alone accounted for about 70 percent of merchandise exports until the early 1990s.This has made Zambia a predominately copper mining country being the largest producer in Africa and seventh largest in the world. The price of copper tends to fluctuate greatly on the international markets and its, trade value fell gradually starting from the early 1970's and extending well into the 2000's. This fall in the value of copper caused a persistently low copper export return, over this time period, this coupled with poor economic management of the country in terms of diversification to manufacturing process and service sectors caused recurrent balance of payments problems.

Recently however, the country has been making efforts aimed at diversifying its economy away from the traditional sectors of mining and agriculture and steady progress is been made in this area as evidenced by the recent World Bank report which stated that the country's non-copper exports have been growing brisklyfrom a small base. Together, they contributed to more than 30 percent of merchandise exports in 2012 and about 16 percent of Gross Domestic Product (GDP). Notwithstanding this growth in non-copper exports, much still needs to be done to have a more diversified economy that will lead to a more robust growth for the country and further shield it from economic instabilities it experiences as a result of fluctuations of copper prices on the international market.

The pace of economic growth slowed in the1980 sand began to deteriorate by the 1990s. The level of economic activity as measured by real GDP slowed down to an average of 1.3 percent in the 1980's and reduced further to an average of – 0.1 percent in the 1990's.

This generally poor macro-economic performance coupled with an underperforming external sector resulted in significant balance of payments and fiscal problems. This forced the country to adopt drastic economic liberalisation and structural adjustment measures, under the widely supported World Bank and (WB) IMF SAP programme to reform and stabilise the country's economy.

❖ Original paper submitted in 2006-07. Updated in January 2013

1 This section has borrowed heavily from the report prepared by the *Le Consortium pour la Recherche Economique et Sociale* (CRES) for the 7up4 project implemented by CUTS in seven countries of West Africa in 2008-2010.

Following this widespread economic liberalisation and privatisation of state owned enterprises, there has been marked improvement in macro-economic performance of the economy. In addition, there have been diversification efforts to other sectors of the economy such as agriculture, horticulture, gem stones, etc. although as earlier alluded to, much still needs to be done as non-copper exports currently only stand at 16 percent of GDP

Growth in GDP has averaged 5.8 percent per annum in the last decade above the 5 percent average for sub-Saharan Africa with 7.6 percent the best growth rate on record recorded in 2010. While inflation has fallen from the triple digit levels of the early and mid-1990s to below 30 percent by the end of the1990s and has largely been sustained in single digit levels since 2006 to date.

This generally stable macro-economic environment and sound macro-economic performance has eased the major balance of payments and fiscal problems in the recent past. Recently, the country has registered surpluses in its current Account balance and government debt, both external and domestic which has been maintained within sustainable levels. However, it appears the fiscal problems the country has been facing in the past may be on the horizon as fiscal accounts have deteriorated sharply in 2013 and the fiscal deficit in that year was 6.8 percent of GDP against the 4.3 percent budgeted. If liabilities, such as the buildup up of arrears towards pensioners and the guarantees extended by government to the food reserve agency are factored in, then fiscal deficit will stand at 8.7 percent of GDP. This higher fiscal deficit is mainly the result of significant overruns in subsidies, wage bill and lower collection of revenues.

The government financed the much-higher-than-budgeted deficit using domestic financing, bridge loans from central bank and unspent proceeds from the 2012 Eurobond. The increased domestic financing has especially been of concern to many stakeholders as there are fears interest rates will be pushed up and credit to the private sector squeezed in the process. As a result of these fiscal problems, the current government has been forced to make some unpopular political decisions, such as the wage freeze until end-2015 and a hiring freeze until end-2014. Some subsidies that were in place such as those on fuel and to the agricultural sector have either been removed or reduced substantially. On a more optimistic note, revenue collection is projected to increase as a result of the new mineral tax regime which is set to come into force in 2011. The tax changes increased company tax from 25 percent to 30 percent mineral royalty tax from 0.6 percent to 3 percent and introduced variable and windfall taxes.

Competition Evolution and Environment

Since late1991, Zambia had fundamentally changed its trade and economic policy. The trade regime had been Considerably, liberalised followed by substantial decentralisation and deregulation in almost all the economic sectors.

