

**An Evaluation of the Effectiveness of the Competition and Consumer Protection Act in
the Promotion and Regulation of Fair Competition, Consumer Protection and
Economic Growth in Zambia**

By

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A dissertation submitted to the University of Zambia in partial fulfillment of the requirements
of Bachelor of Laws degree (LLB)

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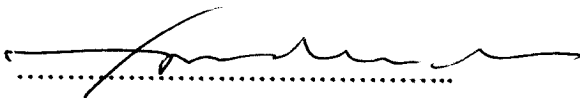
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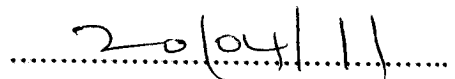
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ABSTRACT

Owing to the shift of the Zambian economy from a national control economy to a free market economy, there has been need for the government to effectively regulate the economy in order to promote fair competition and consumer protection. In an attempt to achieve this need the government enacted the Competition and Fair Trading Act of 1994 which aimed at regulating anti-competitive practices and consumer exploitations in the market. Following a number of changes that have taken place in the Zambian economy, Parliament enacted the Competition and Consumer Protection Act of 2010 which contains various innovative provisions that are intended to address modern economic demands in the Zambian economy.

This dissertation focused on evaluating the effectiveness of the newly enacted Competition and Consumer Protection Act in the promotion and regulation of fair competition, consumer protection and economic growth in Zambia. It examined whether the Competition and Consumer Protection Act has adequately and effectively addressed prevailing social and economic demands of Zambia's economy. The study methodology was based on both primary and secondary sources which comprised interviews with the Competition and Consumer Protection personnel as well as evaluation of other academic materials.

The dissertation made a comparative study of the Competition and Consumer Protection Act with the repealed Competition and Fair Trading Act of 1994. The findings of a comparative study were that the new Act was enacted with various innovative provisions that are intended to address modern economic conditions in Zambia. Through these innovations, the Competition and Consumer Protection Act has fairly addressed prevailing economic demands in the Zambian economy. The study also revealed that the new Act has included provisions that are devoted to promoting economic growth in Zambia.

Further, the dissertation identified shortfalls in the Act and has therefore given recommendations in order to fill up such shortfalls. It recommends that the Act should include provisions for strengthening relations between consumers and the Commission in order to encourage consumers' increased complaint reports to the Commission. It further recommends the intensifying of consumer protection in service provider enterprises, and the introduction of issuance of statutory warranties and receipts by enterprises for goods and services paid for. Furthermore, it recommends the introduction of statutory prohibition of unfair advertisement by enterprises in the Zambian market.

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Firstly, my special thanks go to the almighty God the creator and giver of life for making this piece of work a possibility. Secondly, to my parents for their endless support, encouragements and guidance throughout my life. Mum and dad you have sacrificed and expended yourselves for me to have a better life and become a responsible person. I hope that I have lived up to your expectations of being a good son.

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DEDICATION

To mum and dad, and my late sister, Clara. Mum and dad, this work was inspired by your endless support and encouragements to me. Sister Clara, it is only proper that this work stands as an attribute to your life. May your soul rest in eternal peace.

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LIST OF ACRONYMS

ASA:	Advertising Standards Authority
CCPC:	Competition and Consumer Protection Commission
FDI:	Foreign Direct Investment
IMF:	International Monetary Fund
MNC:	Multi-national Corporation
WB:	World Bank
ZCC:	Zambia Competition Commission
ZICTA:	Zambia Information and Communication Technology Authority

CHAPTER 1

1.0. GENERAL INTRODUCTION

1.1. Introduction

From way back in history, fair competition and consumer protection have been very important aspects of trade and national prosperity. They are major factors in commerce which promote economic prosperity and enhance fair distribution of safe goods and services in the country.¹ Many policy and law makers believe it to be true and are acting accordingly in promoting fair competition and consumer protection in the economy. Therefore, Zambian law makers should undergo effective commercialization and computerization to meet prevailing trends in the economy alongside the growing economy and industrialization to promote fair competition, consumer welfare and economic prosperity.

Since the transition of the Zambian economy in the early 1990s from a national control economy to a free market economy, there has been need for the enactment of legislations that would adequately and effectively regulate the prevailing commercial practices so as to achieve fair competition and adequate consumer protection in the market structures.² In 1994, the government endorsed the need for national legislation to create and safeguard market structures and encourage behaviour which would prevent anti-competitive practices, to ensure that markets operated efficiently and protected the welfare and interests of the consumer.³ This culminated into the enactment of the now repealed Competition and Fair Trading Act Cap 417 which established the Zambia Competition Commission (ZCC), now called the Competition and Consumer Protection Commission (CCPC), largely as a consequence of conditions set on Zambia by the International Monetary Fund (IMF) and the World Bank (WB).⁴ In 2010, the government in addressing modern and prevailing commercial practices passed a new Act, the Competition and Consumer Protection Act to repeal and replace the Competition and Fair Trading Act of 1994. It is therefore the aim of

¹<http://en.wikipedia.org/wiki/Competition>; and http://en.wikipedia.org/wiki/Consumer_Protection; visited on 21st December, 2010

² F. Mutati, National Assembly Deliberations on the Competition and Consumer Protection Bill, (27th July, 2010). Page 1

³ M. Bwembya, Competition Law in Zambia: The Relevance and Adequacy of Such Laws in Consumer Protection in Zambia; Obligatory Essay, 2010. Page 1

⁴ UNCTAD, 'Competition Policy, Trade and Development in the Common Market for Eastern and Southern Africa: Series on Issues in Competition Law and Policy,' Geneva; UNCTAD, 1999.

this paper to evaluate the effectiveness of the new Act in promoting and enforcing fair competition, consumer protection and economic prosperity in Zambia.

1.2. Problem Statement

Various attempts to review the law relating to promoting and regulating fair competition and consumer protection have been made in order to respond to social and economic demands prevailing in the country.⁵ This is because competitive and fair trade as well as consumer protection are among the main stay of economic prosperity and are therefore the panacea to the Zambia's economic, social as well as political doldrums. Gandoo⁶ in her dissertation indicates that issues of fair competition and consumer protection are a serious matter in the economic, social and political setup of a country. Unfair and anti-competitive trade practices and dissatisfaction, or exploitation of consumers may cause grievances among traders and consumers which may lead to instability in the economic, social and political set up of the country.⁷ Furthermore, inadequate and ineffective consumer protection measures would adversely affect the safety and welfare of consumers. Therefore, adequate and effective measures should be put in place to promote and regulate fair competition and consumer protection alongside the growing economy and industrialization in the country.

After radical economic reforms that the Zambian Government initiated in the early 1990s, business and commercial practices have been left to the private sector. This kind of economic setup has the effect of resulting in numerous unfair and anti-competitive trade practices as well as consumers exploitation,⁸ as the aim of many private businesses is to maximize profit. Furthermore, markets have continued to be flooded with cheap and poor quality goods some of which are defective or do not work as expected.⁹ The Commission is of the view that incidences of the traders selling defective goods to consumers will continue unless government puts in place effective measures to curb the imposition of counterfeit and substandard goods into the country.¹⁰ It has been further observed that consumers are mostly

⁵ Zambia Competition Commission; Annual Report, 2004. Page 6 & 7

⁶ H. M. Gandoo, Consumer Protection Law in Zambia; Obligatory Essay, 1983/84. Page 1

⁷ H. M. Gandoo, Consumer Protection Law in Zambia. Page 1

⁸ M. Bwembya, Competition Law in Zambia: The Relevance and Adequacy of Such Laws in Consumer Protection in Zambia; Obligatory Essay, 2010. Page 3 & 19

⁹ I. Mulozi, 'Disclaimer: Supply of Defective Products,' Post Newspaper, (13th Sept, 2010). Page 18

¹⁰ Zambia Competition Commission; Annual Report, 2007. Page 17

on a weaker bargaining side with experienced or trained traders and therefore may not get fair dealings.¹¹

Additionally, after liberalisation of the economy, there has been a decline in formal employment sector implying an increase in informal business arrangements.¹² The research therefore also aims at examining whether the new Act has addressed commercial practices and consumer welfare both in the informal and formal sectors of the economy.

The Competition and Fair Trading Act was enacted in 1994. Over the years, a number of developments have taken place in the area of competition and consumer protection. Therefore, it is necessary to determine whether the new Act has adequately addressed the prevailing economic conditions of the country's modern economy.

1.3. Objectives of the Research

The ultimate objective of this research is to evaluate the effectiveness of the Competition and Consumer Protection Act in the promotion and enforcement of fair competition, consumer protection and on economic growth in Zambia. It aims at examining whether the new Act has adequately and effectively addressed all modern and prevailing social and economic demands of the country. It further attempts to analyse salient provisions within the Act that are devoted to widening the application, and increasing innovations to the Act. In particular, among others, it attempts to analyse the implication of enshrining a comprehensive statutory protection of consumer rights and the effect of monopolizing the enforcement mechanism to the Commission through the tribunal and allowing the appeals to the High Court. It further tries to forecast the potential challenges, if any, which the Commission is likely to face in achieving its objectives and functions under the new Act. It also investigates the mischief that the law makers sought to address by modifying and widening the scope of application of the Act, the attempt that will be achieved by making a comparative study of the newly enacted Competition and Consumer Protection Act with repealed Competition and Fair Trading Act.

1.4. Rationale and Justification of the Research

The transition of the Zambian economy in the early 1990s from a national control economy to a free market economy has left business and commercial practices to be operated by the

¹¹ H. M. Gando, Consumer Protection Law in Zambia; Obligatory Essay, 1983/84. Page 1

¹² S. K. Mwenechanya, Legal Empowerment of the Poor: Empowering Informal Businesses in Zambia; An Issues Paper Prepared for the UNDP- Commission on Legal Empowerment of the Poor, 2007. Page 4

private sector. This kind of economic structure has the effect of resulting in various unfair and anti-competitive trade practices as well as consumers exploitation, which need serious attention by putting in place adequate and effective statutory regulations. This essay therefore, aims at analyzing the effectiveness of the Competition and Consumer Protection Act in addressing modern and prevailing market forces and consumer interests in the Zambian economy.

Besides, due to the shrinking of the formal sector after liberalization, there has been growing masses of the informal business arrangements. This has raised the question as to whether fair competition and consumer welfare shall be promoted and protected under such commercial arrangement; whether the Competition and Consumer Protection Act has fully addressed commercial practices and consumer welfare under both the formal and informal sectors in Zambia.

The advent of the modern commercial demands has sparked the need for the legislation that will adequately and effectively address its prevailing demands. This has raised the question at the enactment of the Competition and Consumer Protection Act as to whether it has fully addressed these social and economic demands of the country and whether the Act will effectively help attain economic prosperity.

1.5. Specific Research Questions

- i. Is the promotion and enforcement of fair competition and consumer protection in Zambia through the Competition and Consumer Protection Act a reality or a mere fallacy?
- ii. What is the extent to which fair competition and consumer rights going to be realized under the Competition and Consumer Protection Act?
- iii. To what extent does the Competition and Consumer Protection Act respond to prevailing socio-economic set up and demands of the country?
- iv. What mischief do the law makers intend to address in modifying and including comprehensive consumer rights in the Competition and Consumer Protection Act?
- v. What innovations, if any, have been made in the Competition and Consumer Protection Act?
- vi. To what extent will the Competition and Consumer Protection Act contribute to the promotion of economic prosperity in Zambia?

1.6. Research Methodology

This study was based on both primary and secondary information. The primary information included interviews with the Competition and Consumer Protection Commissioners, Consumer Protection Activists and business Personnel where necessary. Questionnaires were used sparingly, and only where it was absolutely essential.

Secondary sources included Statutes, Judicial decisions, textbooks, journal articles, news paper articles, student's dissertations, internet sources, research at the National Assembly library, and the Commission's (annual) reports.

1.8. Conclusion

This chapter has shown that there is need by the legislation to promote and enforce fair competition and consumer welfare in the economy in order to achieve economic prosperity and enhance fair distribution of safe goods and services in the country. It has unveiled that lack of fair competition and adequate consumer protection has a negative effect on the social and economic stability of the country. This assumption has therefore prompted this research which aims at analysing the effectiveness of the Competition and Consumer Protection Act in promoting fair competition, consumer protection and economic growth in the prevailing Zambian economy. This analysis however cannot be undertaken without investigating the history of competition and consumer protection laws in Zambia. Thus, the next chapter outlines the historical background of competition and consumer protection laws which today have been adopted by the Zambian government.

