



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

ON THE

COMPETITION AND CONSUMER PROTECTION (AMENDMENT) BILL, N.A.B.

NO. 10 OF 2023

FOR THE

THIRD SESSION OF THE THIRTEENTH NATIONAL ASSEMBLY

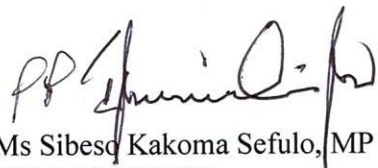
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FOREWORD

Honourable Madam Speaker, the Committee on National Economy, Trade and Labour Matters has the honour to present its Report on the Competition and Consumer Protection (Amendment) Bill, N.A.B. No. 10 of 2023, for the Third Session of the Thirteenth National Assembly. The functions of the Committee are as set out under Standing Orders No. 197 (j) and 198 of the National Assembly of Zambia Standing Orders, 2021.

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from different stakeholders, The list of stakeholders is at Appendix II. The Report is in three Parts. Part I contains the salient provisions of the Bill. Part II highlights concerns raised by stakeholders, while Part III contains the Committee's observations and recommendations. The Committee held 5 meetings to consider the Competition and Consumer Protection (Amendment) Bill, N.A.B. No. 10 of 2023. The list of stakeholders who appeared before the Committee is at Appendix II of the Report.

The Committee wishes to pay tribute to all stakeholders who appeared before it and tendered both oral and written submissions. It further wishes to thank you, Madam Speaker, for affording it an opportunity to study the Competition and Consumer Protection (Amendment) Bill, N.A.B. No. 10 of 2023. The Committee also appreciates the services rendered by the Office of the Clerk of the National Assembly during its deliberations.



Ms Sibeso Kakoma Sefulo, MP
CHAIRPERSON

November, 2023
LUSAKA

TABLE OF CONTENTS

Foreword.....	i
Membership of the Committee.....	1
Background.....	1
Object of the Bill.....	1
Salient Provisions of the Bill.....	1
Concerns Raised by Stakeholders.....	5
Committee’s Observations and Recommendations.....	6
Conclusion.....	7
Appendix I.....	8
Appendix II.....	9

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Ms Sefulo Sibeso Kakoma, MP (Chairperson); Mr Joel Chibuye MP (Vice-Chairperson); Mr Gift S Sialubalo, MP; Mr Kabwe T Chewe, MP; Mr Davison Mung'andu, MP; Mr Derricky Chilundika, MP; Dr Simon Mwale, MP; Mr Ronald Chitotela, MP; Mr Walusa Mulaliki, MP; and Mr Wesley Kolala MP.

2.0 BACKGROUND

The *Competition and Consumer Protection Act, No. 24 of 2010* (the principal Act) was enacted in 2010 following the repeal of *the Competition and Fair Trading Act, Chapter 417 of the Laws of Zambia*. The Act, as the name entailed, promoted competition and protected consumers from unfair trading practices. Despite the enactment of the Act to regulate unfair business practices, generally, the implementation of the Act posed some challenges. One of the challenges was that the Act contained provisions which were ambiguous. This, in some instances, affected the effective implementation of the Act.

In order to resolve the challenges, the Government introduced the Competition and Consumer Protection (Amendment) Bill, N.A.B. 10 of 2023 to amend the *Competition and Consumer Protection Act, No. 24 of 2010*.

3.0 OBJECT OF THE BILL

The objects of the Bill were to amend the Competition and Consumer Protection Act 2010 so as to:

- (a) revise the functions of the Board;
- (b) enhance the protection of consumers against unfair trading practices;
- (c) enhance the promotion of competition;
- (d) provide the procedure for relocation of core assets outside the Republic;
- (e) align the appellate process with the Constitution of Zambia Cap.1;
- (f) domesticate the COMESA Competition Regulations, 2004; and
- (g) provide for matters connected with, or incidental to, the foregoing.

