

## Chapter 4

### Trade and Competition Policy

*This chapter investigates Zambia's reforms in terms of two policy frameworks that strongly influence the investment climate: trade policy and competition policy. In terms of trade policy, the chapter explores how Zambia has been enhancing trade policy consistency, and aiming to diversify its trading structure away from mining. A major challenge nonetheless remains the competitiveness of domestic companies, especially SMEs, which affects their ability to benefit from increasing trading opportunities achieved through sound trade policy. In terms of competition policy, the chapter analyses how the recent Competition and Consumer Protection Act aims to enhance enforcement powers of the Competition Commission and further protect consumer welfare, and what implementation challenges remain in this respect.*

## 1. Trade policy

As a landlocked country, Zambia relies on the regional trading setup both for access to the larger regional market, and for accessing global trading links. The government has thus been a driver of regional integration, and various measures to increase intra-regional trade have been launched. In fact, Zambia chaired the LDC Group during the WTO Doha Round negotiations. The DRC, South Africa and Zimbabwe are Zambia's main regional trading partners, which is reflected in its strong efforts to facilitate trade with these economies. Meanwhile most of Zambia's overall trade remains with the European Union and Switzerland.

### 1.1. Efforts made to reduce compliance costs of customs procedures

What recent efforts has the government undertaken to reduce the compliance costs of customs, regulatory and administrative procedures at the border?

Trade policy has seen substantial liberalization in the early nineties with: the removal of exchange controls, price controls and subsidies; the reduction of import duties; and the cancellation of the import and export licence requirements. In line with the government's overall objective of reducing the cost of doing business a number of programmes are being implemented by the Zambia Revenue Authority (ZRA) to reduce transit times and compliance costs of customs and regulatory and administrative procedures, especially at major borders of Zambia (such as Chirundu, Nakonde, Kasumbalesa and Lusaka International Airport). Examples of such initiatives include the following:

- I. Construction of modern border infrastructure and implementation of One Stop Border Ports (OSBPs) between Zambia and its neighbours. For example, the Chirundu OSBP with Zimbabwe was launched in 2008. Other OSBPs are being constructed at: Kasumbalesa bordering DR Congo (this facility is under a public-private partnership arrangement); and Nakonde bordering Tanzania. Plans are also at an advanced stage for extending this concept, which is supported by modern infrastructure, at Katimamulilo in Sesheke district bordering Namibia and at Kazungula

bordering Zimbabwe and Botswana. These developments are expected to induce greater efficiencies and improve service delivery at border posts.

- II. Setting up of electronic systems to facilitate clearing of imports and exports. The systems include the introduction of Electronic Payment (E-payment) for all customs duties and taxes whereby importers and exporters are allowed to pay electronically, and customs authorities do the receipting electronically. This has helped to reduce delays at the border posts as well as the costs associated with travelling to and from the entry point to settle payments.
- III. At Chirundu and Livingstone border posts, introduction of ASYCUDA++ systems and electronic scanners has facilitated border agency co-ordination in terms of electronic filing systems, and accelerated inspections of cargo goods. The latter has drastically reduced the time taken to inspect the cargo as this is now done electronically unless there is significant difference between the declared goods and what is in the container.
- IV. With the support of donors, the ZRA is implementing the Customs Accredited Client Programme (CACP) for importers who pose a lower risk to customs obligation. Currently there are 16 large importers participating in the pilot phase of this programme. Under this programme, the client is given GREEN lane treatment for its cargo, meaning that its cargo will not be subjected to rigorous inspections once it arrives at the border. Such importers are also given a credit facility which allows them to accompany their cargo without paying duties, and to make payments five days later.

The CACP is an international programme under the WTO with standards that are recognised by all WTO members. The programme is not based on the size of the company but on the ability to meet standards including the following:

- proper ordering system;
- proper accounting system;
- proper governance system; and,
- proper security system.

With regard to regulations, the government has signed the Revised Kyoto Protocol (RKP), which outlines international best practices in trade. The government has enacted legislation to align practices with the RKP. In the 2011 National Budget, the government has introduced a bill to allow the pre-clearance and pre-lodgement of entries before the cargo actually arrives. This is intended to further reduce delays at the border, as the import clearance papers are already completed prior to the arrival of the cargo goods.