CHAPTER 2

2.0. BACKGROUND OF THE CONCEPTS OF COMPETITION AND CONSUMER PROTECTION LAWS

2.1. Introduction

This chapter gives the definitions and historical development of the concept of competition and consumer protection laws in Zambia. It further outlines various scholarly definitions of a 'consumer' advanced from different legal perspectives, and expounds comprehensively what are referred to as 'consumer rights', the benchmark of the concept of consumer protection which have currently been enshrined broadly in most consumer protection statutes, including the Competition and Consumer Protection Act.¹³

2.2. The Concept of Competition Law

Competition law, also referred to as anti-trust law in the United States, is the law that principally addresses anti-competitive business and trade practices in the market economy.¹⁴

To understand the legal rules governing the modern competition law focus must be made at two great sources of law: a) common law evolved by the court and b) statutory law as interpreted by them. It is further argued that the economic conditions that have evolved over time are also believed to have given birth to contemporary laws governing modern market competition.¹⁵ Throughout competition law there has been steady enlarging prohibition of two general classes of commercial related practices. The first group has come to be known as monopolies (dominant positions) and restraint of trade. The second group includes those practices which the law calls unfair methods of competition.¹⁶

2.3. Brief Historical Development of Modern Competition Law

The history of competition law traces back to attempts made by governments to regulate competitive markets for goods and services, leading up to the modern competition or antitrust

¹³Act no. 24 of 2010

¹⁴ M. D. Taylor, *International Competition Law: A New Dimension for the WTO?* (Cambridge: Cambridge University Press, 2006). Page 1

¹⁵ F. D. Jones, 'Historical Development of the Law of Business Competition.' (Yale Law Journal. Vol. 36, 1926). Page 905

¹⁶ F. D. Jones, 'Historical Development of the Law of Business Competition.' Page 905

laws around the world today. The earliest records traces back to the efforts of Roman legislators to control price fluctuations, monopolies and other unfair trade practices.¹⁷

In England, legislation to regulate monopolies and restrictive practices was introduced before the Norman Conquest when concern for fair prices led to attempt to regulate the market.¹⁸ The inception of the industrial revolution in England led to the introduction of the industrial monopoly licence, similar to that of modern patent. At that time the court established, in the landmark case of **Darcy v Allin**¹⁹ that the grant of sole trading rights was void on the grounds that monopolies led to the undesirable consequences of price increase, quality decrease and the tendency to reduce the smaller groups to idleness and beggary.

The next stage in the development of competition law was the development of English law of restraint of trade. A restraint of trade is simply some kind of agreed provision that is designed to restrain another's trade competition. For example, in **Nordenfelt v. Maxim, Nordenfelt Gun Co.**²⁰ a Swedish arms inventor promised on sale of his business to an American gun maker that he would not make guns or ammunition anywhere in the world, and would not compete with the 1st defendant in any way. The court found this kind of an agreement to be a restraint of trade and therefore prohibited. The law of restraint of trade prohibited agreements that were against public policy, unless the reasonableness of such an agreement could be shown.²¹

Modern competition law begins with the United States legislation of the Sherman Act of 1890 and the Clayton Act of 1914.²² These laws, in part, codified past American and English common law of restraints of trade. The Sherman Act was supplemented by the Clayton Act of 1914 that was passed to respond to its inadequacies.²³ The Sherman Act was enacted to respond to the problem of large American corporations using trusts to conceal the nature of their business arrangements. These business arrangements involved anti-competitive practices that the big monopolies engaged in under the auspices of the trusts. The growth of vast industrial trusts and combinations threatened the free market structure in the United

¹⁷ R. Wilberforce, e tal. *The Law of Restrictive Practices and Monopolies*. (London: Sweet and Maxwell, 1966). Page 22

¹⁸ R. Wilberforce, e tal. *The Law of Restrictive Practices and Monopolies*. Page 18

¹⁹ [1802] 11 Co. Rep. 84b

²⁰ [1894] AC 535

²¹ R. Wilberforce, e tal. *The Law of Restrictive Practices and Monopolies*. (London: Sweet and Maxwell, 1966). Page 28

²² <http://en.wikipedia.org/wiki/Competition>; visited on 21st December, 2010

²³ <http://en.wikipedia.org/wiki/Competition>; visited on 21st December, 2010

States and consequently led to demands for legislation to curb the increasing concentration of economic power which had the evil of restraining competition resulting in higher prices, restriction on production and other market control detrimental to the public interest.²⁴ The Sherman Act, sometimes referred to as “a charter of economic freedom” prohibited all contracts, combinations or conspiracy in the restraint of the interstate or foreign trade or commerce of the United States and the monopolization or attempt or conspiracy to monopolise any part of such trade or commerce.²⁵ The violation of the Act subjected the offender to equity proceedings or criminal prosecution or both.²⁶

The Clayton Act of 1914 supplemented the Sherman Act by declaring illegal specific categories of restrictive and monopolistic practices which included price discrimination, exclusive dealing and tying contracts, acquisitions of competing companies and interlocking directorates. All such practices were deemed to be unlawful if their effect could be to substantially lessen competition or tend to create a monopoly.²⁷ After World War II, competition law has gone through phases of renewed attention and legislative updates around the world.

In 1957 the European community signed the treaty of the European Economic Community. As a competitive environment was seen as an important element of the creation of a common market created by this treaty that was to be free from restraint on trade, competition law was made part of the European Union laws.²⁸ The treaty in Article 81(1) contained a provision meant to prevent the restriction or distortion of competition within the common market.

In Zambia, the introduction of competition law was by way of the enactment of the Competition and Fair Trading Act²⁹ of 1994 following the liberalisation of the economy and

²⁴ J. W. Burns, *A Study of the Antitrust Laws; Their Administration, Interpretation, and Effect.* (New York: Central Book Company, Inc, 1958). Page 6

²⁵ Sections 1 and 2 of the Sherman Act of 1890

²⁶ J. W. Burns, *A Study of the Antitrust Laws; Their Administration, Interpretation, and Effect.* (New York: Central Book Company, Inc, 1958). Page 6

²⁷ A. D. Neale, *The Antitrust Laws of The USA; A Study of Competition Enforced By Law,* (Cambridge: Cambridge University Press, 1966). Page 3

²⁸ M. Bwembya, *Competition Law in Zambia: The Relevance and Adequacy of Such Laws in Consumer Protection in Zambia; Obligatory Essay,* 2010. Page 18

²⁹ Chapter 417 of the laws of Zambia, now repealed by the Competition and Consumer Protection Act no. 24 of 2010

largely as a consequence of conditions set on Zambia by the International Monetary Fund and the World Bank.³⁰

Prior to the liberalisation of the economy, the state was the sole controller of all the commercial activities of the economy. It played all the roles of being a policy formulator, market player and regulator of other economic activities such as price control. The shift of the economy into a free market economy saw the delinkage of the state from being an active market participant to being merely as a facilitator and regulator of the country's business activities. The state remained as a regulator of the economy through various regulatory agencies such as the defunct Zambia Privatization Agency and the Zambia Investment Centre, the Securities and Exchange Commission, the Energy Regulation Board, the Communications Authority, now called the Zambia Information and Communication Technology Authority, the National Water Supply and Sanitation Council and the Zambia Competition Commission, now called the Competition and Consumer Protection Commission.

The Competition and Fair Trading Act of 1994 was aimed at regulating the inevitable evil of accumulation of economic power by businesses through acquisitions, merger, price fixing, collusion and other unfair business practices, which would compromise competition in the country and on an assumption that free trade and competition provides high quality and a wide range of choices of goods and reduced prices.³¹ The mischief that the Act was meant to address, which basically was unfair and anti-competitive practices and consumer exploitation in the market, was reflected in the Act's objectives which included the following: to encourage competition in the economy by prohibiting anti-competitive trade practices; to regulate monopolies and concentrations of economic power; to strengthen the efficiency of production and distribution of goods and services and to ensure that the interests and welfare of the consumers were adequately protected.³²

2.4. The Concept of Consumer Protection

The concept of consumer protection is basically seen to have emanated from attempts by governments to protect consumers from various unfair practices exercised by traders in a free

³⁰UNCTAD, 'Competition Policy, Trade and Development in the Common Market for Eastern and Southern Africa: Series on Issues in Competition Law and Policy,' Geneva. UNCTAD, 1999.

³¹M. Bwembya, *Competition Law in Zambia: The Relevance and Adequacy of Such Laws in Consumer Protection in Zambia*; Obligatory Essay, 2010. Page 1 9

³²The preamble to the repealed Competition and Fair Trading Act, Cap 417.

market economy.³³ Governments have noticed the evil that is involved in the private sector if they lay their hands off the countries business operations. It has been recognised that an open market has the effect of resulting in numerous unfair and consumers exploitation practices,³⁴ as the aim of many private businesses is to maximize profit. Hence, governments have embarked on enacting consumer protection laws that are devoted to regulating this type of market economy.

"Consumer protection laws" or "consumer laws" are considered as an area of law that regulates private law relationships between individual consumers and the businesses that sell those goods and services.³⁵ They are a form of government regulation which aims at protecting the interests of consumers in the market economy. Consumer protection also includes efforts made by government, nonprofit organizations, businesses, and individuals to create, protect, and enforce the rights of consumers who buy products or services.³⁶

Consumer protection covers a wide range of topics, including but not necessarily limited to product liability, privacy rights, unfair business practices, fraud, misrepresentation, and other consumer-business interactions. Consumer protection laws in the United States include federal and state statutes governing sales and credit practices involving consumer goods.³⁷ Such statutes prohibit and regulate deceptive or unconscionable advertising and sales practices, product quality, credit financing and reporting, debt collection, leases, and other aspects of consumer transactions.³⁸

2.5. Brief History of Consumer Protection Law in Zambia

Consumer protection law in Zambia became recognised when the colonial government started providing some form of protection to consumers through the enactment of the statutes such as the Pharmacy and Poisons Ordinance, 1941 and the Weight and Measures Ordinance, 1960.³⁹ Before that time there was no need for consumer protection because there was still very little business arrangements and trade in Northern Rhodesia. After independence, Parliament continued to afford protection through the enactment of the Food and Drugs Act⁴⁰

³³ http://en.wikipedia.org/wiki/Consumer_Protection; visited on 21st December, 2010

³⁴ M. Bwembya, Competition Law in Zambia: The Relevance and Adequacy of Such Laws in Consumer Protection in Zambia; Obligatory Essay, 2010. Page 3 & 19

³⁵ http://en.wikipedia.org/wiki/Consumer_Protection; visited on 21st December, 2010

³⁶ http://en.wikipedia.org/wiki/Consumer_Protection; visited on 21st December, 2010

³⁷ http://en.wikipedia.org/wiki/Consumer_Protection; visited on 21st December, 2010

³⁸ http://en.wikipedia.org/wiki/Consumer_Protection; visited on 21st December, 2010

³⁹ M. Sinyinda, Consumer Protection in Zambia; Obligatory Essay, 1995. Page 5

⁴⁰ Cap 303

and the Zambia Bureau of Standards Act.⁴¹ In 1977, there was also a development in consumer protection when the Consumer Protection Association of Zambia was formed as a voluntary organisation aimed at protecting consumers.⁴²

The modern economic era has not only produced advanced business economy, but through the emerging science and technology, has produced complex goods and services. The government has recognised the need for protecting consumers from hazardous, counterfeit and substandard goods and services in the modern economy and thus initiated the enactment of consolidated statutory consumer protection law.

The first principal and consolidated consumer protection law was introduced through the Competition and Fair Trading Act of 1994 which was in 2010 repealed by the Competition and Consumer Protection Act.⁴³ Consumers in Zambia have also been protected in other statutory laws which include the Public Health Act⁴⁴; the Energy Regulation Act⁴⁵; the Zambia Information and Communication Technology Act⁴⁶; the Water Supply and Sanitation Act⁴⁷; the Standards Act⁴⁸ and the Weight and Measures Act.⁴⁹

2.6. Definition of a Consumer

Generally speaking, there is no single definition of a consumer. Various definitions have been advanced each depending on the field of law in which it is defined. However, despite the multiplicity of these definitions, the substance in each definition is primarily the same.

The Oxford Companion to Law defines a consumer as someone who buys, obtains and uses all kinds of goods and services.⁵⁰ He is also defined as someone who consumes goods and services at the end of the production line⁵¹ or someone who acquires goods or services for direct use or ownership rather than for re-sale or use in production and manufacturing. The case of **Donoghue v Stevenson**⁵² also gives an illustration of what may constitute a consumer. In this case, the appellant and a friend bought and consumed ginger beer in an

⁴¹ Act no. 22 of 1982, which in 1994 was repealed by the Standards Act, Cap 416

⁴² M. Sinyinda, *Consumer Protection in Zambia; Obligatory Essay*, 1995. Page 6

⁴³ Act no. 24 of 2010

⁴⁴ Cap 295

⁴⁵ Cap 436

⁴⁶ Act no. 15 of 2009

⁴⁷ Cap 28

⁴⁸ Cap 416

⁴⁹ Cap 403

⁵⁰ D. Walker, *Oxford Companion to Law*. (Oxford: Clarendon Press, 1980). Page 281

⁵¹ D. Walker, *Oxford Companion to Law*. Page 281

⁵² [1932] AC 562

opaque glass bottle. The appellant consumed some of the ginger beer and the remainder revealed a decomposed snail. The appellant suffered shock and gastroenteritis as a result of the impure ginger beer. The House of Lords held that the appellant was a consumer who was owed a duty of care by the manufacturer.