PART I

4.0 SALIENT PROVISIONS OF THE BILL

The provisions of the Competition and Consumer Protection (Amendment) Bill, N.A.B. No. 10 of 2023 are set out hereunder.

Clause 1 – Short title

This clause provided for the short title of the Bill.

Clause 2 – Amendment of section 2

This clause sought to amend section 2 of the principal Act by deleting the definitions such as “re-sale price maintenance”, “statutory monopoly” and “Zambia Bureau of Standards” and substituting them with the revised definitions.

The clause further sought to amend section 2 of the principal Act so as to insert new definitions that had been used elsewhere in the Bill such as “COMESA”, “COMESA Competition Regulations”, “core assets”, “trade association”, “unconscionable” and “Zambia Compulsory Standards Agency”.

Clause 4 – Amendment of section 5

This clause sought to amend section 5 of the principal Act so as to extend the function of the Commission to the investigation and assessment of restrictive agreements, abuse of dominant positions of market power and mergers.

The clause further provided for an additional function of the Commission, which was, to review, in consultation with an appropriate authority, an application for relocation of core assets of an enterprise from the Republic.

Clause 5 – Insertion of section 5A

This clause sought to amend the principal Act by inserting a new section 5A immediately after section 5 so as to provide for the functions of the Board of the Commission, which included overseeing the implementation and successful operation of the policies, programmes and strategies of the Commission and approving the annual work-plan, action plan and activity reports of the Commission.

Clause 6 – Amendment of section 7

This clause sought to amend section 7 of the principal Act by the insertion of a new paragraph so as to give an inspector power to seize and retain, for use as evidence, goods offered, exposed or sold in violation of the Act.

Clause 9 – Repeal and replacement of section 17

This clause sought to amend the principal Act by the repeal and replacement of section 17 so as to enable the Minister, on advice of the Commission, to prescribe the procedure for determining the relevant market within which the share of supply or acquisition thresholds were to be met under the Act.

Clause 10 – Insertion of sections 23A and 23B

This clause sought to amend the principal Act by inserting new sections, 23A and 23B after section 23 so as to prohibit and make it an offence for an enterprise to relocate core assets from the Republic to another State without the approval of the Commission.

Clause 12 – Insertion of section 34A

This clause sought to amend the principal Act by inserting a new section 34A immediately after section 34 which required an enterprise to submit to the Commission correct information in relation to an assessment of a proposed merger and comply with conditions stated in a determination or with an undertaking given as a condition of an approved merger under section 34.

Clause 13 – Repeal and replacement of section 35

This clause sought to amend the principal Act by the repeal and replacement of section 35 so as to give the Commission power to revoke an approved merger in a prescribed manner and form, where an enterprise failed to comply with section 34A.

Clause 14 – Repeal and replacement of section 37

This clause sought to amend the principal Act by the repeal and replacement of section 37 so as to create offences for an enterprise, which implemented a merger without the approval of the Commission as well as implementing a merger that was rejected by the Commission.

Clause 16 – Amendment of section 43

This clause sought to amend section 43 of the principal Act by the insertion of the words “and consumer protection” immediately after the word “competition” so as to provide clarity that the Commission would enter into a Memorandum of Understanding with other regulators for the purpose of coordinating and harmonising matters relating to competition and consumer protection in other sectors of the economy.

Clause 17 – Repeal and replacement of section 45

This clause sought to amend the principal Act by the repeal and replacement of section 45 so as to revise the definition of unfair trading practice which distorted or was likely to distort the purchasing decisions of consumers if the trading practice was misleading consumers, compromising the standards of honesty and good faith, which an enterprise could reasonably be expected to meet, unconscionable and placing pressure on consumers by use of harassment or coercion.

Clause 18 – Amendment of section 46

This clause amended section 46 of the principal Act by the deletion of subsection (2) and the insertion of the new subsection so as to revise the provisions on penalties relating to a person or an enterprise that engaged in unfair trading.

