

The Laws of Zambia

REPUBLIC OF ZAMBIA

THE COMPETITION AND FAIR TRADING ACT

CHAPTER 417 OF THE LAWS OF ZAMBIA

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THE COMPETITION AND FAIR TRADING ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title
2. Interpretation
3. Non-application

PART II

ZAMBIA COMPETITION COMMISSION

4. Establishment of Commission
5. Seal of Commission
6. Functions of Commission

PART III

ANTI-COMPETITIVE TRADE PRACTICES, ETC.

7. Enumeration of anti-competitive trade practices
8. Control of mergers and takeovers
9. Trade agreements
10. Anti-competitive trade practices by associations
11. Criteria for controlling monopolies and concentrations of economic power
12. Unfair trading
13. Authorisation of allowable acts

PART IV

GENERAL

14. Powers of Executive Director
15. Appeals
16. Offences and penalties
17. Regulations

SCHEDULE-Zambia Competition Commission

CHAPTER 417

COMPETITION AND FAIR TRADING

Act No.
18 of 1994
13 of 1994

An Act to encourage competition in the economy by prohibiting anti-competitive trade practices; to regulate monopolies and concentrations of economic power; to protect consumer welfare; to strengthen the efficiency of production and distribution of goods and services; to secure the best possible conditions for the freedom of trade; to expand the base of entrepreneurship; and to provide for matters connected with or incidental to the foregoing.

[3rd June, 1994]

PART I

PRELIMINARY

The Laws of Zambia

1. This Act may be cited as the Competition and Fair Trading Act. Short title
2. In this Act, unless the context otherwise requires- Interpretation
- "affiliated" means associated with each other, formally or informally, by shareholding or otherwise;
- "anti-competitive trade practices" means the trade practices enumerated in sections *seven, eight, nine* and *ten*;
- "Chairman" means the Chairman of the Commission, elected under paragraph 1 of the Schedule;
- "Committee" means a committee of the Commission, established under paragraph 5 of the Schedule;
- "consumer" includes any person-
- (a) who purchases or offers to purchase goods otherwise than for the purpose of resale 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;
- "customer" means a person who purchases goods or services;
- "distribution" includes any act by which goods are sold or services supplied for consideration;
- "distributor" means a person who engages in distribution;
- "Executive Director" means the Executive Director appointed under paragraph 7 of the Schedule;
- "manufacturing" means transforming, on a commercial scale, raw materials into finished or semi-finished products, and includes the assembling of inputs into finished or semi-finished products but does not include mining;
- "member" means a member of the Commission;

The Laws of Zambia

"monopoly undertaking" means a dominant undertaking or an undertaking which together with not more than two independent undertakings-

- (a) produces, supplies, distributes or otherwise controls not less than one-half of the total goods of any description that are produced, supplied or distributed throughout Zambia or any substantial part of Zambia; or
- (b) provides or otherwise controls not less than one-half of the services that are rendered in Zambia or any substantial part thereof;

"person" includes an individual, a company, a partnership, an association and any group of persons acting in concert, whether or not incorporated;

"sale" includes an agreement to sell or offer for sale and includes the exposing of goods for sale, the furnishing of a quotation, whether verbally or in writing, and any other act or notification by which willingness to enter into any transaction for sale is expressed;

"Secretary" means the person appointed as such under paragraph 8 of the Schedule;

"service" includes the sale of goods where the goods are sold in conjunction with the rendering of a service;

"supply", in relation to goods, includes supply or resupply by way of sale, exchange, lease, hire or hire purchase;

"trade association" means a body of persons which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members; and

"trade practice" means any practice related to the carrying on of any trade and includes anything done or proposed to be done by any person which affects or is likely to affect the method of trading of any trader or class of traders or the production, supply or price in the course of trade of any goods, whether real or personal, or of any service.

3. Nothing in this Act shall apply to- Non-application
- (a) activities of employees for their own reasonable protection as employees;
 - (b) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment;
 - (c) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members;
 - (d) the entering into an agreement in so far as it contains a provision relating to the use, licence or assignment of rights under, or existing by virtue of, any copyright, patent or trade mark;
 - (e) any act done to give effect to a provision of an agreement referred to in paragraph (d);
 - (f) activities expressly approved or required under a treaty or agreement to which the Republic of Zambia is a party;
 - (g) activities of professional associations designed to develop or enforce professional standards reasonably necessary for the protection of the public; and
 - (h) such business or activity as the Minister may, by statutory instrument, specify.