Until the beginning of the full-fledged SAP, about 80 percent of the Zambian industries including transport and energy companies were under state control and management. Market-oriented reforms resulted in the liquidation or privatisation of almost all state-owned companies. State trading activities had also been considerably reduced. Additionally, even the few sectors where government remains an active player such as telecoms and energy have been substantially deregulated and open to private participation. However, Zambia Electrical Supply Corporation (ZESCO) in the energy sector and Zambia Postal Services (ZAMPOST) in the Communications sector remain the main players, and still command a monopoly position in the market. Stakeholders have pointed out that the various inefficiencies that are inherent in these two companies are as a result of lack of competition in their respective industries.

Prior to the economic reforms of the early 1990's, the guiding public economic policy was based on socialist fundamentals of economic management with equitable distribution of national resources and state control over economic activities as the main objectives. However, the liberalisation of the general economy in the wake of the SAP's which led to the privatisation of state-owned enterprises and opening up of the external sector had a drastic effect on the country's economy. This structural shift in the economy which opened the economy to private participation necessitated the creation of a competition policy.

Zambia moved towards a new economic paradigm and enacted policies which de-emphasised the role of the Government in the economy and removing high levels of ownership concentration through promoting private participation and innovation.

Prudent macro-economic management through an ambitious macro-economic stabilisation agenda and growth became the focus of the new government's economic policies, which had far-reach in gimplications for the country'sindustrial, investment and trade policies that necessitated a competition policy and law. The rationale behind such policies was to facilitate fair participation of the private sector in the general economy of which competition policy and law was key to enable private sector players to operate within set guidelines and rules, so that the efficiency gains that result from a free market policy is not lost but rather transmitted to the consumer to enhance consumer welfare. Therefore without a competition policy and law in place, then the free market regime would be no more different from the socialist agenda that prevailed in the 70s, 80s and 90s and overall efficiency gains would be lost as companies would engage in anti-competitive practices that erode consumer surplus for the consumer.

The Competition and Fair Trading Act,[1] enactedin 1994, introduced a code of conduct for all businesses and prohibited anti-competitive trade practices, such as the formation of cartels, Restrictive Business Practices, Abuse of Dominance mergers and consumer protection.

Competition Law

The Competition and Fair Trading Act (CFTA) came into force on February15, 19954. After 13 years of implementing the CFTA, it was repealed on August 16, 2010 and replaced with the Competition and Consumer Protection Act (CCPA) number 24 of 2010. The CCPA enhanced consumer protection provisions, merger provisions and created the Competition and Consumer Protection Tribunal (CCPT).

Provisions of the CCPA

The specific objectives under the CCPA are as follows:

a) safeguard and promote competition
b) protect consumers against unfair trade practices.

The CCPA under section 4 provides for the creation of the Competition and Consumer Protection Commission (CCPC) which is the secretariat and investigative wing, the Board of Commissioners which is an adjudicatory body and the Competition and Consumer Protection Tribunal (CCPT) which hears appeals from the Board of Commissioners.

The CCPC is responsible for the enforcement of the CCPA. The salient provisions of the CCPA are contained in eight parts..

The functions of the Commission relate to monitoring, controlling and prohibiting acts or behaviour, which are likely to adversely affect competition and fair-trading in Zambia. Section 5 of the Act sets out the functions of the Commission as follows: –

(a) Review the operation of markets in Zambia and the conditions of competition in those markets;
(b) Review the trading practices pursued by enterprises doing business in Zambia;
(c) Investigate and assess restrictive agreements, abuse of dominant positions and mergers;
(d) Investigate unfair trading practices and unfair contract terms and impose such sanctions as may be necessary;
(e) Undertake and publish general studies on the effectiveness of competition in individual sectors of the economy in Zambia and on matters of concern to consumers;
(f) Act as a primary advocate for competition and effective consumer protection in Zambia;
(g) Advise Government on laws affecting competition and consumer protection;
(h) Provide information for the guidance of consumers regarding their rights under this Act;
(i) Liaise and exchange information, knowledge and expertise with competition and consumer protection authorities in other countries;
(j) Advise the Minister on agreements relevant to competition and consumer protection and on any other matter relating to competition and consumer protection;
(k) Cooperate with and assist any association or body of persons to develop and promote the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act; and
(l) Do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under the Act.

Part III: Restrictive Business and Anti-competitive Trade Practices

The CCPA no. 24 of 2010 contains 16 provisions on restrictive business and anti-competitive trade practices. The main highlights of part III include:

Section 8: Anticompetitive practice, agreement or decision – This section prohibits any category of agreement, decision or concerted practice which has as its object or effect, the prevention, restriction or distortion of competition to an appreciable extent in Zambia.