The holding in the case of **Donoghue v Stevenson** established that, a consumer does not only include the actual person who purchases the goods but every other person who consumes or uses the good.⁵³

Section 2 of the repealed Competition and Fair Trading Act defined a consumer as “any person

a) who purchases or offers to purchase goods otherwise than for the purpose of re-sale but does not include a person who purchases any goods for the purpose of using them in the production and manufacture of any other goods or articles for sale;

b) to whom a service is rendered.”

The Competition and Consumer Protection Act on the other hand defines a consumer as follows: “*Consumer means*

- a) For the purposes of part III, any person who purchases or offers to purchase goods or services supplied by an enterprise in the course of business, and includes a business person who uses the product or service supplied as an input to its own business, a wholesaler, a retailer and a final consumer; and
- b) For the purposes of other parts of the Act, other than part III, any person who purchases or offers to purchase goods or services otherwise than for the purpose of re-sale, but does not include a person who purchases goods or services for the purpose of using the goods or services in the production and manufacture of any other goods for sale, or the provision of another service for remuneration.”

The above statutory definitions clearly indicate that the Competition and Consumer Protection Act has broadened the definition of a consumer to include business persons who use the product or service supplied as an input to its own business, wholesalers and retailers; a provision that broadens the scope of consumer welfare to be protected in the modern market. This definition however applies to the category of consumers that fall under part III of the Act.

2.7. Concept of Consumer Rights

The concept of consumer protection law is a part of, and originated from the concept of consumerism.⁵⁴ The word "Consumerism" means the protection of the rights and interests of

⁵³ M. Sinyinda, Consumer Protection in Zambia; Obligatory Essay, 1995. Page 9

consumers and ensuring right standards for the goods and services for which one makes a payment.⁵⁵ Thus, the concept of consumer protection is principally based on the idea of consumer rights. Consumer rights help in reflecting on the privileges that the consumer ought to enjoy in the market industry. In this regard, it can be argued that the effectiveness of any consumer protection instrument would be determined by the extent to which it reflects consumer rights in its provisions and its practicality in enforcing such rights.

The United Nations Guidelines for Consumer Rights provide a broad framework for the governments to develop and maintain strong consumer policies.⁵⁶ According to these guidelines, each government should set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures.⁵⁷ These guidelines are intended to meet standards that provide protection of consumers from hazards to their health and safety, the promotion and protection of the economic interests of consumers, access of consumers to enable them make informed choices according to individual wishes and needs, consumer education, including education on the environmental, social and economic impacts of consumer choice and availability of effective consumer redress. Furthermore, consumers should be allowed to form consumer and other relevant groups or organisations and opportunity of such organisations to present their views in decision-making processes affecting them and the promotion of sustainable consumption patterns.⁵⁸

Consumer international, a world-wide consumer movement came up with eight basic consumer rights which persuasively a Zambian consumer can enjoy.⁵⁹ The first is the right to satisfaction of basic needs- to have access to basic, essential goods and services. The second is the right to safety- to be protected against products, production processes and services which are hazardous to health or life. It calls for the government to ensure that they adopt or encourage the adoption of appropriate measures including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records

⁵⁴ [http://en.wikipedia.org/wiki/Consumer Protection](http://en.wikipedia.org/wiki/Consumer_Protection); Consumer Protection Law Term Paper, Research Paper and College Essay: WritingServicesCompany.com; visited on 21st December, 2010

⁵⁵ [http://en.wikipedia.org/wiki/Consumer Protection](http://en.wikipedia.org/wiki/Consumer_Protection); Consumer Protection Law Term Paper, Research Paper and College Essay. visited on 21st December, 2010

⁵⁶ E. Phiri, Consumer Right; Post Newspaper Article, 2nd August, 2010. Page 18

⁵⁷ E. Phiri, Consumer Right. Page 18

⁵⁸ E. Phiri, Consumer Right. Page 18

⁵⁹ E. Phiri, Consumer Right. Page 18

to ensure that products are safe for either intended or normally foreseeable use. The third is the right to be informed- to be given the facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labeling. The fourth is the right to choose- to be able to select from a range of products and services offered at competitive prices with an assurance of satisfactory quality. The fifth is the right to be heard- to have consumer interests represented in the decision making and execution of policies, and the development of products and services. The sixth is the right to redress- to receive a fair settlement of just claims, including compensation for misrepresentation, shoddy goods and unsatisfactory services. The seventh is the right to consumer education- to acquire knowledge and skills needed to make informed choices about goods and services. The eighth is the right to a healthy environment – to live and work in an environment which is non-threatening to the well-being of present and future generations.⁶⁰

Zambia is a signatory to the United Nations Protocol on Consumer Rights and therefore is expected to ensure that Zambian consumers enjoy these rights. In this regard, the wording of the Competition and Consumer Protection Act seems to have embodied most of these rights in its provisions under part VII of the Act which deals with consumer protection.

2.8. Conclusion

This chapter has revealed that the history of competition law demonstrates attempts by governments to regulate competitive markets for goods and services. The growing industries and combinations have threatened the free market structures and consequently led to demands for legislation to curb the increasing evil associated with unregulated free market economies such as restraining competition, restriction on production and other market controls detrimental to the public interest.⁶¹ It is further revealed that the attempt to promote and regulate fair competition in the economy is also based on the desire by the government to achieve economic prosperity in the country.⁶²

Another important factor in the history of competition law has been attempts by governments to protect consumers from various unfair practices exercised by traders in a free market economy. Governments have recognised the effect of the increasing anti-competitive

⁶⁰ E. Phiri, Consumer Right; Post Newspaper Article, 2nd August, 2010. Page 18

⁶¹ J. W. Burns, A Study of the Antitrust Laws; Their Administration, Interpretation, and Effect. (New York: Central Book Company, Inc, 1958). Page 6

⁶² As will be shown in the next two chapters with regards to Sections 19(1) and 31 of the Competition and Consumer Protection Act no. 24 of 2010

practices such as concentration of economic power, vertical and horizontal agreements, among others, that they have the evil of restraining competition resulting in higher prices, reduced product quality, restriction on production and other unfair practices detrimental to consumers.⁶³ It has been further observed that consumers are mostly on a weaker bargaining side against experienced or trained traders and therefore may not get fair dealings;⁶⁴ thus, need protection. The chapter has further shown that the whole concept of consumer protection lies on the idea of consumer rights, recommended by the United Nations Guidelines for Consumer Rights that should make the backbone of every member state's consumer protection Act.

⁶³ R. Wilberforce, e tal. *The Law of Restrictive Practices and Monopolies*. (London: Sweet and Maxwell, 1966). Page 22

⁶⁴ H. M. Gandoo, *Consumer Protection Law in Zambia; Obligatory Essay, 1983/84*. Page 1

CHAPTER 3

3.0 A COMPERATIVE STUDY OF THE COMPETITION AND CONSUMER PROTECTION ACT WITH THE REPEALED COMPETITION AND FAIR TRADING ACT

3.1 Introduction

This chapter is a comparative study of the Competition and Consumer Protection Act with the repealed Competition and Fair Trading Act of 1994. The study focuses on identifying and analysing salient innovations that have been made in the Competition and Consumer Protection Act which will, in the next chapter, help determine the effectiveness of the Competition and Consumer Protection Act in promoting and regulating fair competition, consumer protection and economic prosperity in the modern Zambian economy.

3.2 An Overview on the Competition and Consumer Protection Act

The general structure of the Competition and Consumer Protection Act shows that the Act was enacted to respond to a number of developments that have taken place in the Zambian economy. This intent was made clear by the Minister of Commerce, Trade and Industry, Mr. Mutati in his speech during parliamentary deliberations when he stated as follows:

“Madam speaker, the law governing competition and consumer protection issues in Zambia, the Competition and Fair Trading Act, Cap. 417, was enacted in 1994. Over the years, a number of developments have taken place in the area of competition and consumer protection which makes it necessary for us to revise the law...”⁶⁵

In an attempt to address various developments that have taken place in the economy, Parliament enacted the Competition and Consumer Protection Act of 2010 in a more comprehensive manner than the repealed Competition and Fair Trading Act.⁶⁶ This is in order to cover a wide range of consumer welfare and trade practices that have developed over the years. The Competition and Consumer Protection Act takes into account best practices, new aspects of competition and consumer protection and is aligned to the challenges of regional integration. Furthermore, the provisions in the Act are more generic and not specific. This allows for the Competition and Consumer Protection Commission (CCPC) to capture future and unanticipated anti-competitive practices.⁶⁷

⁶⁵ F. Mutati. National Assembly Deliberations on the Competition and Consumer Protection Bill, (27th July, 2010). Page 2

⁶⁶ C. Sampa, The Competition and Consumer Protection Act no. 24 of 2010; Post Newspaper Article, 8th November, 2010. Page 18

⁶⁷ F. Mutati. National Assembly Deliberations on the Competition and Consumer Protection Bill, (27th July, 2010). Page 2

For the businesses, it may appear as the most punitive piece of legislation the country has ever had and has raised concerns that the fines prescribed in the Act may lead to folding of some businesses.⁶⁸ For the Government, it is a piece of legislation that was long overdue to protect the Zambian public and consumers and encourage fair play among competitors in our free market economy. To the Competition Commission, it is a law which would facilitate and enhance effective enforcement while promoting due process so that the Commission does not abuse its authority.⁶⁹

3.3 Innovations in the Competition and Consumer Protection Act: A Comparative Study.

3.3.1 Elaborate Interpretations

As regards interpretation, the Competition and Consumer Protection Act has more elaborate definitions as compared to the repealed Act such that the Commission expects fewer gray areas. In 13 years of the Commission's existence, various stakeholders have taken the Commission to task on how it defines various terms in the Act such as a merger, a takeover or an acquisition or why a consumer was defined as an end user and not the intermediary person.⁷⁰ Further, as the Commission undertook advocacy programmes, there were many terminologies used in the enforcement of competition such as horizontal restraints, vertical restraints, concerted practice, and other such terms not defined in the legislation which made it difficult for the Commission to effectively communicate with its audience. These issues have, however, been addressed in the Competition and Consumer Protection Act.⁷¹

Furthermore, the repealed Act did not define the range of business practices to which it applied. Neither did it, in section 2 define what constituted a 'business.' Nevertheless, the wording of the Act seemed to indicate that it applied to all kinds of economic practices in Zambia. The Competition and Consumer Protection Act does not also define what constitutes a 'business' but it does define the range of business practices to which it applies. It states in section 3 (1) that it applies to all economic activities within, including those having an effect in Zambia. It is therefore indisputable that the Competition and Consumer Protection Act applies to all forms of business activities practiced in both the informal and

⁶⁸ C. Sampa, The Competition and Consumer Protection Act no. 24 of 2010; Post Newspaper Article, 8th November, 2010. Page 18

⁶⁹ C. Sampa, The Competition and Consumer Protection Act no. 24 of 2010. Page 18

⁷⁰ C. Sampa, The Competition and Consumer Protection Act no. 24 of 2010. Page 18

⁷¹ C. Sampa, The Competition and Consumer Protection Act no. 24 of 2010. Page 18

formal sectors including those having an effect within Zambia, except in instances set out in Section 3 (3) of the Act. The Competition and Consumer Protection Act has further broadened the definition of a consumer to include business persons who use the product or service supplied as an input to its own business, wholesalers and retailers.⁷² All in all, the Competition and Consumer Protection Act comprehensively defines most terminologies used in various sections; the innovation which has been observed to work to the advantage of the market players for this will help them understand the Act better.

3.3.2 Expanded Functions of the Commission

Another significant innovation in the Competition and Consumer Protection Act is that it has expanded the functions of the Commission to include such other factors that seem to upgrade the promotion of competition and consumer protection to international standards. The Competition and Consumer Protection Act now provides for the Commission to carry out liaise and exchange of information, knowledge and expertise with competition and consumer protection authorities in other countries.⁷³ Furthermore, the Act provides for rendering of advice by the Commission to the government on laws affecting competition and consumer protection,⁷⁴ and to the Minister on agreements relevant to competition and consumer protection and on any matter relating to competition and consumer protection,⁷⁵ the provisions that were not in the repealed Act.

