



Zambia¹, 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.

Economy

Since its independence in 1964, Zambia depended largely on a single mineral: copper, whose trade value has fallen substantially and the country has not diversified much to other sectors.

Copper and cobalt accounted for about 70 percent of total exports until the early 1990s. A persistently low copper export return over a period of time and poor economic management of the country in terms of diversification to manufacturing, processing and service sector has caused recurrent balance of payments problems.

The pace of economic growth slowed in the 1980s and began to deteriorate by the 1990s. The recurring debt and deficit in balance of payment forced the country to adopt drastic economic liberalisation and SAP since 1991. Recently, there has been some improvement in macroeconomic performance of the economy and also in terms of diversification to other sectors such as agriculture, horticulture, gem stones, etc. Growth in GDP has averaged 2.0 percent per annum while inflation has fallen from the triple digit levels of the early 1990s to below 30 percent by the end of the 1990s. However, there was continuous pressure on the expenditure side and the domestic debt, arising from short-term financing by the Government through open market operations.

Competition Evolution and Environment

Since late 1991, Zambia had fundamentally changed its trade and economic policy. The trade regime had been considerably liberalised followed by substantial decentralisation and deregulation in other spheres of economic activity.

PROFILE	
Population:	10.4 million***
GDP (Current US\$):	4.3 billion***
Per Capita Income: (Current US\$)	380 (Atlas method)*** 840 (at PPP.)
Surface Area:	752.6 thousand sq kms.***
Life Expectancy:	32.7 years**
Literacy (%):	79.9** (of ages 15 and above)
HDI Rank:	164
Sources: - World Development Indicators Database, World Bank, 2005 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

Until the beginning of the full fledged SAP, about 80 percent of the Zambian industries, 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. However, Zambia's Electrical Supply Corporation, its telecommunications sector and the Zambian National Oil Company were exercising monopoly rights in their respective fields.

The economic policy was that of a mixed economy with social welfare as the main objective. However, liberalisation of state enterprises and on trade front in the wake of the SAP had a drastic effect on the country's scenario. This led to emergence of the conditions which necessitated the creation of a competition policy.

Zambia moved towards a competitive market regime by reducing the role of the Government in the economy and removing high levels of ownership concentration through market liberalisation, privatisation and public participation.

* Original paper submitted in June 2005. Revised in July 2005 & March 2006

1 Some of the information in this introduction has been compiled from the CIA World Factbook, <http://www.cia.gov/cia/publications/factbook/geos/yi.html>

Stabilisation, liberalisation and privatisation became the objective of the new government's economic policies, which had deep implications for the country's industry, investment and trade policies that necessitated a competition policy and law to facilitate import and export competition.

A Competition and Fair Trading Act, enacted in 1994, introduced a code of conduct for all businesses and prohibits anticompetitive trade practices, such as the formation of cartels and collusive tendering.

Competition Law²

The Competition and Fair Trading Act Chapter 417 was enacted on May 11, 1994, came into force on February 15, 1995 (but only became operational in April 1997). The purpose was to encourage competition in the economy by prohibiting anticompetitive trade practices; regulate monopolies and concentration of economic power; protect consumer welfare; strengthen the efficiency of production and distribution of goods and services; secure the best possible conditions for the freedom of trade; and to expand the base of entrepreneurship.

The law lays down the following objectives³:

- The first objective is to prevent anticompetitive conduct by encouraging competition and efficiency, in order to provide for greater choice for consumers, in terms of price, quality and service.
- Strengthens the efficiency of production and distribution of goods and services.
- Ensures that the interests and welfare of consumers are adequately protected in their dealings with producers and sellers.

Institution and its Competencies

The Law of 1997 established the Zambia Competition Commission (ZCC), which came into being in May 1997, as the agency responsible for regulating competition in the country.

Broadly, 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. The Commission is entrusted with powers to undertake inquiries and investigations in relation to the conduct of business. Further, the Commission serves to provide information to persons engaged in business and consumers about their rights and duties under the Law.

ZCC functions towards fulfilling the following set of objectives:

- to encourage competition in the economy;
- 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; and
- to expand the base of entrepreneurship.

The Commission comprises of various stakeholders as its part time members with a part time chairman, while the management of the Commission is vested in the Executive Director.

Anticompetitive Practices

The Competition and Fair Trading Act, 1994 sets out provisions to deal with such practices:

Section 7: Anticompetitive Practices – This prohibits agreements, decisions and concerted practices between enterprises, which have the objective of preventing, restricting or distorting competition to an appreciable extent in Zambia or in any substantial part of it.

Section 8: Mergers and Takeovers – The merger control regulation under the Act applies to all mergers in the economy that involve the acquisition or the establishment of control over a significant interest in the whole or a part of a business of a competitor, supplier, customer or other person.

Section 9: Trade Agreements – This deals with horizontal arrangements, this refers to implicit or explicit arrangements between firms competing with identical or similar products in the same market.

Box 59.1: A Case of Exclusive Distributorship

Zambian Breweries Plc (ZBL) notified their exclusive distributorship and cooler usage arrangement with ZCC. ZCC determined that ZBL was a monopoly undertaking controlling 95 percent of the clear beer market in Zambia and that the object of the exclusive arrangements were anticompetitive by foreclosing market access of competing products.

ZCC observed that certain clauses in the distributorship agreement forbade distributors from carrying competing products.

ZCC declared the exclusive distributorship anticompetitive and placed conditions in the placement of coolers in the retail outlets.