PART II

ZAMBIA COMPETITION COMMISSION

4. (1) There is hereby established the Zambia Competition Commission which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and with power, subject to the provisions of this Act, to do all such acts and things as a body corporate may by law do or perform. Establishment of Commission

(2) The provisions of the Schedule shall apply as at to the constitution of the Commission and otherwise in relation thereto.

5. (1) The seal of the Commission shall be such device as may be determined by the Commission and shall be kept by the Secretary. Seal of Commission

(2) The affixing of the seal shall be authenticated by the Chairman or the Vice-Chairman and the Secretary or any other person authorised in that behalf by a resolution of the Commission.

(3) Any contract or instrument which if entered into or executed by a person not being a body corporate would not be required to be under seal may be entered into or executed without seal on behalf of the Commission by the Secretary or any other person generally or specifically authorised by the Commission in that behalf.

6. (1) It shall be the function of the Council to monitor, control and prohibit acts or behaviour likely to adversely affect competition and fair trading in Zambia. Functions of Council

(2) Without limiting the generality of subsection (1), the functions of the Council shall be-

- (a) to carry out, on its own initiative or at the request of any person, investigations in relation to the conduct of business, including the abuse of a dominant position, so as to determine whether any enterprise is carrying on anti-competitive trade practices and the extent of such practices, if any;
- (b) carry out investigations on its own initiative or at the request of any person who may be adversely affected by a proposed merger;
- (c) to take such action as it considers necessary or expedient to prevent or redress the creation of a merger or the abuse of a dominant position by any enterprise;
- (d) to provide persons engaged in business with information regarding their rights and duties under this Act;
- (e) to provide information for the guidance of consumers regarding their rights under this Act;
- (f) to undertake studies and make available to the public reports regarding the operation of this Act;
- (g) to co-operate with and assist any association or body of persons to develop and promote the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act; and
- (h) to do all such acts and things as are necessary, incidental or conducive to the better carrying out of its functions under this Act.

PART III

ANTI-COMPETITIVE TRADE PRACTICES, ETC.

7. (1) Any category of agreements, decisions and concerted practices which have as their object the prevention, restriction or distortion of competition to an appreciable extent in Zambia or in any substantial part of it are declared anti-competitive trade practices and are hereby prohibited. Enumeration of anti-competitive trade practices

(2) Subject to the provisions of subsection (1), enterprises shall refrain from the following acts or behaviour if, through abuse or acquisition of a dominant position of market power, they limit access to markets or otherwise unduly restrain competition, or have or are likely to have adverse effect on trade or the economy in general:

- (a) predatory behaviour towards competition including the use of cost pricing to eliminate competitors;
- (b) discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods or services, including by means of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;
- (c) making the supply of goods or services dependant upon the acceptance of restrictions on the distribution or manufacture of competing or other goods;
- (d) making the supply of particular goods or services dependant upon the purchase of other goods or services from the supplier to the consignee;
- (e) imposing restrictions where or to whom or in what form or quantities goods supplied or other goods may be sold or exported;
- (f) mergers, takeovers, joint ventures or other acquisitions of control whether of horizontal, vertical or conglomerate nature; or
- (g) colluding, in the case of monopolies of two or more manufacturers, wholesalers, retailers, contractors or suppliers of services, in setting a uniform price in order to eliminate competition.

8. (1) Any persons who, in the absence of authority from the Commission, whether as a principal or agent and whether by himself or his agent, participates in effecting-

Control of mergers and takeovers

- (a) a merger between two or more independent enterprises engaged in manufacturing or distributing substantially similar goods or providing substantially similar services;
- (b) a takeover of one or more such enterprises by another enterprise, or by a person who controls another such enterprise;

shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or imprisonment not exceeding five years or to both.

(2) No merger or takeover made in contravention of subsection (1) shall have any legal effect and no rights or obligations imposed on the participating parties by any agreement in respect of the merger or takeover shall be legally enforceable.