3.3.3 Appointment of the Inspector

The Competition and Consumer Protection Act under Section 7, further provides for the appointment of the inspectors for purposes of ensuring compliance with the Act. The function of the inspector is primarily to search any premises occupied by an enterprise or any other place required to be investigated; to search any person if there is reasonable belief that he is in possession of any document or article bearing on the investigation, and to examine any documents found on the premises that has a bearing on the investigation. The inspector is empowered to be furnished with information about any document or article, take extracts or copies of any book or document found on the premises; use any computer on the premises;

⁷² Section 2 (1)(b)

⁷³ Section 5 (i) of the Competition and Consumer Protection Act no. 24 of 2010.

⁷⁴ Section 5 (g)

⁷⁵ Section 5 (j)

attach or remove from the premises for the purpose of examination and safeguarding, any document that appears to have a bearing on the investigation.⁷⁶

Section 7 of the Competition and Consumer Protection Act strengthens the powers of the Commission to carry out investigations, which of course is comprehensive enough to help reveal all forms of modern business arrangements. The repealed Act, despite empowering the commission to carry out investigations did not provide for the appointment of the inspectors.

3.3.4 Restrictive Business and Anti-Competitive Trade Practices.

Under part III, the Competition and Consumer Protection Act gives comprehensive provisions of market practices that are prohibited in competition law. Compared with the repealed Act, it gives more comprehensive definitions and nature of trade practices that are anti-competitive. These innovations in the Act contribute to the effectiveness of the Act in the sense that they would help market players understand clearly trade practices that are prohibited in the market. The provisions under the repealed Act were not detailed enough to explain the kind and nature of business practices that were prohibited. Therefore, it probably gave market players very shallow understanding on the trade practices that were unfair and anti-competitive and which should have been reported to the Commission.

i. Horizontal and Vertical Agreements

The repealed Act mentioned and prohibited horizontal agreements under section 7 (2) (f) but did not define what constituted such practices and neither did it give details on the nature of such practices. The Competition and Consumer protection Act on the other hand defines what constitutes horizontal agreements and further gives details on the nature of such arrangements.⁷⁷ It is therefore unquestionable that under the repealed Act, market players could not exactly know what kind of practices constituted horizontal agreements and this could give an explanation as to why very low rates of complaints relating to horizontal agreements were received by the commission.⁷⁸ The reason given by the Commission as to why there were few complaints of horizontal restraints is that such activities are not easily identifiable as they are kept secret from the public.⁷⁹ This analysis and research on the other hand revealed that the reason for this is partly because some market players were probably

⁷⁶ Section 5 (j)

⁷⁷ Sections 9, 12, 13 and 14

⁷⁸ Zambia Competition Commission; Annual Report, 2006. Page 14

⁷⁹ Zambia Competition Commission; Annual Report, 2006. Page 14

not conversant with legal language in the Act to know exactly what constituted some of the prohibited trade practices. Now that the Competition and Consumer Protection Act defines what constitutes horizontal agreements, it will help most market players to identify and report such practices to the Commission.

Furthermore, the Competition and Consumer Protection Act defines and gives more detailed provisions for vertical agreements.⁸⁰

Under section 14, the Competition and Consumer Protection Act further provides for the share of supply threshold for authorization of restrictive agreements. It states that where the parties to a horizontal agreement, together supply or acquire 30% or more of goods or services of any description in a market in Zambia; or a vertical agreement, individually supply or acquire, at either one of the two levels of market that are linked by the agreement, 50% or more of the goods and services of any description in a relevant market in Zambia; the parties shall apply to the commission for authorization of the agreement in a prescribed manner and form. The commission shall carryout an investigation, before granting an application, to determine whether the agreement is prohibited under the Act.⁸¹

Exemptions

The Competition and Consumer Protection Act further gives provisions for the application for exemptions by enterprises that wish to be exempted from prohibited practices prescribed under section 12. The Section basically prohibits agreements between enterprises that have the effect of preventing, distorting, or restricting competition or substantially lessening competition in a market and other forms of agreements not exempted under the Act.

The Commission in granting an application shall ensure that such practice contributes to, or is likely to contribute to, or result in maintaining or promoting exports from Zambia; promoting or maintaining the efficient production, distribution or provision of goods and services; promoting technical or economic progress in the production, distribution or provision of goods and services; maintaining lower prices, higher quality or greater choices of goods and services for customers; promoting the competitiveness of micro and small business enterprises in Zambia; or obtaining a benefit for the public which outweighs or would outweigh the lessening in competition that would result or is likely to result from the

⁸⁰ Section 10

⁸¹ Section 14

agreement.⁸² An exemption may be given subject to such conditions and for such period as the Commission considers appropriate. If the Commission declines to grant an exemption, it shall inform and accordingly give the reasons.

The Competition and Consumer Protection Act further provides under section 20 that the Commission may amend an exemption if some other enterprises have succeeded to the interest in the enterprise exempted, by substituting the name of the enterprises with the name of the successor; if the name of the enterprises has changed, by substituting the name so changed; or if there has been a change in market circumstances since the exemption was granted.

Furthermore, the Act provides for the revocation of an exemption if the exemption was granted on materially incorrect or misleading information; if there has been a material change of circumstances since the exemption was granted; or if the enterprise exempted fails to comply with any condition upon which the exemption was granted.⁸³

The Competition and Consumer Protection Act also provides for exemptions in respect of professional rules. It provides that a professional association whose rules contain a restriction that has the effect of lessening competition in a market may apply to the Commission for an exemption of a prohibition under section 12.

ii. **Monopolies/Dominant Positions**

Similarly, on prohibition of unauthorised monopolies or dominant positions, the Competition and Consumer Protection Act gives expanded and comprehensive provisions giving details on the nature and kind of monopolies or dominant positions that are prohibited in the current market. For instance, it states that a dominant position will exist when 30% or more of the goods and services are supplied or acquired by one enterprise and when 60% or more of goods and services are supplied or acquired by not more than 3 enterprises.⁸⁴

Under Section 16, the Act gives provision, for prohibition of ‘abuse of dominant position’. It further gives details on the nature of practices in the market that amount to ‘abuse of a dominant position.’ It provides:

“....abuse of dominant position includes-

⁸² Sections 18 and 19

⁸³ Section 21

⁸⁴ Section 15

- a) imposing directly or indirectly, unfair purchase or selling prices or other unfair trading conditions;
- b) limiting or restricting production, market outlets or market access, investment, technical development or technological progress in a manner that affect competition;
- c) applying dissimilar conditions to equivalent transactions with other trading parties;
- d) making the conditions of contracts subject to acceptance by other parties of supplementary conditions which by their nature or according to commercial usage have no connection with the subject matter of the contracts;
- e) denying any person access to an essential facility;
- f) charging an excessive price to the detriment of consumers; or
- g) selling goods below their marginal or variable cost....”

On monopolies, the Competition and Fair Trading Act gave the following provisions:-

- “11. (1) The Commission shall keep the structure of production of goods and services in Zambia under review to determine where concentration of economic power exist whose detrimental impact on the economy outweigh the efficiency advantages, if any.
- (2) For the purposes of subsection (1) but without limiting the generality thereof, the Commission shall consider whether-
- (a) a person controls a chain of distributing units the value of whose sales accounts for a significant portion of the relevant market;
 - (b) a person, by virtue of controlling two or more physically distinct enterprises which manufacture substantially similar goods, supplies a significant portion of the domestic market at unreasonably low prices; or
 - (c) a person has substantial shares in a manufacturing enterprise and whether he simultaneously has a beneficial interest, however small, of outstanding shares in one or two wholesale or retail enterprises which distribute products of the manufacturing enterprise.”

Therefore, from the above provisions, it is clear that the Competition and Consumer Protection Act gives an expanded and detailed version of practices that are prohibited as amounting to abuse of dominant position in the current market. This is in an attempt to cover various practices that have developed in the modern economy over the years. Detailed provisions will help market players to easily identify and therefore report enterprises that will practice arrangements that amount to abuse of a dominant position in the market.

3.3.5 Comprehensive Provisions on Mergers

On the control of mergers, unlike the repealed Act, the Competition and Consumer Protection Act gives more comprehensive provisions.⁸⁵ It defines what constitutes a merger and gives ways in which a merger can be achieved and when a person is said to be controlling a merger.⁸⁶ It also provides under Section 26 for thresholds for authorization of proposed mergers. This means that not all mergers will require authorization and threshold will be put in place to provide guidance. Therefore, parties to a merger transaction that meets particular threshold shall apply to the commission for the authorization and upon receipt of the application, the commission shall reject or approve an application.

⁸⁵ Part IV of the Competition and Consumer Protection Act

⁸⁶ Sections 24 (2) and (3)

The Competition and Consumer Protection Act further provides for the review of the mergers,⁸⁷ a provision which was not provided for in the repealed Act. It provides that a merger shall be reviewed if it likely to create a position of dominance in a localized product or geographical market; when it is likely to contribute to the creation of a dominant position through a series of acquisitions which are not individually subject to prior notification; if the merger may substantially prevent or lessen competition; if it is concluded outside Zambia and has consequences in Zambia that require further considerations and if as a result of that merger, there is or is likely to be competition and public interest factors which require to be considered.⁸⁸ This development in the Competition and Consumer protection Act will help market players and the Commission to easily recognise mergers that should be authorised to operate in the Zambian economy; those that will not adversely affect competition in the market.

The Act further provides that firms may apply for negative clearance, a feature that was not in the repealed Act.⁸⁹ Negative clearance means certification by the Commission that an otherwise anti-competitive conduct can be allowed under the conditions specified by the Commission. However, where this is granted, it does not commit the Commission if new information becomes available showing that such clearance is not appropriate.

The Competition and Consumer Protection Act further provides for the factors that the Commission should take into consideration in considering the proposed merger, such as 'market assessments' to determine the likely effects of the proposed merger in the relevant market, on trade and the economy in general; whether the merger is likely to substantially lessen competition in a market.⁹⁰ The Commission shall also make 'competition assessments.'⁹¹ These assessments shall take into account factors that affect competition in the market, the levels of concentration of players in the relevant market; the creation or strengthening of barriers to the market entry; the level of import in the relevant market; the availability of substitute products; the likelihood of the merger removing from the market an existing effective and vigorous competitor; the extent to which there is countervailing buyer or supplier power in the relevant market; the dynamic characteristics of the market including

⁸⁷ Section 27

⁸⁸ Section 27

⁸⁹ Section 28

⁹⁰ Section 29

⁹¹ Section 30 (2)

growth, innovations, pricing and other inherent market characteristics and the risk that a position of dominance may be abused.

The Commission will also take into consideration ‘public interest assessments’.⁹² Public interest assessments require the Commission to determine the extent to which the proposed merger will result in a benefit to the public; the extent to which it would or is likely to promote technical or economic progress and transfer skills and the extent to which it shall maintain or promote exports from Zambia or employment. Other factors include, how it would save the failing firm; the extent to which it may enhance competitiveness or protect the interests of micro enterprises; the extent to which it may affect the ability of national industries to compete in international markets; and other socio-economic factors as may be appropriate.

3.3.6 Provisions on Market Inquiries

The repealed Act did not have provisions for market inquiries though in practice the Commission conducted market interventions.⁹³ The Competition and Consumer Protection Act has empowered the Commission to carry out market inquiries under part V of the Act. The Commission shall initiate market inquiries where there is reasonable cause to believe that a restriction or distortion of competition is prevailing in a sector.⁹⁴ The purpose of market inquiries is to determine whether any feature or combination of features in a sector or a type of agreement therein has an effect of preventing, restricting, or distorting competition. In doing this the Commission will be required to identify features of the market that prevent restrict or distort competition. It will also for the purpose of market inquiry invite interested parties to submit information to it and may exercise, in relation to any enterprises, its powers of investigation under the Act.⁹⁵

As the Commission cannot foresee the range of problems amenable to the market inquiry, it cannot therefore predict the solutions which it may emerge. The legal test that will be applied in this instance is the ‘adverse effect on competition test’. That is, whether or not there is an adverse effect on competition in the relevant market.⁹⁶

⁹² Section 31

⁹³ Zambia Competition Commission; Annual Report, 2006. Page 7

⁹⁴ Section 39

⁹⁵ Section 40

⁹⁶ V. Musonda, Market Enquiries in the Competition and Consumer Protection Act; Post Newspaper Article, 30th August, 2010. Page 18

Under market inquiries, the Commission will be required to assess the nature and extent of rivalry between firms operating in the markets; consider the market structure; conduct of suppliers and acquirers and conduct of customers. Also under considerations for market enquiries would be how open a particular market is to entry, expansion and exit, the countervailing or bargaining power of the buyers and suppliers, and the effect in a market where a firm is involved in at least three lines of operation, namely manufacturing, distribution and retailing.⁹⁷

At the conclusion of a market enquiry, the Commission will be required, under Section 41 of the Act to publish its findings in the local media, unlike in preceding Act where this was not provided for.