The government has also started implementing programmes to facilitate regional integration through cross border trading. It is implementing the COMESA Simplified Trade Regime (STR) for quick movement of goods across the borders. The STR under implementation includes Malawi and Zimbabwe, and STR discussions have also been initiated with the DRC.

In the 2011 National budget, the legal provisions of the law on the engagement of customs clearing agents were revised. The threshold at which an individual is now required to use a clearing agent for customs clearance is USD 2 000 (up from USD 500). For small-scale cross-border traders, the cost in agency fees of appointing a clearing agent for the import of any goods worth USD 500 or more could exceed their business turnover.

Challenges still remain in the area of border agency co-ordination and the establishment of the single window system, which would enable single entry payments for the importers and exporters of goods and services. Once in place, this should also drastically improve the efficiency of clearing cargo at border posts.

## **1.2. Enhancing trade policy consistency and predictability**

What steps has the government taken to reduce trade policy uncertainty and to increase trade policy predictability for investors? Are investors and other interested parties consulted on planned changes to trade policy?

A structured consultative process involving the direct participation of the private sector has been set up under the Ministry of Commerce Trade and Industry (MCTI). The objectives are: to involve the private sector in the continuous review of the impact of trade policies, regulations, and administrative procedures on the competitiveness of the private sector; and to identify opportunities for trade expansion and economic diversification.

Given the diverse nature of trade, 6 sub-working groups have been set up so far. Sub-working groups are chaired by the private sector while the ministry provides the secretariat.

The main consultative structure is the Sector Advisory Group (SAG) chaired by the Permanent Secretary at MCTI. Members of the SAG include representatives of the private sector, civil society, donor community, and government ministries. The SAG is a standard approach introduced by the government for all sectors as a mechanism for monitoring the implementation of the FNDP. Under this arrangement, two Technical Working

Groups (TWGs) have been established to respectively deal with trade and manufacturing issues.

- i) Technical Working Group on Trade covering: Services, Trade Facilitation, Trade Related Aspect of Intellectual Property Rights, Trade Expansion, which is also one of the pillars of Private Sector Development Reform Programme (PSD-RP), the Cotonou Agreement, trade in goods, and finally the Enhanced Integrated Framework (EIF).
- ii) Technical Working Group on Manufacturing: Economic diversification away from base metal mining and towards value-addition manufacturing and processing is a top priority for the government. The aim is to promote Non-Traditional Exports (NTEs) and to stimulate investment towards technology transfer and formal sector employment generation, drawing on the multiplier effects of a strong manufacturing sector. In this regard, six sub-working groups have been established, with each allocated a manufacturing sub sector:
  - processed foods;
  - textiles and garments;
  - gemstones;
  - leather and leather produces;
  - wood and wood products;
  - engineering.

This consultative framework enables the private sector to help shape the government's trade policies and economic diversification programmes. It also enables the government to assess "supply response" to the trade measures being implemented, and to identify policy gaps, incompatible regulations, and administrative procedures hindering business and investment growth. Despite this well intentioned consultative framework, there are however some weaknesses in how it is facilitated and the extent to which it influences trade policies.

MCTI provides secretarial facilities and co-ordinates the meetings of the main SAG, TWGs and Sub-Working Groups. The main SAG meetings take place quarterly and are generally well co-ordinated. However, the scheduling of TWG and Sub-Working Group meetings is sometimes erratic, with the agenda and timings controlled by MCTI although Working Groups are chaired by the private sector. As a result, some meetings are called at short notice to address an issue of government interest rather than the structured programme of activities set out by the respective Working Groups. This affects the attendance of Working Group members, especially private sector representatives who have limited time to divert to unscheduled meetings.

This problem is exacerbated by the cost of attending meetings, as these favour Lusaka-based members of the private sector. In addition, there is no mechanism for the wider dissemination of information on the activities of the main SAG and the Working Groups.