Box 1: CCPC Fines in Lusaka

The Competition and Consumer Protection Commission (CCPC) fined 15 garages in Lusaka for engaging in uncompetitive business tendencies. The garages were found to have agreed to uniformly charge clients for various services contrary to section 9 (1)(a) of the Competition and Consumer Protection Act No. 24 of 2010, which prohibits horizontal agreements between enterprises. Top Gear, the major instigator, was fined up to two percent of its annual turnover of the latest financial business year while the others were each fined one percent of their annual turnover. The parties appealed the Commission's decision to the Competition and Consumer Protection Tribunal and the Tribunal found for the Commission. The penalties were however reduced by 50 percent.

Section 9: Horizontal agreements prohibited per se: section 9 deals with anti-competitive horizontal agreements in which players in the same sector (competitors) engage in coordinated action in order to achieve a common economic interest. These are basically cartel behaviours and are prohibited per se.

Section 10: Vertical agreements prohibited per se: section 10 deals with resale price maintenance which is essentially a vertical price fixing arrangement between enterprises at different levels of the distribution chain and is *per se* prohibited. An enterprise that contravenes this section is therefore liable to pay the Commission a fine not exceeding ten percent of its annual turnover.

Section 11: Severability: section 11 deals with severability. If an agreement prohibited under section nine or ten contains any provisions that are not prohibited, the provisions shall continue to have effect to the extent that they can be affected without the prohibited provisions.

Section 13: Interconnected bodies corporate: section 13 exempts the application of competition law to all vertical/ horizontal arrangements between body corporate belonging to the same economic unit.

Section 14: Share of supply threshold for authorisation of restrictive agreements: parties to a horizontal or vertical agreement who together supply or acquire 30 percent or more of goods or services of any description in a relevant market in Zambia should apply to the commission for authorisation.

Section 15: Share of supply threshold for establishing existence of dominant position: section 15 defines both unilateral and collective dominance. Single dominance is defined as quantitative market shares of a single firm of 30.0 percent while collective dominance is also defined in quantitative terms which constitutes 60.0 percent market share of not more than three firms.

Section 16: Prohibition of abuse of dominant position: sections 16 provide instances related to abuse of market power. an enterprise shall refrain from any act or conduct if, through abuse or acquisition of a *dominant position* of market power, the act or conduct limits access to markets or otherwise unduly restrains competition, or has or is likely to have an adverse effect on trade or the economy in general.

Sections 18–23: section 18 deals with application of exemption from horizontal and vertical agreements. The Act provides that an enterprise that wishes to be exempted from a prohibition under section *twelve* may apply to the commission for exemption. Further, section 19 involves the determination of the application for exemptions. Section 20 provides for amendments to the application of exemption, however, the commission under section 21 reserves the right to revoke of an application for exemption. Section 22 provides for the need for professional associations to apply for exemption in instances where by their rules contain a restriction that has adverse effect on competition. Section 23 provides for the publication of any grants or revocation of application for exemption in a daily newspaper.

PART IV: Mergers

This is another substantive part of the CCPA. It deals with merger control in Zambia. It has 14 sections starting from section 24 to section 37.

Box 2: Restrictive Business Practice Against Royal Zambezi Lodge

On June 02, 2011, the Commission received a complaint from Chongwe Camp against Royal Zambezi Lodge who owns an airstrip in the Lower Zambezi National Park alleging that Royal Zambezi had introduced an unreasonably excessive charge of US$2000 per bed per year in order for the competitors' customers in the lodging market to land on the airstrip. The complainant further stated that the timing of imposing this charge was calculated to eliminate the competitors out of the market because the peak period for tourism in lower Zambezi was just beginning.

The Commission construed two issues from the allegation which issues were;

1. Anti-competitive trade practice in accordance with Section 16 (2) (a) of the Act
2. Essential facility doctrine in accordance with Section 16 (2) (e) of the Act

The Commission established that although the real market share for Royal Zambezi airstrip could not be established with absolute certainty, Royal Zambezi had through its behaviour demonstrated power in the relevant market and was hence dominant in line with Section 2 of the Act. The timing for imposing the charge for the use of the airstrip was clearly an abuse of market power. Such conduct amounted to imposing, directly or indirectly, unfair trading conditions especially as regards the timing of the charge when tourism had reached its peak period.