3.3.7 Provisions on Sector Regulated Activities

Based on practical activities, it is clear that there is an overlap between the activities of the Competition and Consumer Protection Commission (previously known as the Zambia Competition Commission) and those of the Sector Regulators which in some instances both address competition and consumer protection. Examples of such sectors include: the Energy Regulation Board, created under the Energy Regulation Act⁹⁸; the Zambia Information and Communication Technology Authority, created under the Zambia Information and Communication Technology Authority Act⁹⁹; the Bank of Zambia, created under the Bank of Zambia Act¹⁰⁰; the Securities and Exchange Commission, created under the Securities Act,¹⁰¹ among others. Both the Competition and Consumer Protection Commission and the Sector Regulators are supposed to implement the same responsibility of ensuring that markets work effectively and that consumers are protected.¹⁰²

The Competition and Consumer Protection Act has recognised the importance of this coordination and has therefore included provisions, under part VI of the Act for purposes of ensuring coordination and harmonization in matters relating to competition and consumer protection in various sectors of the economy. Furthermore, part VI of the Act requires the economic activities of the enterprises where regulators exercise statutory powers, to be

⁹⁷ V. Musonda, Market Enquiries in the Competition and Consumer Protection Act. Page 18

⁹⁸ Chapter 436 of the Laws of Zambia

⁹⁹ Act no. 15 of 2009

¹⁰⁰ Chapter 360 of the Laws of Zambia

¹⁰¹ Chapter 354 of the Laws of Zambia

¹⁰² Y. Musonda, Market Enquiries in the Competition and Consumer Protection Act; Post Newspaper Article, 30th August, 2010. Page 18

subject to part III of the Competition and Consumer Protection Act. Sector Regulators will therefore play a key role in competition and consumer protection enforcement through institutional linkages and coordination with the new Commission. In regulating these economic activities, the Commission will be required to enter into Memorandum of Understanding with various sector regulators such as Patents and Companies registration Agency, the Zambia Development Agency, the National Water Supply and Sanitation Council, the Pharmaceutical Regulatory Authority, the Zambia Bureau of Standards, the Zambia Weights and Measures, the Pensions and Insurance Authority, the Zambia Revenue Authority, among others, for the purpose of harmonizing and coordinating matters pertaining to competition and consumer welfare in the markets.¹⁰³

For instance, the coordination between the Competition and Consumer Protection Commission and the Zambia Information and Communication Technology Authority is found in the following provisions. Section 8 of the Zambia Information and Communication Technology (ZICTA) Act,¹⁰⁴ provides;-

“The Authority shall consult the Zambia Competition Commission on any matter relating to competition in the sector.”

On aspects of competition and consumer protection, Section 6 of the ZICTA Act provides;-

“(1) The Authority shall regulate the provision of electronic communication services and products and monitor the performance of the sector, including the levels of investment and the availability, quality, cost and standards of the electronic communication services.

(2) Without limiting the generality of subsection (1), the Authority shall-

(f) promote the interests of consumers, purchasers and other users of information and electronic communications services, including, in particular, persons with disabilities and the aged in respect of the accessibility, quality and variety of the services and equipment;

(g) promote competition among persons engaged in commercial activities relating to, or in connection with, the provision of information and communication technology and efficiency and economy on the part of persons so engaged;.....”

3.3.8 Comprehensive Provisions on Consumer Protection

Under consumer protection, the Competition and Consumer Protection Act gives more comprehensive provisions which are intended to respond to the prevailing consumer exploitation levels, created by modern commercial standards. To begin with, the Act has

¹⁰³ Y. Musonda, Market Enquiries in the Competition and Consumer Protection Act; Post Newspaper Article, 30th August, 2010. Page 18

¹⁰⁴ Act No. 15 of 2009

broadened the meaning of a consumer, which implies that the range of welfare and interest to be protected in the market has been expanded. The Act now grants protection to business persons who use the product or service supplied as an input to its own business, such as wholesalers and retailers, the category which the repealed Act did not offer protection. It also defines what constitutes unfair practices, false or misleading representation, prohibited disclaimers and such other practices.

The Competition and Consumer Protection Act, additionally, under Section 45 renders a trading practice unfair if it places pressure on consumers by use of harassments or coercion, capable of distorting the purchasing decisions of consumers. The Act further, under section 48, provides for prohibition of use of disclaimers and supply of defective or unsuitable goods and services by the traders. This therefore means that any trader who displays a disclaimer purporting to refuse any liability or any right a consumer has under the Act or any other written law commits an offence and liable to a fine prescribed under the Act. It also entails that a consumer is entitled to seek redress and compensation in an event of injury caused to him by the defectiveness or dissatisfaction with goods and services supplied by the enterprises.¹⁰⁵

Furthermore, the Competition and Consumer Protection Act in an attempt to adequately protect the consumer provides under Section 50 for precise product labeling. It prohibits traders to sell product in Zambia unless they clearly indicate the product name, the ingredients used, the date of manufacture and expiry date, the manufacturer's name, the physical location of the manufacturer, the phone number and any other contact details. The Act further prohibits the sale of any goods to consumers unless the goods conform to the mandatory consumer product information standard for the class of goods, set by the Zambia Bureau of Standards or other relevant competent body.¹⁰⁶

Another significant innovation is Section 51; it provides that a person or enterprise shall not charge a consumer more than the price displayed on a good or service, a provision which was not in the repealed Act. Display of prices will help in ensuring that there is no cheating of true prices by the shopkeepers, for they shall not charge a consumer more than a displayed price.

¹⁰⁵V. Banda, Product Labelling, Price Display; Post Newspaper Article, 30th August, 2010. Page 18

¹⁰⁶ Section 50

Furthermore, in an attempt to balance the bargaining positions between an enterprise and the consumer, the Act renders contract terms unfair and prohibited if they cause significant imbalance in the parties rights and obligations, detrimental to the consumer.¹⁰⁷ The repealed Act provided for unfair trading but does not exactly capture an aspect of unfair contract terms. The Competition and Consumer Protection Act recognises unfair contract terms in consumer protection and renders them not binding on the consumer.¹⁰⁸ In Section 54, the Act provides for a mechanism for redress for consumers aggrieved with unfair contract terms or trading practices, defective goods, false and misleading representations, disclaimers and other practices as prescribed.

3.3.9 Investigations and Determination by the Commission

The Competition and Consumer Protection Act provides for a more detailed explanation of the manner in which investigations will be carried out. For example, under Section 57 (2), it states that the Commission shall give notice of investigation to the person who, or an enterprise which is the subject of the investigation. However, the Commission can defer the giving of notice where it has reasonable belief that the giving of notice may materially prejudice its investigation.¹⁰⁹ It can also make the decision not to investigate if a request to investigate is frivolous or vexatious.¹¹⁰

Under Section 58, the Competition and Consumer Protection Act empowers the Commission to give directions to an enterprise to cease being part of an agreement where such agreement distorts, prevents or restricts competition. It may require the enterprises to terminate or modify the agreement within such period as may be specified by the Commission. Where the Commission determines that an agreement entered into by the enterprises has the object or effect of preventing or restricting competition or constitutes exploitation of the monopoly situation, the Commission may give directions to remedy, mitigate or prevent adverse effect on competition or any detrimental effects on the consumer.

Furthermore, the Competition and Consumer Protection Act introduced, under Section 62 interim measures to be made by the Commission in circumstances where in the course of an investigation, it has reasonable grounds to suspect that an enterprises is a party to a prohibited agreement which has a risk of causing serious or irreparable injury to a particular person.

¹⁰⁷ Section 53 (1)4

¹⁰⁸ Section 53 (2)

¹⁰⁹ Section 55 (6)

¹¹⁰ Section 56 (1)

Such interim measures should be necessary to prevent a particular person, protect the public interest, or prevent pre-emptive action being taken by the enterprises under investigation. The Act also provides that a foreign competition authority may request the Commission to investigate and make an appropriate determination, where it has reasonable grounds to believe that anti-competitive practices in Zambia are damaging competition in the country of the authority.¹¹¹

3.3.10 The Competition and Consumer Protection Tribunal

Under the repealed Competition and Fair Trading Act of 1994, the parties aggrieved with the decision of the Commission sought redress in the courts of law. This proved to be expensive and time consuming. In an effort to address these encumbrances, the Competition and Consumer Protection Act established the Competition and Consumer Protection Tribunal under Section 67. This will be less formal, inexpensive and an expeditious way of dealing with appeals made to it under the Act. The functions of the tribunal will be to hear any appeal made to it and to perform any other function assigned to it under the Act or any other law. This means that if a person or enterprise is not happy with the decision of the Commission, they can then appeal to the Tribunal which will review the Commission's decision. This will ensure that the Commission is kept on its toes in ensuring that its decision making process is made in a transparent and accountable manner.

With regards to mergers exercised in contravention of the Act, the Tribunal may order a party to a merger to sell any shares, interests or assets it acquired pursuant to the merger or declare void any provision of an agreement to which the merger was subject.¹¹² In addition, it may also direct any firm, or any other person to sell shares, interests or assets of the firm if the prohibited practice cannot adequately be remedied in another provision of the Act. A person aggrieved by the decision of the Tribunal may seek redress from the High Court within 30 days from the date of the decision.

3.3.11 Other innovations

Another important innovation in the Competition and Consumer Protection Act is the power vested in the Commission to impose sanctions on enterprises that violate the Act. There had been much criticism about the Commission not having any 'teeth to bite' or powers to impose

¹¹¹ Section 65 (1)

¹¹² Section 73

finer on the offenders of the competition and consumer protection law. Now the provisions under the Competition and Consumer Protection Act will adequately address this concern through revised stiff fines and/or imprisonment.¹¹³

The Competition and Consumer Protection Act has also introduced what is called leniency programmes. Leniency programmes may be granted where an enterprise voluntarily discloses the existence of an agreement that is prohibited under the Act, and cooperates with the Commission in the investigation of the practices. The Act provides that such an enterprise may not be subjected to all or part of a fine that could otherwise be imposed on it under the Act.¹¹⁴

The Act further provides for the issuance of guidelines by the Commission for better carrying out of the provisions of the Act. It provides that the Commission shall publish such guidelines in a daily newspaper and such guidelines shall be binding on all persons regulated under this Act.¹¹⁵ Furthermore, the Commission shall disseminate information and advice concerning the operation of the Act¹¹⁶

3.4 Conclusion

This chapter has discussed salient provisions in the Competition and Consumer Protection Act that are intended to address prevailing economic demands. It has shown that Parliament enacted a modified and more comprehensive Act than the repealed Competition and Fair Trading Act of 1994 in order to cover a wide range of consumer welfare and trade practices that have developed over the years. The Competition and Consumer Protection Act takes into account best practices, new aspects of competition and consumer protection and is aligned to the challenges of regional integration. Furthermore, it appears more punitive than the repealed Act and protects the Zambian public and consumers and encourages fair play among competitors in our free market economy. It is a law which would facilitate and enhance effective enforcement of fair competition and consumer protection in Zambia. The next chapter evaluates the effectiveness of the Act, taking into consideration whether it will effectively protect consumer rights and respond to the prevailing economic demands in the economy.

¹¹³ Section 82

¹¹⁴ Section 79

¹¹⁵ Section 84

¹¹⁶ Section 85

CHAPTER 4

4.0. EFFECTIVENESS OF THE COMPETITION AND CONSUMER PROTECTION ACT IN REGULATING AND PROMOTING FAIR COMPETITION, CONSUMER PROTECTION AND ECONOMIC GROWTH IN ZAMBIA

4.1. Introduction

This chapter gives an evaluation of the effectiveness of the Competition and Consumer Protection Act in promoting and regulating fair competition, consumer protection and economic growth in the modern Zambian economy. It analyses modern economic practices and levels of consumer exploitation and respectively determines the effectiveness of the provisions in the Act that are intended to regulate such practices. This will be achieved by determining the extent to which the Competition and Consumer Protection Act has responded to the prevailing economic demands and consumer exploitation levels in the modern economy. The chapter further analyses the extent to which the Competition and Consumer Protection Act is designed to contribute to economic growth in Zambia. This will be achieved by outlining and analysing salient provisions in the Act that are devoted to promoting economic growth in the economy.