(As amended by Act No. 13 of 1994)

9. (1) It shall be an offence for enterprises engaged on the market in rival or potentially rival activities to engage in the practices appearing in subsection (2) where such practices limit access to markets or otherwise unduly restrain competition; Trade agreements

Provided that this subsection shall not apply where enterprises are dealing with each other in the context of a common entity wherein they are under common control or where they are otherwise not able to act independently of each other.

(2) This section applies to formal, informal, written and unwritten agreements and arrangements.

(3) For the purposes of subsection (1), the following are prohibited:

- (a) trade agreements fixing prices between persons engaged in the business of selling goods or services, or purchase of goods or services between persons, or limit or restrict the terms and conditions of sale or supply or purchase between persons engaged in the sale of purchased goods or services;
- (b) collusive tendering;
- (c) market or customer allocation agreements;
- (d) subject to the Coffee Act, allocation by quota as to sales and production; Cap. 228
- (e) collective action to enforce arrangements;
- (f) concerted refusals to supply goods and services to potential purchasers; or
- (g) collective denials of access to an arrangement or association which is crucial to competition.

10. The following practices conducted by or on behalf of a trade association are declared to be anti-competitive trade practices:

Anti-competitive trade practices by associations

- (a) unjustifiable exclusion from a trade association of any person carrying on or intending to carry on in good faith the trade in relation to which the association is formed; or
- (b) making of recommendations, directly or indirectly, by a trade association, to its members or to any class of its members which relate to-
 - (i) the prices charged or to be charged by such members or any such class of members or to the margins included or to be included in the prices or to the pricing formula used or to be used in the calculation of those prices; or
 - (ii) the terms of sale (including discount, credit, delivery, and product and service guarantee terms) of such member or any class of members and which directly affects prices or profit margins included in the pricing formula.

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.

Criteria for controlling monopolies and concentrations of economic power

(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.

12. A person shall not-

Unfair trading

- (a) withhold or destroy producer or consumer goods, or render unserviceable or destroy the means of production and distribution of such goods, whether directly or indirectly, with the aim of bringing about a price increase;
- (b) exclude liability for defective goods;
- (c) in connection with the supply of goods or services, make any warranty-

The Laws of Zambia

- (i) limited to a particular geographic area or sales point;
- (ii) falsely represent that products are of a particular style, model or origin;
- (iii) falsely represent that the goods are new or of specified age; or
- (iv) represent that products or services have any sponsorship, approval, performance and quality characteristics, components, materials, accessories, uses or benefits which they do not have;
- (d) engage in conduct that is likely to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, quantity or quality of any products or services; or
- (e) supply any product which is likely to cause injury to health or physical harm to consumers, when properly used, or which does not comply with a consumer safety standard which has been prescribed under any law.

13. (1) The Commission may authorise any act which is not prohibited outright by this Act, that is, an act which is not necessarily illegal unless abused if that act is considered by the Commission as being consistent with the objectives of this Act.

Authorisation of allowable acts

(2) The Minister may, on the recommendation of the Commission, by statutory instrument, make regulations prescribing the particulars to be furnished to the Commission for the purposes of subsection (1).

PART IV

GENERAL

14. (1) Where the Executive Director or any officer has reasonable cause to believe that an offence under this Act or any regulations made hereunder has been or is being committed, he may seek from a court a warrant granting-

Powers of Executive Director

- (a) authority to enter any premises;
- (b) access to, or production of, any books, accounts or other documents relating to the trade or business of any person and the taking of copies of any such books, accounts or other documents:

Provided that any books, accounts or other documents produced shall be returned forthwith if they are found to be irrelevant.

(2) In the exercise of the powers contained in subsection (1), the Executive Director or other officer of the Council may be accompanied or assisted by any such police officers as he thinks necessary to assist him to enter into or upon any premises.