The Commission found that Royal Zambezi was dominant with market power for only six months up to the end of the year. This was because it was during this period that the competitors were locked to the airstrip which became an essential facility in the short term of six months. They were locked to this facility by virtue of the fact that they had already advertised their services to their foreign customers who had by then concluded tourist packages on the understanding that they would land on the Royal Zambezi airstrip. This meant that if they had to use alternative airstrips, they would havehad to cancel the earlier presentations they had made to their customers.

In view of the concerns above, the Commission made a decision and directed Royal Zambezi Lodge not to go ahead with its proposed plans of denying access to the airstrip.

Section 24: Definition of Merger: Section 24 of the CCPA offers a definition of the merger. A merger occurs where an enterprise, directly or indirectly, acquires or establishes, direct or indirect, control over the whole or part of the business of another enterprise, or when two or more enterprises mutually agree to adopt arrangements for common ownership or control over the whole or part of their respective businesses.

Section 25: Reviewable mergers: section 25 deals with reviewable mergers which are mergers which reach the prescribed thresholds as provided for under section 26. The prescribed threshold refers to the value of assets/turnover of the merging parties whichever is higher if all merging parties are domiciled in Zambia. However, for a merger taking place in Zambia, the threshold determination remains as above but only refers to the enterprise in Zambia.

Section 27: Other mergers subject to review: section 27 provides for proposed mergers that fall below the prescribed threshold but the authority feels that such mergers may need to be assessed on grounds that there is suspicion that;

(a) The merger is likely to create a position of dominance in a localised product or geographical market;
(b) The merger is likely to contribute to the creation of a dominant position through a series of acquisitions which are not individually subject to prior notification;
(c) The merger may substantially prevent or lessen competition;
(d) The merger is concluded outside Zambia and has consequences in Zambia that require further consideration; or
(e) As a result of the merger, there is, or is likely to be, competition and public interest factors which require to be considered.

However, the commission may where it determines that a merger is reviewable by the commission under sub-section (1) of section 27 request any party to submit to it any info on the transaction for its verification.

Section 28: Negative clearance: section 28 provides for negative clearance for parties that need clarification as to whether the proposed merger requires the authorisation of the Commission under section 26 or is subject to review by the Commission under section twenty-seven to apply to the Commission for negative clearance in the prescribed manner and form upon payment of the prescribed fee.

However, negative clearance, if given, does not commit the Commission if new information becomes available showing that such clearance is not appropriate.

Sections 29 and 30: market and competition assessment: These sections give an elaboration of market determination and competition analysis during a merger review process respectively.

Section 29: Market Assessment: the CCPA provides that the Commission shall, upon receipt of a proposed merger notification, carry out a **market assessment** of the proposed merger to determine the likely effects of the proposed merger in the relevant market, on trade and the economy in general.

Section 30: Competition Assessment: CCPA provides that the Commission shall, in considering a proposed merger, assess whether the merger is likely to prevent or substantially lessen competition in a market in Zambia. The Commission shall in considering a proposed merger, take into account the likely and actual factors that affect competition in a defined market, including:

(a) The levels of concentration of players in the relevant market;
(b) The creation or strengthening of barriers to market entry;
(c) The level of imports in the relevant market;
(d) The extent to which there is countervailing buyer or supplier power in the relevant market;
(e) The availability of substitute products in the relevant market;
(f) The likelihood of the merger removing from the market an existing effective and vigorous competitor;
(g) The dynamic characteristics of the market including growth, innovation, pricing and other inherent market characteristics; and
(h) The risk that a position of dominance may be abused.

Section 31: Public interest assessment: Apart from competition analysis, the CCPA adds another dimension to merger review. This is the aspect of public interest. Public interest includes matters, such as technical and economic progress, the saving of a failing firm, promotion of exports and employment creation, protection of micro and small business enterprises in Zambia, etc.

Section 32: Period allowed for assessment: section 32 involves time limits in which a merger should be assessed. This section provides for 90 days for normal period assessment of a merger but also provides for an extension of a further 30 days if the partiers to the merger fail to provide the information for complete assessment of the merger within the prescribed 90 days. The notice for extension is given to the parties two weeks before the expiry of the 90 days failure to which the proposed merger will be deemed approved.