4.2. Effectiveness of the Act in Promoting and Regulating Fair Competition in Zambia

The Competition and Consumer Protection Act was enacted in a detailed and comprehensive manner.¹¹⁷ It gives comprehensive descriptions and definitions of legal terminologies used in its provisions. This innovation will enable market players, especially those in the informal sector, to identify and understand easily various trade practices that are prohibited under the Act and that should be reported to the Commission. Some of the provisions in the repealed Act were vague and outdated with definitions that were not exhaustive, thus it left out detailed and key elements of competition law.¹¹⁸ The direct effect of this was difficulties in identifying and enforcing all aspects of trade practices in competition law.¹¹⁹ Therefore, the inclusion of innovations discussed in chapter 3 will improve the effectiveness of the Act in enforcing all aspects of prevailing anti-competitive practices and consumer welfare in the modern Zambian economy. The following gives an evaluation of how the innovations in the

¹¹⁷ C. Sampa, The Competition and Consumer Protection Act no. 24 of 2010; Post Newspaper Article, 8th November, 2010. Page 18

¹¹⁸ F. Mutati. National Assembly Deliberations on the Competition and Consumer Protection Bill, (27th July, 2010). Page 2

¹¹⁹ F. Mutati. National Assembly Deliberations on the Competition and Consumer Protection Bill. Page 2

Competition and Consumer Protection Act have raised its effectiveness in promoting fair competition in the modern economy.

i. Liaise and Exchange of Information, Knowledge and Expertise with Foreign Competition and Consumer Protection Authorities

Modern International trade and FDI involve exchange and transfer of various commodities, equipments and services, among other things.¹²⁰ It is therefore inevitable that the competition and consumer protection laws in other countries are similar to those enforced in the Zambian economy, reason being that countries trade in similar goods and services. Thus, Zambian lawmakers can learn from foreign countries on the effective means of regulating competition and protecting consumers in Zambia, in comparison with competition and consumer protection laws in foreign countries.

The Competition and Consumer Protection Act has recognised this aspect and has therefore included to the functions of the Commission the liaising and exchange of information, knowledge and expertise with competition and consumer protection authorities in other countries.¹²¹ This provision will help in ensuring that the competition and consumer protection laws in Zambia are kept at the same standard with those in other countries and at international level.

ii. Advising the Government and Minister on Laws Affecting Competition and Consumer Protection

The provision on rendering of advice by the Commission to the government on laws affecting competition and consumer protection;¹²² and to the Minister on agreements relevant to competition and consumer protection and on any matters relating to competition and consumer protection,¹²³ shall help the government as the lawmaker to discover the areas within the competition and consumer protection law that shall require attention or revision alongside the changing economic demands in the country. It shall also help the Minister to formulate appropriate statutory instruments¹²⁴ effective for the regulation of competition and consumer protection in the prevailing economic demands.

¹²⁰ Zambia Competition Commission; Annual Report, 2004. Page 2

¹²¹ Section 5 (i) Competition and Consumer Protection Act no. 24 of 2010.

¹²² Section 5 (g)

¹²³ Section 5 (j)

¹²⁴ Section 87

iii. Thorough Market Inquiries and Investigations

The Zambian economy is becoming sophisticated, part of which has started to involve high levels of technology such that third party observers or market players may not be able to know whether or not a certain enterprise is practicing anti-competitive practices. In an attempt to address this mischief, the Competition and Consumer Protection Act has established the appointment of inspectors. The inspectors shall help in ensuring compliance with the Act, thereby improving the enforcement and effectiveness of the Act.

Furthermore, the Act has given comprehensive provisions on market inquiries to be conducted by the commission within the sector of the economy or a particular type of agreement occurring across various sectors. Market inquiries will help to a large extent in determining whether any feature or combination of features in a sector or a type of agreement therein has an effect of preventing, restricting, or distorting competition. In the same manner, the Act provides for investigations to be conducted by the Commission if it has reasonable grounds to believe that there is, or likely to be a contravention of any provision of the Act. This innovation in the Act will help the Commission to reveal and sanction all forms of anti-competitive practices that might have been concealed by dishonesty enterprises in the market.

iv. Comprehensive Provisions on Restrictive Business and Anti-Competitive Trade Practices

Comprehensive and detailed provisions on restrictive business and anti-competitive trade practices will help market players to easily identify, and hence report to the Commission practices that constitute prohibited horizontal or vertical agreements, thereby enhancing the enforcement and effectiveness of the Act. In order not to limit the list of practices that are prohibited under these agreements, Section 12 gives an open ended prohibition of practices that may substantially lessening competition in the market. This allows the Act to capture all future and unanticipated agreements in the economy that may have the effect of substantially lessening competition in the market.

On monopolies, the Act recognises that economic monopolization is the opposite of a free market or competitive market. The object of the Competition and Consumer Protection Act is to promote a competitive market and a non restrictive economy. For this reason, the Act prohibits the establishment of abusive monopolies or dominant positions which limit access to markets or restrain competition or which are likely to have an adverse effect on trade in the

market economy.¹²⁵ It further describes practices that include abuse of a dominant position in the economy. Description of these practices will help market players to easily identify and therefore report such practices to the Commission.

v. Detailed Provisions on Mergers

The Competition and Consumer Protection Act recognises the effects of authorising unassessed mergers into the economy. It recognises that although mergers may promote the attainment of efficient production and distribution of goods and services in the economy, their down side may change the industrial structure and achieve self centered gains.¹²⁶ For this reason, the Act gives comprehensive provisions on practices that constitute mergers,¹²⁷ and further provides for the authorization of mergers only after substantive market, competition and public interest assessments have been conducted by the Commission.¹²⁸ Merger control mechanisms will ensure that optimal industrial structures exist that are likely to support the attainment of efficient production and distribution of goods in the economy.

Presently, the Zambian economy is facing the so-called regional rationalization by the Multinational Corporation (MNC).¹²⁹ Regional market strategies have seen regionally dominant firms in Southern Africa, being Lafarge in cement and Clinker; South African Breweries in clear beer, opaque beer and carbonated soft drinks.¹³⁰ The nature of these industries is that they have effectively foreclosed prospective and vigorous entrants. Where such entrants dare to enter a market, their sustainable market existence are slim.¹³¹

In this regard, the Competition and Consumer Protection Act is designed to monitor the development of local markets to ensure that before authorising such MNC's into the Zambian economy substantive market, competition and public interest assessments are carried out so that the gains of liberalisation are not usurped by a few MNCs at the expense of the Zambian's national economic development and growth.

Furthermore, the Act recognises that some mergers may, after being authorised to operate in Zambia, eventually create dominance in a localised product; create a dominant position through a series of acquisitions; prevent or lessen competition; be concluded outside Zambia

¹²⁵ Section 16

¹²⁶ Zambia Competition Commission; Annual Report, 2004, at xiv

¹²⁷ Section 24

¹²⁸ Sections 29, 30 and 31

¹²⁹ Zambia Competition Commission; Annual Report, 2004, at xiv

¹³⁰ Zambia Competition Commission; Annual Report, 2004, at xiv

¹³¹ Zambia Competition Commission; Annual Report, 2004, at xiv

and has consequences in Zambia that require further consideration or where there is competition and public interest factors which require to be considered. For this reason, the Act provides for the review of already operating mergers.¹³² In an event that the merger does not comply with any conditions of an approval of mergers or submitted incorrect or misleading information in support of a merger, the Commission may revoke the operation of such merger in Zambia.¹³³

vi. Coordination of the Commission with Sector Regulators

The Competition and Consumer Protection Act recognises that the range of competition law is broad. It covers all economic activities within and having an effect within Zambia.¹³⁴ For this reason, the Act provides for coordination with sector regulators that deal with competition in the economy, such as the Zambia Information and Communication Technology Authority, the Bank of Zambia, the Energy Regulation Board and the Securities and Exchange Commission, among others.¹³⁵ This provision will help in ensuring that fair competition is regulated in all sectors of the economy, including hidden practices that the Commission may not be able to capture.

For instance, the Zambia Information and Communication Authority Act provides under Section 8 for the ZICTA to consult the Competition and Consumer Protection Commission (CCPC) on any matter relating to competition in the sector. On aspects of competition and consumer protection, Section 6 of the ZICTA Act provides for the Authority to regulate the provision of electronic communication services and products. It also provides for the monitoring of the performance of the sector, including the levels of investment and the availability, quality, cost and standards of the electronic communication services. Under Section 6(f), the Act provides for the promotion of the interests of consumers, purchasers and other users of information and electronic communications services. Furthermore, in section 6 (g) it provides for the promotion of competition among persons engaged in commercial activities relating to, or in connection with, the provision of information and communication technology and efficiency and economy on the part of persons so engaged. Thus, the coordination between ZICTA and the Competition and Consumer Protection Commission

¹³² Section 25 and 27

¹³³ Section 35

¹³⁴ Section 3

¹³⁵ Y. Musonda, 'Market Enquiries in the Competition and Consumer Protection Act'; Post Newspaper Article, 2010. Page 18

will to a large extent contribute in promoting fair competition and consumer protection in the telecommunication sector in Zambia.

Similarly, the Energy Regulation Act¹³⁶ provides under Section 6(d) that the Board shall in conjunction with the Zambia Competition Commission (now called the Competition and Consumer Protection Commission) 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.

vii Leniency Programmes

The introduction of leniency programmes in the new Act will contribute significantly to its effectiveness, in that such programmes provide incentives to market players to voluntarily disclose concealed agreements that are prohibited under the Act. This will contribute to the increased number of reports to the Commission on enterprises practicing prohibited agreements in the market, thereby raising the enforcement and effectiveness of the Act.

viii Dissemination of Information on Matters Relating to Competition in the Act

One of the major problems that inhibit the enforceability of law is ignorance of the law and lack of access to information or sensitization of the law. The Competition and Consumer Protection Act recognises this aspect in the economy. Thus, it provides for the issuance of guidelines by the Commission for better carrying out of the provisions of the Act. It provides that the Commission shall publish such guidelines in a daily newspaper and such guidelines shall be binding on all persons regulated under this Act.¹³⁷ Furthermore, the Commission shall disseminate information and advice concerning the operation of the Act.¹³⁸ Dissemination of information and guidelines will help in sensitizing consumers on their rights *and on anti-competitive practices in the market.*

vii. Imposition of Stiff Penalties/ Sanctions

One of the ways in which compliance with the law is ensured is the imposition of sanction on persons who do not comply with the provisions of the Act. The Competition and Consumer Protection Act vests power in the Commission to impose sanctions on enterprises that violate

¹³⁶ Cap 436 of the laws of Zambia

¹³⁷ Section 84

¹³⁸ Section 85

the Act. There had been much criticism about the Commission not having any ‘teeth to bite’ or powers to impose fines on the offenders of the competition and consumer protection law. The Competition and Consumer Protection Act is now one of the most punitive pieces of legislation the country has ever had.¹³⁹

4.3. Effectiveness in Promoting and Regulating Consumer Protection

The concept of consumer protection is linked to the idea of consumer rights.¹⁴⁰ Therefore, it suffices to argue that the effectiveness of any consumer protection Act would be determined by the extent to which it reflects consumer rights in its provisions and the levels of enforcement of such rights in practice. The following evaluates the extent to which the Competition and Consumer Protection Act reflects consumer rights in its provisions.

An Overview: Expanded Realization of Consumer Rights

The structure of the Competition and Consumer protection Act seems to have embodied most of the consumer rights under part VII of the Act. To begin with the Act has broadened the meaning of a consumer, which implies that the range of welfare and interest to be protected in the market has been expanded. The Act will now protect business persons who use the product or service supplied as an input to its own business, such as wholesalers and retailers, the category which the repealed Act did not offer protection. Furthermore, comprehensive definitions in the Act will ensure that Zambian consumers fully understand their rights embodied in the Act and therefore report all violations of consumer rights to the Commission. The following indicates how the Competition and Consumer Protection Act prohibits practices in the market that violate consumer rights.

i. Prohibition of harassments or coercion on consumers

The Competition and Consumer Protection Act under Section 45 now renders a trading practice unfair if it places pressure on consumers by use of harassments or coercion, capable of distorting the purchasing decisions of consumers. This provision will enable consumers whose purchasing decisions have been influenced by the coercion, to have recourse to redress

¹³⁹ C. Sampa, The Competition and Consumer Protection Act no. 24 of 2010; Post Newspaper Article, 8th November, 2010. Page 18

¹⁴⁰ http://en.wikipedia.org/wiki/Consumer_Protection; Consumer Protection Law Term Paper, Research Paper and College Essay: WritingServicesCompany.com; visited on 21st December, 2010

in such situations, provided there is proof of coercion. Consumers who feel that their purchasing decision was affected negatively due to pressure, harassment or coercion are empowered under the Act to report such cases to the Commission. Use of force on the consumer using either harassment or coercion will be a breach of the Act and therefore punishable.