15. Any person aggrieved by a decision of the Commission made under this Act or under any regulations made hereunder may, within thirty days after the date on which a notice of that decision is served on him, appeal to the High Court. Appeals

16. (1) Any person who-

Offences and penalties

- (a) contravenes or fails to comply with any provision of this Act or any regulations made hereunder, or any directive or order lawfully given, or any requirement lawfully imposed under this Act or any regulations made hereunder, for which no penalty is provided;
- (b) omits or refuses-
 - (i) to furnish any information when required by the Commission to do so; or
 - (ii) to produce any document when required to do so by a notice sent by the Commission: or
- (c) knowingly furnishes any false information to the Commission;

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand penalty units or imprisonment for a term not exceeding five years or to both.

(2) If the offence is committed by a body corporate, every director and officer of such body corporate, or if the body of persons is a firm, every partner of that firm, shall be guilty of that offence provided that no such director, officer or partner shall be guilty of the offence if he proves on a balance of probability that such offence was committed without his knowledge or consent, or that he exercised all due diligence to prevent the commission of the offence.

(As amended by Act No. 13 of 1994)

17. The Commission may, with the approval of the Minister, by statutory instrument, make regulations governing- Regulations

- (a) anything which under this Act is required or permitted to be prescribed;
- (b) any forms necessary or expedient for purposes of this Act;
- (c) any fees payable in respect of any service provided by the Commission; or
- (d) such other matters as are necessary or expedient for the better carrying out of the purposes of this Act.

The Laws of Zambia

SCHEDULE

(Section 4)

ZAMBIA COMPETITION COMMISSION

1. (1) The Commission shall consist of-

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- (a) a representative from each of the Ministries responsible for finance, and commerce and industry;
- (b) a representative of the Zambia Bureau of Standards;
- (c) two representatives from the Zambia Chamber of Commerce and Industry, each representing different sections of that body;
- (d) a representative of the Law Association of Zambia;
- (e) a representative of the Zambia Federation of Employers;
- (f) a representative of the Zambian Congress of Trade Unions;
- (g) two persons representing consumer interests and appointed by the Minister;
- (h) a representative of the Engineering Institution of Zambia;
- (i) a representative of the accounting profession; and
- (j) the Economics Association of Zambia.

(2) All members shall be nominated by their respective institutions and shall be appointed by the Minister.

(3) The Chairman and the Vice-Chairman shall be elected by the Commission from amongst its members:

Provided that the members appointed under items (a) and (b) of sub-paragraph (1) shall not be elected as Chairman or Vice-Chairman.

2. (1) The members shall hold office for a period of three years from the date of appointment and may, upon the expiration of that term, be re-appointed for a like term and, for this purpose, paragraph 1 (2) of this Schedule shall apply.

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(2) A member referred to in items (b), (c), (d), (e), (f), (g) and (h) of paragraph 1 (1) of this Schedule may resign upon giving one month's notice in writing to the organisation which nominated him and to the Minister and shall be removed by the Minister at any time if the body which nominated him withdraws its recognition and so informs the Minister in writing.

(3) The office of a member shall become vacant-

- (a) upon his death;
- (b) if he is absent without reasonable excuse from three consecutive meetings of the Commission of which he has had notice; or
- (c) if he is lawfully detained or his freedom of movement is restricted for a period exceeding six months;
- (d) if he becomes an undischarged bankrupt;
- (e) if he becomes of unsound mind; or
- (f) by operation sub-paragraph (2).