Section 33: Undertakings on proposed merger: section 33 provides that the commission may consider any undertakings offered by any party to a proposed merger in order to address any concern relating to the proposed merger that has arisen or may be expected to arise during

Box 3: Takeover of Lumwana Mines by Barrick Gold

CCPC, Zambia approved the purchase of Lumwana Copper Mine by Barrick Gold Corp as part of the takeover of Equinox Minerals Limited. CCPC granted final conditional authorisation to the proposed acquisition of 100 per cent shareholding of Equinox Minerals Limited by Barrick Gold Corporation of Canada. The conditions were that the mining giant honours the subsisting agreements that Lumwana Copper Mines had entered into with the local smelter, local suppliers to the mine and other third line industries. Other conditions were that Barrick Gold Corporation takes necessary steps to ensure no job losses occurred as a result of the transaction and that since Lumwana Mine was considering future extraction of Uranium, that Barrick Gold ensures people are protected from future radioactive hazards that Uranium poses.

the assessment of the proposed merger. *Section 34: Determination of proposed merger:* section 34 deals with the determination of the proposed merger. A proposed merger could be authorised without any conditions, with conditions (undertakings) or reject the merger completely.

More often than not, mergers in Zambia are approved with conditionalities. This is because industries in Zambia tend to be monopolistic, and firms merging with dominant firms have a higher probability of engaging in anti-competitive conduct and abusing their dominance. As such, the Commission may choose to reject a merger or approve it with undertakings made by the merging entities.

Section 35: Revocation of merger: section 35 deals with revocation of a merger which would result when the merger was authorised based on incorrect information provided by the parties or where a party to the merger fails to comply with any conditions of an approved merger.

In analysing a merger and determining whether it should be approved, prohibited, or approved with conditions, the commission is required to balance the competition factors which are commonly accepted by competition authorities worldwide, with peculiar public interest in the context of Zambia's social economic factors

Section 36: Compliance with other laws: an approved merger is not immune or exempt from the application of other laws.

Section 37: Offences relating to mergers: the following offences are penalised under the CCPA:

(a) Implementing a merger that is reviewable by the Commission without the approval of the Commission;

(b) Implementing a merger that is rejected by the Commission; or

(c) Failing to comply with conditions stated in a determination or with undertakings given as a condition of a merger approval;

Section 61: *Remedies in Merger Control*: CCPA provides that the Commission may, where it determines after an investigation that an enterprise is a party to a merger and the creation of a merger has resulted, or is likely to result, in a substantial lessening of competition within a market for goods or services, give the enterprise such directions as it considers necessary, reasonable and practicable to — remedy, mitigate or prevent the substantial lessening of competition; and remedy, mitigate or prevent any adverse effects that have resulted from, or are likely to result from, the substantial lessening of competition.

PART V: Market Inquiries

Part 5 of the CCPA deals with Market Inquiries and it has 4 sections.

Section 38: Initiation of market inquiry: section 38 gives powers to the Commission to conduct market inquiries in any sector of the economy where it has reasonable grounds to suspect that there is a restriction or distortion of competition.

Section 39: Purpose of market inquiry: According to section 39 the purpose of carrying out a market inquiry is to understand the operation of the market and see whether there are restrictions or distortions of competition in any sector of the economy.

Section 40: Powers of investigation in connection with market inquiry: section 40 obliges the enterprises covered by the market inquiry to provide the information requested by the commission. Further, section 40 read in conjunction with section 55 spells out sanctions for firms that fail to provide the needed information to the Commission during a market inquiry.

Section 41: Action to be taken following market inquiry: section 41 requires the Commission to publish the findings of the inquiry in a daily newspaper.

PART VI: Sector Regulated Activities

Part VI has three sections and these are section 42 to section 44. This part of the Act provides for cooperation between specific sector regulators and the competition authority especially in matters of concurrent jurisdiction related to competition and consumer protection. To enhance cooperation and avoid regulatory overlap, this part of the Act allows the Commission to enter into memoranda of understanding with sector specific regulators. This would spell out areas of concurrent jurisdiction and matters that are specific to the application of competition law and those for the specific sector regulators.

Section 42: Application of Act to sector regulated activities: Regulated sectors are subject to the application of the CCPA in as far as there are restrictive business practices that are being practiced in these regulated sectors and have adverse effect on competition.

Section 44: Market inquiry into regulated sector: Section 44 gives powers to the Commission to conduct market inquiries in regulated sectors in so far as these sectors are engaged in Restrictive Business Practices.