Some of the Working Group's activities involve participation in regional negotiations. Where the private sector representatives are invited to participate, they are required to meet their own costs of travel. Together with the need for effective preparation ahead of such activities, this factor limits their participation.

Some decisions taken by the government on trade issues nonetheless do not flow from the consultative process provided by this framework. For example, in March 2011, the Zambia Bureau of Standards (ZABS) announced the re-introduction of mandatory Pre-Shipment Inspections (PSIs) for a wide range of manufacturing inputs and finished products. This measure was introduced without prior consultations or assessment of the PSIs' impact on the cost of doing business. This proposed re-introduction of PSIs, pegged at USD 350 per consignment, was also going to lead to delays in the processing of shipments. About 400 trucks originate from South Africa everyday bringing goods to Zambia. The time needed to conclude the PSI and attendant inspective charges would only increase the cost and delays of shipments.

The implementation of this scheme, which was to begin in May 2011, has been deferred following intense lobbying by the private sector. Such unilateral actions critically risk reversing the gains already made in market liberalisation and in reducing the cost of doing business. It also has the potential of lowering investor confidence.

Stances on regional trade and multi-lateral negotiations are also at times taken by the government without due regard to the private sector that will be affected by the resulting trade regime (*e.g.* Zambia's position on the EPA negotiations and on multiple memberships to SADC and COMESA). In other cases, individual private sector companies approach the government by-passing the consultative framework. This at times can result in the government adopting measures that favour a sub-sector at the expense of others.

### 1.3. Expanding Zambia's markets through regional and multi-lateral engagements

How actively is the government increasing investment opportunities through market-expanding international trade agreements and through the implementation of its WTO commitments?

Copper remains Zambia's leading export commodity, accounting for three quarters of total exports. Diversification is an objective of the government, and some advances in non-traditional exports can be observed. These products include wire, electricity cables, cement, scrap metal, gemstones, as well as high value crops such as flowers, which have been growing at an average annual rate of 20% since 2002. Agricultural exports registered the strongest growth amongst non-mineral exports.

To support this trend, Zambia is engaged in regional and international integration programmes aimed at expanding its trading links and volume to spur further diversification. Zambia is a member of a number of regional and international groupings aimed at expanding markets for domestically produced goods and services. These include membership to both Common Market for Eastern and Southern Africa (COMESA), which is currently a customs union, and the Southern Africa Development Community (SADC) Free Trade Areas (FTA). Zambia is also actively participating in the establishment of the Tripartite Free trade Area between COMESA, SADC and the East Africa Community (EAC). Besides these regional programmes, the government has also signed and is currently implementing a number of bilateral trade initiatives aimed at expanding trade, such as with China, Canada and Japan.

At the multi-lateral level, Zambia is a member of the World Trade Organisation (WTO) and currently chairs the LDC group at the WTO. Under the Cotonou agreement, Zambia has benefited from duty-free quarter free-market access from the European market and from the Generalized System of Preference (GSP) in the US market under AGOA. For further market access, Zambia has also been negotiating economic partnership agreements (EPAs) with the European Union under the Eastern Southern Africa (ESA) group.

Zambia is also a member of a number of regional and international organisations dealing with investment issues such as: UNCTAD, WAIPA, SADC, COMESA and MIGA. Amongst the various other international bodies regulating and facilitating trade, Zambia has been playing a leading role in a number of international trade arrangements. For example, Zambia chaired the LDC group in the DOHA Round and ESA-EPA group over the last two years.

Zambia hosted the International AGOA Forum in June 2011, providing a further opportunity to place the country's investment and trade potential in the international spotlight.

Membership to the above organisations has led to improved market access under preferential trade terms for the private sector that can invest and take advantage of larger foreign markets. The major challenge has however been the low productive capacity of the private sector and its difficulty to meet the competitive demands and standards of regional and international markets so as to take advantage of their increased market access.

#### **1.4. Harmonising trade distortions amongst industries**

How are trade policies that favour investment in some industries and discourage it in others reviewed with a view to reducing the costs associated with these distortions?