The Laws of Zambia

3. A member shall be paid such remuneration or allowances as the Council may, subject to the approval of the Minister, determine. Remuneration and allowances of the Commission
4. (1) Subject to the other provisions of this Act, the Commission may regulate its procedure.
- (2) The Commission shall meet as often as necessary or expedient for the discharge of its business and such meetings shall be held at such places, times and days as the Commission may determine.
- (3) The Chairman may at any time call a meeting of the Commission and shall call a special meeting to be held within ten days of receipt of a written request for that purpose addressed to him by at least one-third of the members of the Commission.
- (4) Seven members shall form a quorum at any meeting of the Commission.
- (5) There shall preside at any meeting of the Commission-
- (a) the Chairman;
- (b) in the absence of the Chairman, the Vice-Chairman; or
- (c) in the absence of both the Chairman and Vice-Chairman, such member as the members present may elect for the purpose of the meeting.
- (6) The decision of the Commission shall be by a majority of members present and voting at the meeting and, in the event of an equality of votes, the Chairman or other person presiding at the meeting shall have a casting vote in addition to his deliberative vote.
- (7) The Commission may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberation of a meeting of the Commission but such person shall have no vote.
- (8) The validity of any proceedings, act or decision of the Commission shall not be affected by any vacancy in the membership of the Commission or by any defect in the appointment of any member or by reason that any person not entitled to do so took part in the proceedings.
- (9) The Commission shall cause minutes to be kept of every meeting of the Commission and of every meeting of any committee established by the Commission.
5. (1) The Commission may for the purpose of performing its functions under this Act establish committees and delegate to any such committee such of its functions as it considers necessary. Committees of the Commission
- (2) The Commission may appoint as members of a committee established under sub-paragraph (1) persons who are or are not members of the Commission and such persons shall hold office for such period as the Commission may determine.
- (3) Subject to any specific or general direction of the Commission, a committee established under sub-paragraph (1) may regulate its own procedure.
6. (1) If any person is present at a meeting of the Commission or committee of the Commission at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested, he shall as soon as is practicable after the commencement of the meeting disclose such interest and shall not, unless the Commission or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question touching such matter.
- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.
7. (1) The Commission shall appoint, on such terms and conditions as it may determine, an Executive Director who shall be the chief executive officer of the Commission. Executive Director of the Commission
- (2) The Executive Director shall be responsible for the day-to-day administration of the Commission.
8. (1) There shall be a Secretary to the Commission who shall be appointed by the Commission on such terms and conditions as the Commission may determine. Secretary and other staff
- (2) The Secretary shall, under the general supervision of the Executive Director, carry out corporate secretarial duties.
- (3) The Commission may appoint, on such terms and conditions as it may determine, such other staff as it considers necessary for the performance of its functions under this Act.

The Laws of Zambia

9. (1) A person shall not, without the consent in writing given by or on behalf of the Commission publish or disclose to any person, otherwise than in the course of his duties, the contents of any document, communication or information which relates to and which has come to his knowledge in the course of his duties under this Act. Prohibi publica disclos informã unauth person

(2) Any person who knowingly contravenes the provisions of sub-paragraph (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding six thousand penalty units or to imprisonment for a term not exceeding three years or to both.

(3) If any person having information which to his knowledge has been published or disclosed in contravention of sub-paragraph (1) unlawfully publishes or communicates any such information to any other person he shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding six thousand penalty units or to imprisonment for a term not exceeding three years or to both.

(As amended by Act No. 13 of 1994)

10. No action or other proceeding shall lie against any member, member of staff, servant, agent or representative of the Commission for or in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Act. Immun

11. (1) The funds of the Commission shall consist of such moneys as may-

(a) be appropriated by Parliament for the purposes of the Commission;

(b) be paid to the Commission by way of grants or donations; and

(c) vest in or accrue to the Commission.

(2) The Commission may-

(a) accept money by way of grants or donations;

(b) raise by way of loans or otherwise from any source in Zambia and, subject to the approval of the Minister, from any source outside Zambia, such money as it may require for the discharge of its functions; and

(c) charge and collect fees in respect of programmes, publications, seminars, consultancy and other services provided by the Commission.

(3) There shall be paid from the funds of the Commission-

(a) the salaries, allowances, loans, gratuities and pensions of the staff of the Commission and other payments for the recruitment and retention of staff;

(b) such reasonable travelling and subsistence allowances for members or members of any committee of the Commission when engaged on the business of the Commission and at such rates as the Commission may determine; and

(c) any other expenses incurred by the Commission in the performance of its functions.

(4) The Commission may after the approval of the Minister, invest in such manner as it thinks fit such of its funds as it does not immediately require for the discharge of its functions.

Funds
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12. The financial year of the Commission shall be the period of twelve months ending on 31st December in each year. Financ Year

13. (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts. Accour

(2) The accounts of the Commission shall be audited annually by independent auditors appointed by the Minister.

(3) The auditors' fees shall be paid by the Commission.

The Laws of Zambia

14. (1) As soon as practicable but not later than six months after the expiry of the financial year, the Commission shall submit to the Minister a report concerning its activities during the financial year. Annual Report

(2) The report referred to in subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report-

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure; and
- (c) such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay it before the National Assembly.