Source: <http://www.globalcompetitionforum.org/regions/africa/Zambia/Annual%20Report%20-%201999.PDF>

2 *Enforcing Competition Law in Zambia: A CUTS and Zambia Consumers Association (ZCA) joint publication and Competition Policy in Zambia*

3 Preamble to the *Competition and Fair Trading Act, Chapter 417 of the Laws of Zambia*.

Section 10: Anticompetitive Trade Practices by Associations – Section 10 captures anticompetitive practices by trade associations. ‘Trade Associations’ here means a body of persons which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members.

Box 59.2: Action against Unfair Trade Practice

A case was lodged against BMK Zambia Ltd. on unfair trade practices. The complainant bought a liner kit from BMK (Z) Ltd. to restore the engine of his motor vehicle.

BMK sales personnel recommended Sub-Assembly Engine (SAE). Later the complainant discovered that the cylinder head in his engine was not compatible with SAE and he decided to return it for possible refund or replacement.

However, BMK refused to replace it or refund the money. After the Commission’s intervention BMK decided to refund the amount. Consequently, the Commission decided to close the matter as the case was resolved without any further action.

Source: [http://www.globalcompetitionforum.org/regions/africa/Zambia/Annual%20 Report%20-%201999.PDF](http://www.globalcompetitionforum.org/regions/africa/Zambia/Annual%20Report%20-%201999.PDF)

Section 11: Criteria for Controlling Monopolies and Concentration of Economic Power- This is dealt with separately under Section 11.

Section 12: Unfair Trade/Consumer Welfare and Protection – This contains a range of provisions aimed at protecting consumers.

Regulatory Framework⁴

Despite committing itself to complete privatisation of major service sectors during 1990s, the government has not carried out privatisation of public sector entities dealing with utilities such as broadcasting, telecom, railways and energy. However, it allowed participation of private sector to some extent in sectors like broadcasting and telecommunications (especially in the cellular phone sector) subject to stringent licensing regulations.

Besides Telecommunication and Energy, there are other sector-specific laws which govern the Zambian market:

- The Food and Drugs Act;
- The Rent Act;
- The Sale of Goods Act, 1983;
- The Electricity Act;

- The Markets Act;
- The Trademarks Act;
- The Merchandise Market Act;
- The Dairies and Dairy Products Act;
- The Standards Act; and
- The Bill of Exchange Act.

Telecommunications Sector

In 1994, the Zambian Government liberalised the Telecommunications Sector by an Act of parliament, which created the Regulatory Authority and allowed more players in the sector. The purpose of establishing a regulatory authority was to allow for an orderly and stable development of the telecommunications sector by promoting investment as well as ensuring fair and balanced competition and fair treatment of consumers.

The *Communication Authority of Zambia (CAZ)* is responsible for the regulation of the sector, falling under the Ministry of Communications and Transport. The state owned Zambia Telecommunications Company (ZAMTEL) is the sole provider of basic telecommunication services.

Energy Sector

This sector was largely state-owned. The government had initiated its steps towards the liberalisation of the energy sector in 1991 and as a result a ministry responsible for energy was created. Further, in 1994, the National Energy Policy was developed.

In addition, Zambian Government took further steps to promote competition and to safeguard the interest of consumers by enacting a law in 1995 namely *The Energy Regulation Act*, which provided for an independent regulatory authority, *Energy Regulation Board (ERB)* in 1997. The Energy Regulation Act was further amended in December 2003.

The law empowers ERB to regulate the whole energy sector, but the focus is mainly on the following sub-sectors:

- Electricity;
- Petroleum;
- Coal; and
- Solar.

In order to promote better coordination among the sectoral regulators and the competition authority, the ZCC Executive Director sits on their boards. However, that does not give the ZCC statutory powers to intervene in the regulators’ decisions or investigation. This overlap issue needs to be addressed in future.

The ZCC also carries out various types of periodical awareness generation campaigns in the capital and the regions, through information materials and seminars.

⁴ “Enforcing Competition Law in Zambia”, CUTS and Zambia Consumers Association (ZACA); and “Market Practices in Zambia-Where do the consumers stand?”, CUTS and Zambia Consumers Association (ZACA).

Consumer Protection

Zambia had no comprehensive law for consumer protection until recently. Instead some legal provisions for consumer protection were contained in various Zambian legislations, including the competition law.

The Competition and Fair Trading Act, 1994, provides for the protection of consumer interests by ensuring that they have greater choice in terms of price, quality and service. Moreover, ZCC has a separate *Consumer Complaints Desk* for redressing of consumer complaints.

Nevertheless, several constraints like lack of focus and inadequate funding etc. called for establishment of a separate law and body for consumer protection.

As such, currently, Zambian authorities are in the process of enacting a comprehensive consumer protection law so that consumers can be well protected against unfair business practices. The new law provides guidelines to consumers on how to deal with a trader who violates the specified conditions and the way to seek compensation and redressal.

The new law will establish a body vested with the power to litigate on behalf of consumer and also monitor other market agents.

Concluding Observations and Future Scenario

Competition regime in Zambia has performed well though but it is still in its infancy stage. The Commission suffers from an acute shortage of financial and human resources, which have severely limited the scale of its operations and advocacy efforts. The level of understanding and awareness of competition law, procedure and remedial action among the consumers and business concerns is quite low. Although ZCC's performance seems to be quite impressive despite the constraints, building its capacity as envisaged in the Act remains one of the important challenges.

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

- Consumer protection should be given priority. Consumer law and a separate authority should be put in place;
- Need to clearly spell out the relationship between the ZCC and sector regulators both at policy and operational levels;
- ZCC to address the concerns of the small-scale sector; and
- ZCC to strengthen its awareness-raising activities. ZCC should use various ways and means to publicise their activities to improve public awareness on competition issues.

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