Currently six sectors have been considered as priorities, and have concentrated specific efforts in terms of attracting investment. These sectors are: processed foods, textiles and garments, engineering products, gemstone, leather and leather products, and wood products. In order to attract investment in these priority sectors, incentive packages have been provided that include: lower taxes, accelerated access to land (*e.g.* MFEZs and farming blocks) and simplified licensing procedures.

Distortions however occur when import tariffs are adjusted to suit particular industries. For example, in 2010 the government increased tariffs for a range of steel products, ostensibly to protect the newly established steel manufacturing plant. Resulting from this measure, tariffs for imported steel products that were previously classified as raw materials or as processed or intermediate products were increased (for instance a 15% customs duty was imposed on cold rolled coils, and a further 25% duty was placed on deformed bars and galvanized cold rolled coils). This has increased the cost of imported steel for other manufacturers, mining and construction companies that depend on the importation of the above raw materials. This can also be observed in the pharmaceutical industry where the government has imposed trade taxes on raw materials while zero-rating finished products. This has to a large extent discouraged investment in the sector because of the higher production costs resulting from trade taxes.

The government also increased the tariff for imported wheat in order to protect local farmers. This has however created a "pricing war" between



wheat farmers and milling companies who feel that local wheat is overpriced, amid intense lobbying for the banning of wheat imports.

Another example is the government's decision to restrict imports of sugar that is not fortified with Vitamin A. This has "crowded out" imports of sugar, giving local producers the advantage for setting quality standards and the prices of sugar sold on the local market.

The consultative process that has been established to deal with the priority sectors under the national export strategy document should therefore consider in advance the potential costs associated with the distortions created through measures designed to encourage investment in these priority sectors.

Trade taxes have often been used to discourage outsourcing of raw materials from cheaper sources, and this has raised the cost of production for the private sector previously reliant on imported inputs. This discourages investment in those sectors. The government should examine the economy-wide effects of proposed trade measures favouring particular industries, and ensure that the terms of reference for reviews of existing measures pay proper attention to potential effects on trade and investment activity. This would minimize the risk of impairing liberalisation commitments.<sup>1</sup>

### 1.5. Addressing market access restrictions

To what extent does trade policy support and attract investment through measures that address sectoral weaknesses in developing countries (*e.g.* export finance and import insurance)?

As an LDC, Zambia has sought to obtain maximum preferential market access conditions via the international trading system, such as the EBA Initiative and the Duty Free Quota Free arrangements of the interim EPA signed with the EU. Zambia has also been actively pursuing opportunities for expanding exports under the AGOA framework.

Regionally, Zambia has fully acceded to both the COMESA Customs Union and the SADC Free Trade Area. These arrangements enable Zambian goods meeting Rule of Origin criteria to enter both COMESA and SADC markets duty- and quota-free. Zambia is also participating in the SADC-COMESA EAC Tripartite FTA negotiations that are expected to result in the harmonisation of trade regimes in the sub-continent. Under COMESA and SADC, rigorous procedures are in place for reporting NTBs and other restriction practices. In the same vein, Zambia is obliged to adhere to regional trade policies and to avoid imposing unjustified restrictions.

In all the above arrangements, the Zambian business sector has access to wider regional and international markets. Yet simultaneously, the COMESA and SADC trade regimes have exposed the Zambian private sector to more intense competition, especially for manufactured goods originating from the more technologically-advanced producers in South Africa and Kenya. Other distortions relate to the restrictions resulting from applying SPS measures against imports, as these are often used as an indirect way of restricting imports rather than as a means of addressing actual health and safety concerns.

Amongst the main challenges faced by the Zambian private sector is the access to affordable finance for both short and long-term investment purposes. Lending base rates are at around 20% whilst few financial service institutions offer long-term finance. In addition, no explicitly structured export pre-financing products and services are easily accessible by the private sector. Export financing is largely by way of “over drafts” rather than term lending. On the other hand, insurance services are better structured to support the export sector, although this does not adequately cover needs for importing inputs used in export production.

This situation is not helped by the lack of a structured export finance strategy in Zambia. Nevertheless, short-term projects targeting MSMEs have in the past been implemented under specific donor-funded projects, such as the Market Access Trade and Enabling Policies (MATEP).