PAERT VII: Consumer Protection

Part VII of the Act covers matters related to unfair trading practices (consumer protection) and this part has 10 sections. Consumer protection refers to ensuring that even with the dynamics of the markets, consumers are not subjected to the whims of unscrupulous market players who engage in Unfair Trade practices (UTP's) and only aim to make profits

Section 45: Definition of unfair trading practice: CCPA defines Unfair Trading Practices as as a trading practice that (a) misleads consumers; (b) compromises the standard of honesty and good faith which an enterprise can reasonably be expected to meet; or (c) places pressure on consumers by use of harassment or coercion; and thereby distorts, or is likely to distort, the purchasing decisions of consumers.

Section 46: Prohibition of unfair trading practice: section 46 makes it an offence for an enterprise to engage in an unfair trading practice. The ACT prohibits unfair trading practices and sets out a sanction of a fine not exceeding ten percent of that person's or enterprise's annual turnover or one hundred and fifty thousand penalty units,[2] whichever is higher which is payable to the Commission if guilty of engaging in unfair trading practice.

Section 47: False or misleading representations: section 47 prohibits false or misleading representations and the party which engages in this conduct is guilty of an offence and the following sanction is meted out:

A fine not exceeding ten percent of that person's or enterprise's annual turnover or one hundred and fifty thousand penalty units, whichever is higher.

Section 48: Display of disclaimer prohibited: section 48 prohibits the display of declaimers. An owner or occupier of a shop or other trading premises shall not cause to be displayed any sign or notice that purports to disclaim any liability or deny any right that a consumer has under the Act or any other written law. A party who engages in this conduct faces the following sanction:

A fine not exceeding ten percent of that person's or enterprise's annual turnover.

Box 4: Allegations of Misleading Comparative Advert Against Reckitt and Colman

This case was a complaint by Kiwi Brands Limited against Reckitt and Colman Limited alleging that the nugget shoe polish advert was misleading and that its claim of superiority had not been proven. The allegation was that the advert in question was or was likely to restrict, distort or prevent competition in connection with the production, supply or distribution of shoe polish in the relevant market and that it depicted Reckitt and Colman as superior than other shoe polish suppliers and distributors. However, investigations revealed that the advert in question was not likely to restrict, distort or prevent competition in the relevant market. The commission therefore rejected the complaint since the advert did not frustrate or inhibit the effective working of the competitive process in the relevant market.

Complaint of Unfair Trade Practice Against BMK (Z) Ltd

This case was a complaint against BMK (Z) Limited of unfair trade practice. The complainant bought a liner kit to restore an engine which had a knock in his motor vehicle from BMK Limited. BMK sales personnel had recommended to him a sub-assembly Engine (SAE). After buying the SAE the complainant discovered that the cylinder head in his engine was not compatible with the SAE. He decided to return it for possible replacement or refund. BMK refused to replace it or refund the money. After the commission's intervention, BMK agreed to refund the complainant.

Section 49: Prohibition of supply of defective and unsuitable goods and services: section 49 involves the prohibition of supply of defective and unsuitable goods and services. A party which engages in this conduct is liable upon conviction:-

(a) to a fine not exceeding five hundred thousand penalty units; and
(b) to pay the Commission, in addition to the penalty stipulated under (a), a fine not exceeding ten percent of that person's or enterprise's annual turnover.

Section 50: Product labeling: section 50 deals with product labeling which refers to important product information such as the product name, the ingredients used in the product, the date of manufacture and expiry of the product, the manufacturer's name, the physical location of the manufacturer, the telephone number and any other contact details of the manufacturer. A person or trader who omits these mandatory requirements of the law in terms of product labeling commits an offence and is liable to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

Additionally, if a person or an enterprise resupplies a product which has been recalled from the market for lacking the legal product information commits an offence and is liable upon conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Section 51: Price display: section 51 of the Act prohibits charging a price for a product or service which is different from the one that is displayed. A person or an enterprise that fails to comply with this legal requirement commits an offence and is liable upon conviction to a fine not exceeding ten percent of that person's or enterprise's annual turnover.

Section 52: Consumer product safety: section 52 is as outlined below:

(1) A person or an enterprise shall not sell any goods to consumers unless the goods conform to the mandatory safety standard for the class of goods set by the Zambia Bureau of Standards or other relevant competent body.