This provision gives effect to consumer's 'right to choose'- to be able to select freely from a range of products and services, offered at competitive prices with an assurance of satisfactory quality.¹⁴¹ The Competition and Consumer Protection Act recognises this right under section 45 and thus prohibits placing of pressure on consumers by use of harassments or coercion, capable of distorting the purchasing decisions of consumers.

ii. Prohibition of False or Misleading Representation

Another innovation in the Competition and Consumer Protection Act is with regard to ensuring that the trading practice does not compromise the standard of honesty and good faith thereby ensuring that enterprises do not get away with deceit. Deceit in this case means the observance of honorable intent in business relations and the avoidance of any attempts to deceive consumers during the performance of contractual obligations.¹⁴² In this regard, the Competition and Consumer Protection Act prohibits, under section 47 a person or enterprises form falsely representing: that any goods are of a particular standard, quality, value, composition, style or model; any services are of a particular standard, quality, value or grade; that any goods are new; that a particular person has agreed to acquire goods or services; or that any goods or services have sponsorship, approval, affiliation, performance characteristics, accessories, use or benefits that they do not have. The Act further prohibits making of false or misleading representation concerning: the price of any goods or services; the availability of facilities for the repair of any goods or of spare parts for goods; the place of origin of any goods; the need for any goods or services; or the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.¹⁴³

¹⁴¹ E. Phiri, 'Consumer Right'; Post Newspaper Article, 2nd August, 2010. Page 18

¹⁴² E. Phiri, 'Unfair trading Practice, the Competition and Consumer Protection Bill'; Post Newspaper Article, 6th September, 2010. Page 18

¹⁴³ Section 47 (b)

This provision is in line with the consumer's 'right to be informed.'¹⁴⁴ The right to be informed requires that a consumer be given facts needed to make an informed choice, and to be protected against dishonest or misleading advertising and labeling.¹⁴⁵ Thus, all enterprises will be required to comply with this provision failure of which will be sanctioned pursuant to Section 47 (a).

iii. Prohibition of Disclaimers

The Commission has noticed that one of the most notorious unfair trading practices in the modern economy is the display of disclaimers such as "*not return, not refund.*"¹⁴⁶ In using these disclaimers, traders exclude themselves from any liability just after the purchase of a particular good. The implication of such disclaimer is that even if the consumer discovers defects in a good, they are barred from returning it for exchange or refund. This is an unfair trading practice that is detrimental to the consumers. If consumers can not return or exchange defective products, then they will suffer the loss of their hard earned money.¹⁴⁷

The Competition and Consumer Protection Act recognises the use of disclaimers by many modern enterprises as a way of excluding their liability to the consumer. Thus, the Act prohibits the display of 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.¹⁴⁸

iv. Prohibition of Supply of Defective and Unsuitable Goods and Services

The Competition and Consumer Protection Act further prohibits the supply of defective and unsuitable goods and services. It prohibits the supply of goods that are not fit for the purpose for which they are normally used or the purpose that the consumer indicated to the person or the enterprises.¹⁴⁹ This provision in the Act gives effect to the realization of the 'rights to safety', which require that consumers be protected from products that are hazardous to health. It further requires that goods are safe for either the intended purpose or normally foreseeable use.¹⁵⁰

¹⁴⁴ E. Phiri, 'Unfair trading Practice, the Competition and Consumer Protection Bill'; Post Newspaper Article, 6th September, 2010. Page 18

¹⁴⁵ E. Phiri, 'Unfair trading Practice, the Competition and Consumer Protection Bill.' Page 18

¹⁴⁶ V. Bunda, "No Return, no Refund" Disclaimer: Post Newspaper Article, 28th February, 2011. Page 18

¹⁴⁷ V. Bunda, "No Return, no Refund." Page 18

¹⁴⁸ Section 48

¹⁴⁹ Section 49

¹⁵⁰ E. Phiri, 'Unfair trading Practice, the Competition and Consumer Protection Bill'; Post Newspaper Article, 6th September, 2010. Page 18

v. Provisions for Product Labeling

The Competition and Consumer Protection Act further recognises that modern markets are being clouded with a lot of pirated or counterfeit products, most of which are of substandard and have the effect of injuring the safety of consumers. In addressing this problem the Act provides for product labeling, which is intended to ensure that the products being sold are produced by the recognised manufacturers and are safe for consumption. The Act further prohibits the sale of any goods to consumers unless the goods conform to the mandatory consumer product information standard for the class of goods, set by the Zambia Bureau of Standards or other relevant competent body.¹⁵¹ This provision will ensure that goods and services produced and sold to consumers are of the standards and quality set by the Zambia Bureau of Standards or other relevant competent body. The provision also accords with the consumer 'right to be informed.' That is, to be given the facts needed to make informed choices and to be protected against dishonest or misleading labeling.¹⁵²

vi. Prohibition of Overcharging

Another mischief observed in the modern market is the exploitation of consumers through overcharging of true purchasing price. The Commission has noticed that there are some traders who charge their customers more than the true purchasing prices of a product or service.¹⁵³ The Competition and Consumer Protection Act has recognised this problem and therefore prohibits under Section 51 charging a consumer more than the price displayed on a good or service.

vii. Prohibition of Unfair Contract Terms

Furthermore, the Competition and Consumer Protection Act has recognised that the bargaining positions between an enterprise and the consumer are usually biased against consumers. It has been observed that consumers are mostly on a weaker bargaining side with experienced or trained traders and therefore do not get fair dealings. To this effect, the new Act prohibits contract terms if they cause significant imbalance in the parties' rights and obligations, detrimental to the consumer.¹⁵⁴ The Act further provides redress for consumers aggrieved with unfair contract terms or trading practices, defective goods and

¹⁵¹ Section 50

¹⁵² E. Phiri, 'Unfair trading Practice, the Competition and Consumer Protection Bill'; Post Newspaper Article, 6th September, 2010. Page 18

¹⁵³ V. Bunda, "No Return, no Refund" Disclaimer': Post Newspaper Article, 28th February, 2011. Page 18

¹⁵⁴ Section 53 (1)

representations.¹⁵⁵ According redress to the consumers, gives effect to consumers 'right to redress.'¹⁵⁶ That is, to receive a fair settlement of just claims, including compensation.

4.4. Effectiveness of the Competition and Consumer Protection Act in Promoting Economic Growth

The rationale behind promoting and regulating fair competition in the economy is to achieve economic development through an effective and competitive market. Adam Smith, the proponent of absolute economic liberalism and the founder of modern economics, canonized the theory that free competition was a fundamental assumption in any market economy and that effective competition brings about superior economic performance. Section 5 of the Zambia Development Agency Act¹⁵⁷ also captures this principle. It provides that:-

“5. (1) The functions of the Agency shall be to further the economic development of Zambia by promoting efficiency, investment and competitiveness in business and promoting exports from Zambia.”

Therefore, efficiency and competitiveness in the market can further economic development of the country. It is therefore on this theory that the promotion of fair competition by the Competition and Consumer Protection Act is based.

Economic growth of any country is evidenced by increase in total income, employment opportunities, decreased out-migration of population, value of production, increased diversification of industry, higher labor force participation rates, increased duration of employment and higher wage levels, among others. Economic growth is usually brought about by technological innovation and positive internal and external forces.¹⁵⁸

The uncompetitive economy had proved futile in Zambia in the Kaunda era. The lack of competitiveness as a result of Government restrictive entry policies in the sectors led to inefficiencies, gross mismanagement, wastage and inability to compete even at international level.¹⁵⁹ The Competition and Consumer Protection Act recognises the importance of promoting a competitive economy and consumer welfare as being among the fundamental

¹⁵⁵ Section 54

¹⁵⁶ E. Phiri, 'Unfair trading Practice, the Competition and Consumer Protection Bill'; Post Newspaper Article, 6th September, 2010. Page 18

¹⁵⁷ Act No. 11 of 2006

¹⁵⁸ www.businessdictionary.com; visited on 19th January, 2011

¹⁵⁹ Zambia Competition Commission; Annual Report, 2004. at xiii

ways of promoting economic prosperity in Zambia. For this reason, it has included a number of provisions that are intended to promote economy performances of the Zambian economy. It points out instances in which the Commission has to take into consideration economic progress of the country in authorising the operation of certain enterprises in the Zambian economy. Such provisions include the following.

Section 16 of the Act gives provisions that have a positive effect on the economic progress of the country. It prohibits enterprises to engage in any act or conduct, through abuse or acquisition of a dominant position of the market if it limits access to markets or restrains competition, or is likely to have an adverse effect on the economy in general. In subsection (b), it prohibits practices or conducts limiting or restricting production, market outlets or market access, investment, technical development or technological progress in the manner that affect competition.

Economic growth as defined above involves an increase in the value of production, increased diversification of industry, technological innovation and positive internal and external forces. It is therefore unquestionable that this provision is aimed at promoting economic growth in Zambia. It has the power of expanding the economic base of the country by ensuring that market players engage in practices that will leave room for other competitors to enter the market, promote technical development or technological progress, thereby allowing an expanding economic sphere in the country. It will ensure the elimination of all forms of unauthorised economic domination and promote the establishment of many other economic practices in the country. The ultimate effect of this provision will be the facilitation of industrialization, high quality and low price products in the country.

Furthermore, the Act provides for the granting of exemptions to agreements that, basically would contribute to the economic performance of the country.¹⁶⁰ It empowers the Commission to grant exemptions to those agreements that would contribute to maintaining or promoting efficient production and distribution of goods and services, or export from Zambia. Such agreements should also be capable of promoting technical or economic progress in the production, distribution or provision of goods and services and maintain lower prices, higher quality or greater choice of goods and services for consumers and promote competitiveness of micro and small business enterprises in Zambia. If the enterprises fails to

¹⁶⁰ Section 19

bring out or fails to comply with any condition upon which the exemption was granted, the Commission is empowered to revoke the exemption.¹⁶¹

A similar provision is given on factors that the Commission should take into consideration in authorizing the operation of mergers in the market. It stipulates that the Commission should conduct 'public interest assessment' in allowing a proposed merger. 'Public interest assessment' include determining the extent to which the proposed merger would promote technical or economic and the transfer of skills, or improve the production and distribution of goods and services, and the extent to which it would save the failing firm or improve the ability of the ability of national industries to compete in international markets. It also includes the extent to which it would enhance competitiveness, or advance or protect the micro and small businesses, and maintain or promote exports from, and employment in Zambia.

The Competition and Consumer Protection Act, further provides for the authorization of the proposed merger after considering 'market assessments', 'competition assessments' and 'public interest assessments' as prescribed under the Act. These provisions encourage the Commission to allow the operation of those mergers that have positive effect on the economic growth of the Zambian economy. Authorised mergers are means through which the economy can achieve greater efficiencies through the combination of resource and enterprises. It is increasingly common that investment in developing countries has been through privatization, mergers and acquisitions and not Greenfield investments.¹⁶² The future of Zambia's economic growth still remains in attracting foreign direct investments (FDI). It is believed that the economic strides made so far of creating a competitive market environment is a necessary move to attract FDI. With increasing trends of globalization, huge sums of money from Multinational Corporations (MNCs) are criss-crossing the world in search of attractive investment opportunities. It has been observed that the Zambian economy has benefited from this movement of capital mainly by way of mergers and acquisitions and or takeovers. In addition, the improved macro-economic environment and the free and competitive markets prevailing in the country have set a platform for more investment and improved confidence in the management of the Zambian economy.¹⁶³

¹⁶¹ Section 21

¹⁶² Zambia Competition Commission; Annual Report, 2004. at vi

¹⁶³ Zambia Competition Commission; Annual Report, 2004. at vi

However, in as much as it is recognised that mergers and acquisitions aim at ensuring optimal industrial structure exist capable of supporting the attainment of efficient production and distribution of goods and services in the economy, it has also been observed that, in extreme cases, mergers and acquisitions could adversely change the market structure to achieve self-centred gains at the expense of economic growth, development and consumer welfare. For this reason, the Act contains provisions for assessing, monitoring, controlling and analysing all mergers and acquisitions that occur in the Zambian economy.

4.5. Conclusion

This chapter shows that the Competition and Consumer protection Act has innovations that have, to a large extent addressed various prevailing economic demands and the levels of consumer exploitations in the country. In promoting and regulating fair competition in the modern economy, the Act gives expanded and detailed provisions on the nature of practices that are prohibited in the market. This will help market players easily identify practices in the market that are anti-competitive thereby reporting them to the Commission. On protection of consumer welfare, the Act also gives expanded and comprehensive provisions and effective realization of consumer rights in its provisions. It now includes some of the consumer rights that were not protected under the repealed Act.

Further, the Act contains various provisions that are devoted to promoting economic growth in the country. It therefore suffices to arrive to a conclusion that the Competition and Consumer Protection Act, in addition to promoting fair competition and consumer protection, is intended to contribute to the promotion of economic development in Zambia. Furthermore, the Competition and Consumer protection Act is more punitive than the repealed Act. This will help in ensuring compliance with the Act. The establishment of the tribunal will also contribute to the effectiveness of the Act in that parties who are aggrieved by the decisions of the Commission will have a privilege to appeal to the tribunal which will hear and determine appeals expeditiously and cost effectively. This will also ensure that the Commission does not abuse its authority. Furthermore, leniency programmes shall also contribute significantly to the enforcement of the Act, through the increased reports to the Commission.