Also, The ZDA has established the Zambia Insurance Export Development Fund (ZEDEF), to support MSMEs in meeting their financing needs for export-oriented production. The ZEDEF loan programme is a rapidly disbursing credit facility and is disbursed through producer associations. The fund was part of a programme originally established and funded by the EU, and features under the Export Development Programme II. The fund is now operated by ZDA through an appointed committee.

Access to this credit facility by members of Producer Associations is on a group basis, i.e. by the Producer Association which also assumes joint responsibility for the total debt, irrespective of whether individual members repay or not. The types of loans financed include:

- Short-term loans for pre and post shipment finance for up to six months.
- Medium term loans for production and/or seasonal inputs for up to 12 months.
- Systems, assets and other internal development or capacity-building activities for the benefit of all members.

- A revolving line of credit for up to twelve months for any purpose of benefit to all members, with an appropriate debt ceiling as approved by the ZEDEF Steering Committee.

Loans are foreign currency dominated and interest is pegged at the London Inter-Bank Overnight Rate (LIBOR). Borrowers must also demonstrate capacity to generate the foreign currency with which to service the loan. This facility however has limited capacity to meet the demand from export producers.

## 2. Competition policy

Competition policy helps consumers by promoting competition between suppliers, resulting in lower prices, greater supply and better quality. Competition also contributes to the economy in general, increasing growth by promoting innovation and helping to achieve a sound business environment to attract investment.

Zambia was a pioneer in Africa in introducing competition policy. Zambia has recently significantly improved its competition framework by repealing the Competition and Fair Trading Act (CAP 417 of 1994) and replacing it with the Competition and Consumer Protection Act No. 24 of 2010 to enhance enforcement powers and further protect consumer welfare. However, implementation of its competition policy still requires Zambia to confront challenges such as the application of the Act to regulated sectors and financial and human resources constraints.

### 2.1. Clarity of competition law

Are the competition law and its application clear, transparent, and non-discriminatory? What measures does the competition authority use (e.g. publishing decisions and explanations on the approach used to enforce the laws) to help investors understand and comply with the competition law and regulations?

Competition Law in Zambia is enshrined in the Competition and Fair Trading Act (CAP 417 of 1994) which came into force in February 1995. The Act mainly aims to promote competition and consumer welfare by prohibiting cartels, abuses of dominant positions, anti-competitive mergers and restrictive trade practices. The Competition and Consumer Protection Commission formerly known as the Zambia Competition Commission (ZCC) was established in 1997 as a statutory agency to enforce the provisions of the Competition and Fair Trading Act before replacement by the current Act.

In 2010, the Competition and Fair Trading Act was repealed and replaced by the Competition and Consumer Protection Act (No. 24 of 2010). The current Act has been strengthened and includes provisions that address comprehensive consumer protection issues such as products liabilities and consumer safety, and has also granted increased investigative powers to the Commission (now designated by the 2010 Act as the “Competition and Consumer Protection Commission”). The Act seeks to promote increased transparency and non-discrimination by providing for wide stakeholder consultations in relation to *e.g.* mergers and acquisitions, consumer protection and safety, unfair trade practices, and the like. The Competition and Fair Trading Act of 1994 gave the Minister of Commerce, Trade and Industry discretionary powers to stop the Commission from carrying out investigations. These powers have been removed under the new law as decisions of the Commission can now only be reversed by the High Court.

Previously it was a requirement under the 1994 Act that all mergers and acquisitions be notified and approved by the Commission before being undertaken. This provision however tends to be enforced amongst firms already established and operating in Zambia. Foreign companies without a presence in Zambia taking over local firms do not have to comply with this requirement as ZCC has not established disclosure requirements for foreign companies setting up or acquiring existing businesses in Zambia.