Clause 19 – Repeal and replacement of section 47

This clause sought to amend the principal Act by the repeal and replacement of section 47 so as to prohibit a person or enterprise from making false or misleading representations relating to quality, standard, price, place of origin, need and existence, exclusion or effect of any condition, warrant, guarantee, right or remedy of goods and services.

Clause 20 – Amendment of section 48

This clause sought to amend section 48 (1) of the principal Act by the insertion of the words “or platform” immediately after the word “premises” so as to prohibit an owner or occupier of a shop or other trading platform from causing to be displayed any sign or notice that purported to disclaim any liability or denied any right that a consumer had under this Act or any other written law.

Clause 21 – Amendment of section 49

This clause sought to amend section 49 (2) of the principal Act by the deletion of subsection (2) and the substitution therefor of subsection (2), so as to revise the provisions on penalties for a person or an enterprise that supplied a consumer with goods that were defective, not fit for the purpose for which they were normally used or for the purpose that the consumer indicated to the person.

Clause 22 – Amendment of section 50

This clause sought to amend section 50 (1) of the principal Act by the deletion of the words “label to clearly indicate the product name” and the substitution of the words “label in the official language to clearly indicate the product description” so as to make the provision more clearer that the product name would be in the official language.

Clause 23 – Repeal and replacement of section 51

This clause sought to amend the principal Act by the repeal and replacement of section 51 so as to prohibit a person or enterprise to charge a consumer more than the price indicated on the product or service. The clause further required a person or enterprise that displayed more than one price for a product or service to sell the product or service at the lowest price displayed.

Clause 24 – Amendment of section 52

This clause sought to amend section 52(1) of the principal Act by the deletion of subsection (1) and substitution of the new subsection so as to prohibit a person or enterprise from selling any goods to consumers unless the goods conform to the mandatory safety standard for the class of goods set.

The clause further amended section 52 (2) (b) of the principal Act by the deletion of subsection (2) (b) and the substitution thereof of a new subsection so that a person who, or an enterprise which, contravened subsection (1) was liable to pay the Commission a fine not exceeding ten per cent of that person's or enterprise's annual turnover in addition to the penalty provided in this provision.

Clause 25 – Amendment of section 55

This clause sought to amend section 55 (5) of the principal Act and the substitution thereof of the new subsection so as to revise the provisions relating to a person who failed to furnish to the Commission with information relating to a matter specified in the notice which the Commission considered relevant to the investigation.

Clause 27 – Repeal and replacement of section 58

The clause sought to amend the principal Act by the repeal and replacement of section 58 so as to authorise the Commission to give an enterprise that was involved in anti-competitive conduct or unfair trading practice direction, in writing to ensure that the enterprise ceased to engage in an anti-competitive conduct or unfair trading practice within a period specified by the Commission or make an order imposing a financial penalty not exceeding ten per cent of that enterprise's annual turnover during the period of the breach of the prohibition up to a maximum period of five years.

Clause 29 – Amendment of section 64

This clause sought to amend section 64 of the principal Act by the insertion of a new subsection (4) immediately after subsection (3), which allowed a mandatory order of the Tribunal to be served, executed and enforced as if it were an order of the High Court.

Clause 31 – Amendment of section 67

This clause sought to amend section 67 of the principal Act by the insertion of the following new subsection (7) immediately after subsection (6), which required a member of the Tribunal to continue to hold office, after the expiration of the period for which that member was appointed until a successor was appointed for a period that should not exceed three months.

Clause 34 – General amendment

The clause sought to amend the principal Act by the deletion of the words "to pay the Commission a fine" wherever the words appeared and the substitution thereof of the words "to pay the Commission a penalty" so as to make it clear that, what was being paid to the Commission was a penalty and not a fine.

PART II

5.0 CONCERNS RAISED BY STAKEHOLDERS

The stakeholders who appeared before the Committee raised the concerns as discussed below.