(2) person who, or an enterprise which, contravenes subsection (1) commits an offence and is liable, upon conviction:
   (a) to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding five years, or to both; and
   (b) to pay the Commission, in addition to the penalty stipulated under paragraph (a), a fine not exceeding ten percent of that person's or enterprise's annual turnover.

(3) A person or an enterprise shall, in addition to the penalty stipulated under subsection (2), be liable for any loss or damage, including any indirect or consequential loss or damage, arising as a result of:
   (a) the lack of conformity of the goods with the relevant standard; or
   (b) the defect or dangerous characteristic on account of which the goods have been declared unsafe.

(4) The Commission may, where it has reasonable grounds t believe that a person or an enterprise is selling goods which are unsafe, after consulting the Zambia Bureau of Standards and such other relevant competent body as it considers appropriate, apply to the Tribunal for an order that:
   (a) goods of a certain description are unsafe and that the sale of such goods to any consumer is prohibited; or
   (b) goods of a certain description already sold to consumers are unsafe and should be recalled from the market by the supplier, who shall meet any expenses of the recall as well as paying compensation to the consumer from whom the goods are recalled.

Section 53: Unfair contract term: An unfair contract term is prohibited under this section as outlined below:

(1) In a contract between an enterprise and a consumer, the contract or a term of the contract shall be regarded as unfair if it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.
(2) An unfair contract or an unfair term of a contract between a consumer and an enterprise shall not be binding.
(3) Notwithstanding subsection (2), a contract shall bind the parties if it is capable of being enforced without the unfair term.

PATRT VIII: Investigations and Determination by Commission

This part of the Act deals with investigative powers of the Commission.

Section 55: Investigations by Commission: section 55 of the Act confers power to the Commission to carry out investigations in matters related to competition and consumer protection law infringements and sets out sanctions to be imposed on any person or enterprise who fails to comply with the orders or directives of the Commission for any information relevant to the investigation. A person or enterprise that fails to comply with the directives of the Commission during the investigation process is liable upon conviction to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

Section 56: Decision not to investigate: section 56 deals with a matter related to decisions not to investigate a complaint if it's frivolous and vexatious and may wish to refer that case to another regulatory authority.

Section 57: Consent agreement and undertaking: this section of the Act deals with matters related to concert agreements and undertakings. The commission may at any time during or after investigation enter in to a consent agreement with an enterprise under investigation or request the enterprise to give an undertaking in the prescribed manner or form.

Section 60: Appeals: A person who, or an enterprise which, is aggrieved with an order or direction of the Commission under this Part may, within thirty days of receiving the order or direction, appeal to the Tribunal.

PART IX: The Competition and Consumer Protection Tribunal

This part of the Act deals with the establishment of the tribunal and all matters related to operations of the tribunal.

Section 68: *Function of the Tribunal:*

(a) Hear any appeal made to it under this Act, and

(b) Perform such other functions as are assigned to it under this Act or any other Law.

PART X: General Provisions

Part X of this Act deals with general provisions. Section79 of this part deals with the introduction of the leniency Programme for purposes of cartel investigations. The Act provides that the Commission may operate a leniency programme where an enterprise that voluntarily discloses the existence of an agreement that is prohibited under this Act, and co-operates with the Commission in the investigation of the practice, may not be subject to all or part of a fine that could otherwise be imposed under this Act."

Regulatory Framework

For effective competition administration and enforcement, there is need for supporting legal framework in the economy. In Zambia, it would appear that there is sufficient legal framework to support and complement competition law enforcement as it relates to competition and consumer protection law infringements. Even if the competition authority in our country has economic wide competence and mandate in matters related to competition law, it recognises the existence and importance of sector specific regulators and other institutions that deal with matters related to consumer protection. The following are the laws that have an effect on competition and consumer protection:

- Information and Communications Technologies Act No. 15 of 2009.
- Electricity Act, Cap 433
- Public Health Act, Cap 295
- Food and Drugs Act, Cap 303
- Petroleum Act, Cap 435
- Weights and Measures Act Cap 403
- Standards Act, Cap 416
- Banking and Financial Services Act, Cap 387
- Energy Regulation Act, Cap 436
- Markets Act, Cap 290
- The Securities Act

The above laws complement the competition law in terms of ensuring that there is fair and effective competition in the economy and that consumers are protected against conducts of unfair trading. In terms of regulated sectors, there are areas where the Commission has concurrent jurisdiction with sector specific regulators. To enhance coordination and consistency in terms of regulation in these sectors, the Commission has entered into memoranda of understanding with sector regulators that specify areas of concurrency and issues that are specific to the Commission and those that should solely be dealt with sector regulators. Certain specific sector regulators apart from having technical and competition issues also have provisions in their laws that deal with consumer protection. In these areas the Commission refers complaints that are specific to each sector regulator to deal with it. However, there are also supporting institutions such as the local authorities that provide laboratory facilities to test food products to ascertain the foreign material that they may contain.