The Commission has also not yet developed guidelines that address outreach programmes for compliance with the Act, however, its annual reports provide the decisions and explanations on the approaches used to enforce the competition law in the country. The Commission also holds regular workshops highlighting the procedures and guidelines that it follows. Radio and television are also used to highlight the enforcement activities on competition and consumer protection provisions. The Commission holds consultative workshops on a regular basis with other government agencies including sector regulators, private sector businesses and the judiciary to discuss and gather information on anti-competitive practices and consumer protection issues. Since the amendment of the Act in 2010, the Commission has been conducting various awareness campaigns, mainly addressing consumer protection issues.

The Zambian competition law applies to all entities, regardless of whether private, public or foreign. Although the Commission largely opens investigations when a complaint has been filed to it, it opens investigations on its own initiations as well. Zambian competition law can also be enforced by civil lawsuits in court by private parties and criminal prosecution by the Commission became possible in cartel cases without the involvement of the Director of Public Prosecution under the 2010 Act. However it is further perceived that the Commission may sometimes be restricted in applying the

competition law against government agencies and State Owned Enterprises (SOEs), especially protected by other laws.

## 2.2. Financial capacity and operational autonomy of the commission

Does the competition authority have adequate resources, political support and independence to implement effectively competition law?

Operationally, the Commission has a Board comprising appointees from independent institutions. Members of the Board elect persons to act as chairperson and vice-chairperson and, have put in place procedures for guiding their oversight functions. The Board of the Commission is also responsible for appointing a chief executive who also reports directly to the Board.

Operational autonomy of the Commission is however compromised by its reliance on government subventions to cover its costs.<sup>2</sup> The budgetary resources that it receives are normally less than its planned programmes, a factor that limits the activities that it actually undertakes. The Commission is also generally accorded low priority in the allocation of budgetary resources as can be noted from the analysis of budget releases over the period 2006-10:

Table 4.1. **National budget funding to the Zambia Competition and Consumer Protection Commission**

|                        | ZMK million |       |       |       |       |
|------------------------|-------------|-------|-------|-------|-------|
| GRZ grants             | 2006        | 2007  | 2008  | 2009  | 2010  |
| Requested budget       | 2 246       | 3 260 | 4 229 | 5 939 | 7 340 |
| Treasury grant release | 1 672       | 1 800 | 2 050 | 3 124 | 2 101 |
| Deficit                | 574         | 1 460 | 2 179 | 2 815 | 5 239 |
| Proportion released    | 25.6%       | 45.8% | 51.5% | 47.4% | 71.4% |

Source: Zambia Competition and Consumer Protection Commission.

As can be noted, the Commission received less than 30% of its requirements during the 2010 financial year. On the other hand, it does have limited provisions for raising revenues through Statutory Fines and Fees charged for services. The Commission charges a fee equivalent to 0.1% of the combined turnover or value of assets (whichever is the higher) affected by the merger for companies seeking approval for proposed mergers and acquisitions. Through these charges, the Commission raised about ZMK 3.1 billion in 2010, about 6 times more than was raised in 2009, but only equivalent to 42% of its budget as be noted below.

Table 4.2. **Internally generated fee income**

ZMK million

| Fee category                        | 2006         | 2007           | 2008         | 2009         | 2010           |
|-------------------------------------|--------------|----------------|--------------|--------------|----------------|
| Mergers, takeovers and acquisitions | 81.1         | 724.7          | 464.3        | 364.9        | 2 898.9        |
| Relocation                          | 64.4         | 201.6          | 182.9        | 145.4        | 95.9           |
| Other charges                       | 54.0         | 167.8          | 113.8        | 38.6         | 93.6           |
| <b>Total</b>                        | <b>199.5</b> | <b>1 094.1</b> | <b>761.0</b> | <b>548.9</b> | <b>3 088.4</b> |
| Proportion of budget (%)            | 8.9          | 33.6           | 18.0         | 9.2          | 42.1           |

Source: Zambia Competition and Consumer Protection Commission.

Income generated from fees does not cover the deficit in budget financing. This revenue flow is also unpredictable as it depends on economic factors that drive mergers and acquisitions, and the skills of its staff to meet the complex business arrangements that result in the contravention levies.