CHAPTER 5

5.0 GENERAL CONCLUSION AND RECOMMENDATIONS

5.1 General Conclusion

This essay has shown that there has always been need by the government to promote and enforce fair competition and consumer welfare in the economy in order to achieve economic prosperity and enhance fair distribution of safe goods and services in the country. It has unveiled that lack of fair competition and adequate consumer protection has a negative effect on the social and economic stability of the country.

In an attempt by the government to address the social and economic needs, Parliament enacted the Competition and Consumer Protection Act containing various innovative provisions that are intended to address prevailing social and economic demands in the country. The essay has shown that Parliament enacted a modified and more comprehensive Act than the repealed Competition and Fair Trading Act of 1994 in order to cover and address a wide range of consumer welfare and trade practices that have developed over the years in the economy. The Competition and Consumer Protection Act takes into account best practices, new aspects of competition and consumer protection and is aligned to the challenges of regional integration. Furthermore, the Act appears more punitive than the repealed Act and protects the Zambian public and consumers and encourages fair play among competitors in our free market economy. The Competition and Consumer Protection Act has now empowered the Commission to impose stiffer fines and penalties on enterprises that fail to comply with the Act. This will help in ensuring compliance with the Act. Furthermore, the inclusion of leniency programmes in the Act will contribute to increased rate of reports to the Commission on enterprises practicing prohibited agreements thereby improving the enforcement and effectiveness of the Act. In the same way, market inquiries, investigations and the appointment of the inspectors by the Commission for purposes of ensuring compliance with the Act will significantly contribute to the enforcement of the Act thereby, improving its effectiveness. It is therefore the submission of this essay that the Competition and Consumer Protection Act has got the capacity to facilitate and enhance effective enforcement of fair competition and consumer protection in the modern Zambian economy.

The effectiveness of the Competition and Consumer Protection Act has been determined by the extent to which it responds to the prevailing economic practices in Zambia. This essay

shows that the Competition and Consumer protection Act has innovations that, to a large extent address various prevailing economic demands and levels of consumer exploitations in the country.

In promoting and regulating fair competition in the economy, the Act includes provisions that have adequately and comprehensively defined terminologies used in the Act. The Act further gives detailed provisions on the nature of practices that are prohibited in the market. This will help market players easily identify practices in the market that are anti-competitive thereby reporting them to the Commission.

On protection of consumer welfare, the Act also has comprehensive provisions. This essay shows that the Competition and Consumer Protection Act has expanded the range of consumer protection to include business persons who use the product or service supplied as an input to its own business, wholesalers and retailers.¹⁶⁴ Furthermore, the Act has given effective realization of consumer rights in its provisions. The Act has now included some consumer rights that were not protected under the repealed Act. The Competition and Consumer Protection Act now prohibits the use of false or misleading representation by traders; display of disclaimers; supply of defective and unsuitable goods and services; and use of unfair contract terms. The Act also provides for the requirement of product labeling; price display and consumer product safety.

Further, the establishment of the Competition and Consumer Protection Tribunal will also contribute to the effectiveness of the Act in that parties who are aggrieved by the decisions of the Commission will have a privilege to appeal to the tribunal which will hear and determine appeals expeditiously and cost effectively. This will also ensure that the Commission does not abuse its authority.

Furthermore, the essay shows that the Competition and Consumer Protection Act contains various provisions that are devoted to promoting economic growth in the country, the provisions that were not in the repealed Act. Therefore, it suffices to conclude that the Competition and Consumer Protection Act, in addition to promoting fair competition and consumer protection will significantly contribute to the promotion of economic development in Zambia.

¹⁶⁴ Section 2 (1)(b)

5.2 Recommendations

The Competition and Consumer Protection Act was enacted to address various consumer exploitations and economic practices that have developed over the years in the economy.¹⁶⁵ Based on the above evaluation, the Act seems to have fairly addressed most of the economic demands in the current market. However, like every other law, the Competition and Consumer Protection Act has not existed without shortfalls. This chapter seeks to identify such areas in the Act and offer some recommendations in order to seal up the shortfalls.

i. Provisions for Strengthening Relations Between Consumers and the Commission

The mechanism for ensuring the enforcement of the Competition and Consumer Protection Act depends mainly on two ways. Firstly, market inquiries or investigation of market conditions by the Commission¹⁶⁶ and secondly, reports made by third parties or market players to the Commission.

This position is seen in Section 55, among other Sections,¹⁶⁷ where it provides:

“55. (1) Subject to subsection (4), the Commission may, at its own initiative or on a complaint made by any person, undertake an investigation if it has reasonable grounds to believe that there is, or is likely to be a contravention of any provision of this Act.”

Furthermore, with regards to consumer protection, Section 54 provides

“54. Any person who alleges that a person or an enterprises-

a) is practicing any unfair trading; b) has made a false or misleading representation in respect of goods and services or facilities; c) has displayed a disclaimer at any trading premises contrary to the provisions of the Act; d) has supplied defective or unsuitable goods or provided unsuitable services to that person; e) is selling goods that do not conform with the mandatory safety standards for the class of goods; f) has concluded or is enforcing an unfair contract or term of contract to the detriment of that person; or g) has contravened any other provision of this Act relating to consumer protection or has failed to comply with a requirement under this Act, to the detriment of that person;

may lodge a complaint with the Commission in the prescribed manner and form.”

The Act does not go further to provide for guidelines or the mechanism a consumer or person should follow in lodging a complaint to the Commission. The Act should include an express provision that will provide for a defined and friendly mechanism for lodging a complaint to the Commission. This will enhance consumer’s access to the Commission and therefore

¹⁶⁵ F. Mutati. National Assembly Deliberations on the Competition and Consumer Protection Bill, (27th July, 2010). Page 2.

¹⁶⁶ This also includes the inspectors appointed by the Commission.

¹⁶⁷ See also Sections 7, 38, 40 and 79.

increase reports to the Commission on the violations of the Act. Further, the provision should include incentives for consumers such as an easy and friendly complaint lodging environment and expeditious actions by the Commission in addressing consumer complaints.

It is recommended that the Act include a provision which provides for guidelines or mechanism for the making, receipt and handling of consumer complaints under the Act. The guidelines should include procedure for: meeting consumer needs and requirements; handling of consumer complaints and disputes, which include an inexpensive and expeditious dispute resolution process; compensation of consumers in the event of a breach of the Code of Conduct by the Commissioner; protection of consumer information; and any other matter relating to the lodging of a complaint to the commission.

The Commission should deal reasonably with consumers and address consumer complaints expeditiously and in accordance with the guidelines. The Act should also provide for the dissemination of information sensitizing consumers through the media on the process of lodging consumer complaints to the Commission as well as information regarding services, operation and performance of the Commission. This will enhance consumer's access to the Commission and therefore increase reports to the Commission, thereby improving the enforcement and effectiveness of the Act.

ii. Strengthening Consumer Protection in Service Provider Enterprises

The Competition and Consumer Protection Act seems to focus so much on protecting consumers purchasing goods as opposed to consumers receiving services. The Act should also focus on intensifying consumer protection in service provider enterprises. For instance, the Act should include provisions giving the Commission powers to scrutinize services rendered to consumers in hotels, insurance, consultancy and utility companies so that consumer welfare in such businesses is adequately protected from possible violations such as misleading representation, unfair contract terms or disclaimers, among others. In protecting consumers, voluntary standards should be extended to the area of services, in particular, medical and hospital services, financing and investor services, e-commerce, real estate services, and so on, in coordination with the appropriate sector regulators.

A comparison can be made with Consumer protection laws in the United States which include federal and state statutes governing sales and credit practices involving consumer goods and services. Such statutes prohibit and regulate deceptive or unconscionable

advertising and sales practices, product quality, credit financing and reporting, debt collection, leases, and other aspects of consumer transactions.¹⁶⁸ Therefore, the Competition and Consumer Protection Act should also strengthen consumer protection in debt collection, credit financing, mortgages, mortgage advice, margin loans and other service provider enterprises.¹⁶⁹

iii. Provisions for Statutory Warranty

It is further recommended that the Competition and Consumer Protection Act include provisions for issuance of statutory warranties by enterprises upon the purchase or hire of appropriate goods or services by the consumer. Provisions for issuance of warranties could improve the effectiveness of warranties law which provides fundamental rights to consumers when they purchase goods or services.¹⁷⁰ Warranties give guarantee on purchased goods that they are of the quality represented and will be replaced or repaired if found to be faulty.¹⁷¹

The Australian Ministerial council¹⁷² discussed the effectiveness of statutory warranties law and confirmed that it provides fundamental rights to consumers when they purchase goods or services. These laws have their origin in the late 1800's,¹⁷³ and given the fundamental changes that have taken place in the market, it is necessary that the Competition and Consumer Protection Act include statutory provisions requiring enterprises to give warranties to consumers upon the purchase of appropriate goods or services. This will improve the effectiveness of the Competition and Consumer Protection Act for it will ensure that the said fundamental consumer rights are protected. That is, consumers being able to return defective products for replacement or repair if such products do not function as expected.

Therefore, Parliament should take action to initiate a review of the statutory warranty regime or legislation with the aim of developing a clear codified warranty law that can be applied nationally in the Competition and Consumer Protection Act.

¹⁶⁸ http://en.wikipedia.org/wiki/Consumer_Protection; visited on 21st December, 2010.

¹⁶⁹ Just like the United States federal and state statues provide; See also Ministerial Council Report on Consumer Affairs Meeting; Review of Australia's Consumer Policy Framework: Commonwealth of Australia, 2010.

¹⁷⁰ Ministerial Council Report on Consumer Affairs Meeting; Review of Australia's Consumer Policy Framework: Commonwealth of Australia, 2010.

¹⁷¹ Such a provision will strengthen Section 48 of the Competition and Consumer Protection Act for consumers will be able to return defective products for replacement or repair or even claim the money paid for.

¹⁷² Ministerial Council Report on Consumer Affairs Meeting, 2010.

¹⁷³ Ministerial Council Report on Consumer Affairs Meeting, 2010.

iv. Provisions for Issuance of Receipt for Good and Services Paid for

The Competition and Consumer Protection Act should include a provision ordering enterprises to issue receipts for every goods and services paid for by the consumer. This will help compliance with section 51 of the Competition and Consumer Protection Act which provides that:

“51 (1) A person or an enterprises shall not charge a consumer more than the price indicated or displayed on a product or service.”

When the shopkeeper issues receipts to the consumers, receipt books or teller machines will indicate all the transaction conducted by him, hence subject to scrutiny by the managers. In this way, issuing of receipts will help in ensuring that there is no cheating of true purchasing prices by shopkeepers because all the details of the transactions will be reflected in the receipt books or teller machines, which will be checked by the managers. Such a provision, therefore, shall strengthen the enforcement of Section 51 of the Competition and Consumer Protection Act, thereby improving the enforcement and effectiveness of the Act

v. Provisions for Unfair Advertisement

The Competition and Consumer Protection Act has not addressed the aspect of unfair advertisement as one of the ways of promoting fair competition in the economy. In modern markets, some enterprises engage in making advertisements that injure the reputation of the competitor's quality of goods and/or services.¹⁷⁴ This practice compromises fair competition in the market and should therefore be prohibited under the Act.

In UK, complaints of unfair advertisement are reported to the Advertising Standards Authority ("ASA") often brought by businesses seeking to challenge the advertising activities of their competitors.¹⁷⁵ In the same way, the Competition and Consumer Protection Act should prohibit unfair advertisement in the market and provide for reporting such complaints to the Commission.

¹⁷⁴ H. Smith, J. Smith. e tal, *Misleading and Unfair Advertising; the Advertising Standard Authority-Complaints by Competitors*, Globe Business Publishing Ltd, 2011; at <http://www.globebusinesspublishing.com>; visited on 24th March, 2011.

¹⁷⁵ <http://www.globebusinesspublishing.com>; visited on 24th March, 2011.

5.3 Conclusion

In conclusion, this essay submits that the Competition and Consumer Protection Act has the capacity to achieve effective enforcement of fair competition and consumer protection in the modern Zambian economy. It further has the capacity to contribute to the promotion of economic growth in Zambia. However, in order to further improve the effectiveness of the Competition and Consumer Protection Act, it is recommended that the Act include provisions for strengthening consumer relations with the Commission. This will enhance consumer's access to the Commission and therefore increase reports to the Commission on the violations of the Act. The Act should also focus on intensifying consumer protection in services provided by service provider enterprises. Further, the Act should include provisions for the issuance of statutory warranties and receipts by enterprises upon the purchase of appropriate goods and services by the consumer. Furthermore, the Act should prohibit and sanction unfair advertisement by enterprises as one of the anti-competitive practices in the Zambian market.

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