(i) Energy Sector

The Energy Regulation Act, Cap 436

The energy regulation board was created by an Act of parliament, the energy regulation act cap 436 of the laws of Zambia on April 28, 1995. The board was established to regulate the energy sector. While the board has the mandate to issue operating licenses in the sector, monitor the conduct of undertakings operating in the sector and handle issues related to prices and services that adversely affect customers in the sector, section 6 of the act gives recognition to the Competition Authority in matters of competition in the sector. Specifically, section 6 (d) of the act states:

> "in conjunction with the Zambia Competition Commission established by the Competition and Fair Trading Act,[3] monitor the levels and structures of competition within the energy sector with a view to promoting competition and accessibility to any company or individual who meets the basic requirements for operating as a business in Zambia".

Practically, for any competition issue that arises in the sector (Restrictive Business Practices and Merger Review) the Board works together with the Commission to find the possible way to create and enhance competition in the sector.

(ii) Telecommunications Sector

The Zambia Information, Communications Technology Authority Act cap 388

This authority was established by an act of parliament, the ICT Act cap 388 of the laws of Zambia on August 28, 2009. This authority was fundamentally established to regulate the telecommunications sector. However, section 8 of the Act recognises the mandate of the Competition and Consumer Protection Commission in the area of competition. Specifically, in areas related to competition section 8 of the Act states;

> "The authority shall consult the Zambia Competition Commission on any matter relating to competition in the sector"

In view of the above provision, the Commission and the Authority work together on any competition related matters that may arise in the sector.

(iii) Banking Sector

The Banking and Financial Services Act cap 387

The banking and financial services act cap 387 of 1994 is administered by the bank of Zambia to regulate the banking and financial services sector in Zambia.

While the bank has the sole mandate to regulate the activities and operations in the financial sector, section 40 of the act deals with anti-competitive conducts in the sector which also fall under the mandate of the Competition Commission. Further, section 42 of the banking and financial services act does not exempt the competition law from its application in this sector. Hence, the Competition Commission has the power to investigate anti-competitive conducts in the financial sector.

Concluding Observations and Future Scenario

The Competition regime in Zambia has performed well and is continuously being perfected as the Commission gains more experience. The Commission's financial and human resource position and skill has also improved over time though there is room for further improvement.

The CCPA confers the Commission with various sanctions to competition and consumer law infringements which if adequately and effectively implemented would likely deter would be offenders to indulge in competition and consumer protection law infringements. In addition, several competition provisions merger review process is more elaborate in the current Act than it was in the CFTA and consumer protection provisions are more comprehensive than they were in the CFTA.

Further, the level of understanding and awareness of competition law, procedure and remedial action among the consumers and business enterprises has improved. Although CCPC's performance seems to be quite impressive despite the constraints, building its capacity as envisaged in the Act remains one of the important challenges.

In order to improve upon the system, the following recommendations have been put forth:

- CCPC to strengthen its awareness-raising activities. CCPC should use various ways and means to publicise their activities to improve public awareness on competition and consumer protection law.
- Notwithstanding the above recommendations, CCPC should up their advocacy programmes include government officials and the judiciary.
- The CCPC need to decentralise its operations into regions/provinces to adequately capture consumer rights infringements.
- This Act was repealed and replaced by the Competition and Consumer Protection Act No. 24 of 2010.

The Competition and Fair Trading Act was repealed in 2010 and the Act is now called the Competition and Consumer Protection Act and the name Zambia Competition Commission changed to Competition and Consumer Protection Commission.

Endnotes

1 This Act was repealed and replaced by the Competition and Consumer Protection Act No. 24 of 2010.

2 One penalty unit fee is equivalent to ZMK180 (3.6 US Cents)

3 The Competition and Fair Trading Act was repealed in 2010 and the Act is now called the Competition and Consumer Protection Act and the name Zambia Competition Commission changed to Competition and Consumer Protection Commission.