Like many statutory bodies, the Competition and Consumer Protection Commission lacks adequate human and financial resources to carry out its mandate fully. Due to inadequate resources, the Commission is only present in Lusaka and does not cover other parts of the country. It largely relies on donor support to address institutional capacity development needs.

In addition, the Commission operates from the premise that it cannot apply the law against the government. The Commission consults the government on issues on which it should act upon independently. Invariably, accountability of the Commission remains diffused, especially in cases where alleged contraventions of competition law directly or indirectly involve public institutions.

### 2.3. Addressing anti-competitive practices

To what extent, and how, have the competition authority addressed anti-competitive practices by incumbent enterprises, including state-owned enterprises, that inhibit investment?

The Commission has tended to deal firmly with incumbent enterprises, whenever anti-competitive practices are reported or come to its attention. This has resulted in the Commission imposing cease and desist orders in some instances where practices have been deemed as conducts restricting or distorting competition, *e.g.* cartel cases in poultry sector in 1999 and in oil marketing sector in 2001.

The Commission however faces significant challenges in cases where SOEs are protected by related legislations. For example, the Commission

engaged government to have the international gateway and landline phone sector liberalised. Whereas the gateway has been liberalised, the landline phone sector is still state-owned. The Commission has however still continued to engage the government on this as it cannot make SOEs in the sector comply with the law without government endorsements.

The Commission also lacks specific powers to overrule decisions of other regulatory agencies where the resulting actions will contravene the Competition and Consumer Protection Act. For example, after the privatisation of Zambia Telecommunication (Zamtel) in 2010, the regulatory agency, ZICTA imposed a moratorium on the licensing of new entrants into the mobile telephone market for the next five years up to 2015 and the Commission has seen itself unable to stop this development.

The Commission has therefore been more effective in addressing anti competitive practices by private companies but less so with SOEs and those that have sector regulators.

#### **2.4. Capacity of the commission to evaluate impact of other policies on the establishment of competitive markets**

Does the competition authority have the capacity to evaluate the impact of other policies on the ability of investors to enter the market? What channels of communication and co-operation have been established between competition authority and other government agencies?

Antitrust agencies sometimes have an uneasy relationship with sector regulators. Sectoral regulators may see an antitrust agency as a potential threat for funding and prestige. This threat of competition authority may cause a sector regulator to seek a greater control over its own regulated industry. In Zambia, the broad mandate and jurisdiction over all sectors of the economy present the Commission with challenges of overlapping jurisdictions. This situation is particularly complex where other sector regulators, such as the Energy Regulation Board (ERB) and the Zambia Information Communications Technology Authority of Zambia (ZICTA), have mandates for oversights.

The Commission works with such sector regulators by referring specific issues relating to their jurisdictions to them. However, with the exception of the agencies covered by the Energy Act and the Financial and Banking Services Act, no other regulators are obliged by statute to consult with the competition authority when handling such issues. This presents difficulties of

overlap and jurisdictional conflicts between sector regulators and competition authority in Zambia.

The Commission presently lacks adequate financial and human resources to carry out assessments and to engage external experts that can address technical aspects and provide it informed advice when needed. Where time and resources permit, local business associations are consulted on mergers and acquisitions. This is however not institutionalised by the Commission, again due to resource constraints.

Presently, the competition law does not give the competence to the Commission to nullify anti-competitive practices authorized by sector regulators. The Commission has however established informal and formal channels of communications with other government agencies to strengthen its evaluation activities. For example, the Commission plans to enter into agreements with all other sector regulators as well as some government agencies in order to strengthen co-ordination and collaboration in the implementation of the Act. When communicating with the central government, the Commission however needs to go through the Ministry of Commerce, Trade and Industry who then also has to assess whether the issue merits from the perspective of the Cabinet with the reviews of other ministries. This is clearly a complex and time-consuming process that could be revised.

### **2.5. Evaluating the costs and benefits of industrial policies**

Does the competition authority periodically evaluate the costs and benefits of industrial policies and take into consideration their impact on the investment environment?

The Commission has carried out studies in cement, poultry, beef, cotton, aviation, inland port, fertiliser, maize and maize cereal sectors to assess the costs and benefits of industrial policies. Notable evaluations were also done to assist government to review the policy and law relating to the telecommunications sector (international gateway).

As a result of this review, a more competitive environment has been nurtured in the mobile telecommunications. For example, one mobile cell phone service provider slashed international call rates by about 40% in Zambia after the reduction in the licensing fees for international gateway facilities from USD 12.5 million to USD 300 000 per year. Others have since reduced roaming charges for calls within Southern Africa. Inter-connectivity costs amongst the different mobile telephone operators and Internet service



providers still remain high, however, and some mobile telephone operators have made complaints to the Commission requesting it to investigate the underlining costs for local calls in order to bring down the high charges of inter-connectivity.

The Commission is also a member of the Sector Advisory Group (SAG) Committee on industry and trade and uses this opportunity to make contributions during the review of policies being proposed. Due to resource constraints, the Commission is not able to carry out periodic evaluations on the effects of those policies that could also enable it to influence activities of the SAG. Also due to resource constraints, the Commission does not deal with all violations of the competition law, and impacts of changing industrial structures on competition.

## **2.6. Roles of the commission in privatisation activities**

What is the role of the competition authority in case of privatizations? Have competition considerations had a bearing on investment opportunities, such as not permitting market exclusivity clauses, been adequately addressed?

The Commission's role in the privatisation process has been advisory in terms of market structure and reviewing the preferred bidders before the purchase is done. In this regard, the Commission works closely with the ZDA during the privatisation process to ensure non-infringements of the competition law. Depending on the structure of the market, the Commission does have powers to impose sector wide conditions on exclusivity clauses. The Commission was also recently co-opted into a government committee that is negotiating Investment Promotion and Protection Agreements (IPPAs). Through this committee, the Commission is able to advise the governments to have IPPAs which are based on free market principles.

## **2.7. International co-operation**

To what extent is the competition authority working with its counterparts in other countries to co-operate on international competition issues, such as cross-border mergers and acquisitions, related to the investment environment?

The Commission is an active member in regional competition groupings. The Commission is a member of the Southern and East African Competition

Forum; the SADC Competition and Consumer Committee; and, the COMESA competition regime. The Commission has been assisting other African countries in reviewing their laws and regulations, and has helped formulate Competition Laws in countries that had no legislations on competition.

The Commission co-operates with other authorities on cross border issues. For the COMESA region, cross border issues can in theory be dealt with under the COMESA competition rules and regulations, although no cases have been heard to date. Co-operation under SADC is voluntary (although a new mechanism of co-operation is contemplated beyond the SADC Competition and Consumer Committee). The Commission also recently actively participated in the inaugural meeting of the African Competition Forum formed in 2011.

The Commission has been strengthening its technical capabilities through staff development and exposure to overseas competition and consumer protection authorities. This has included the Australian Competition and Consumer Commission (ACCC) and the US Federal Trade Commission (FTC), which have helped develop internal capacity among staff. The Commission has continued to expose its staff to seminars and training workshops to develop in-house expertise.

## Notes

1. OECD, PFI Toolkit, Trade Policy Chapter, [www.oecd.org/document/61/0,3746,en\\_39048427\\_39049358\\_41368893\\_1\\_1\\_1\\_1,00.html#policypractices](http://www.oecd.org/document/61/0,3746,en_39048427_39049358_41368893_1_1_1_1,00.html#policypractices).
2. Reliance on government subventions to cover agencies' costs is common among competition authorities.

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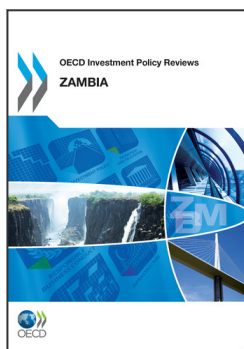
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**From:**  
**OECD Investment Policy Reviews: Zambia 2012**

**Access the complete publication at:**  
<https://doi.org/10.1787/9789264169050-en>

**Please cite this chapter as:**

OECD (2012), "Trade and Competition Policy", in *OECD Investment Policy Reviews: Zambia 2012*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264169050-8-en>

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