Clause 4-Amendment of section 5

Stakeholders stated that this clause sought to amend the principal Act by extending the functions of the Commission. They noted that the new function would enable the Commission to look into matters pertaining to companies wishing to move their most valuable assets from the country. However, stakeholders were concerned that managing assets could bring about legal and regulatory complexities. This is because matters relating to property laws, investments, and other asset-management regulations would arise, requiring expertise, which might be beyond the core functions of the Commission.

Clause 16 – Amendment of section 43

Stakeholders noted that clause 16 empowered the Commission to enter into a Memorandum of Understanding with any business entity in order to harmonise issues relating to competition and consumer protection. They observed that in other jurisdictions in the region, competition and consumer protection authorities were separate entities, while in Zambia they all fell under the jurisdiction of the Commission. However, stakeholders were of the view that combining competition and consumer protection within the same body could create conflicting priorities. This was because the objectives of fostering healthy market competition and safeguarding consumer interests may sometimes clash. They proposed that Government should consider creating two separate entities to deal with matters of competition and consumer protection.

Clause 19 – Repeal and replacement of section 47

Stakeholders stated that clause 19 provided for a refund option to a consumer where a consumer suffered or experienced loss from a false or misleading representation. They were concerned that some consumers might not fully understand their rights regarding refunds, resulting in challenges when seeking the refunds. Stakeholders were of the view that there was a need to educate consumers about their rights and the conditions under which refunds could be requested.

Clause 23 - Repeal and replacement of section 51

Stakeholders submitted that clause 23 prohibited a person or enterprise from charging more than the displayed price. They noted that where such circumstances occurred, the consumer would have to pay a lower price or get a refund for the difference between the higher price and that indicated on the display. They argued that while the law might stipulate a lower price, ensuring that corporations complied with this legal requirement would be challenging as consumers may face resistance or obstacles in getting the lower price as specified by law.

Clause 24 – Amendment of section 52

Stakeholders observed that this clause prohibited a person or an enterprise from selling, supplying, importing or displaying expired products. However, they were concerned that enforcing regulations for the disposal of expired goods in rural areas would be difficult due to limited enforcement capacity and compliance monitoring mechanisms in remote areas. They were of the view that the Commission should have a presence at district level to ensure compliance.

PART III

6.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

Having interacted with various stakeholders, the Committee notes that in as much as the Bill has proposed some progressive amendments, it equally has some ramifications which need to be addressed. The Committee, therefore, makes the following observations and recommendations outlined below.

6.1 Clause 4-Amendment of Section 5

The Committee notes that clause 4 will grant the Commission an additional function of reviewing applications for the relocation of core assets of an enterprise from Zambia. However, it is of the view that this is tantamount to interference by the Commission in private businesses and may potentially hinder the inflow of investment in Zambia as other businesses will not be comfortable or willing to transmit certain information to the Commission.

In view of the foregoing, the Committee recommends that the Commission should establish clear and transparent guidelines regarding the movement of core assets. This should include defining what constitutes core assets, outlining the process for their movement, and the circumstances under which the intervention is warranted.

6.2 Clause18- Amendment of section 46

The Committee notes that clause seeks to amend section 46 of the principal Act by imposing a penalty for engaging in unfair trading practises. The Committee further notes that there are rapid market changes and the emergence of new practices in the digital realm presents challenges in keeping up with and effectively regulating these new forms of unfair trading practices.

In this regard, the Committee recommends that the Competition and Consumer Protection Commission must develop a flexible regulatory framework that can adapt to rapid market changes. The Committee is of the view that rather than rigid rules, focus should be on principle-based flexible regulations that can accommodate a wide range of business models and technological advancements.

6.3 Clause 19 – Repeal and replacement of section 47

Clause 19 provides for a refund option to a consumer, where a consumer suffers or experiences loss from a false or misleading representation.

The Committee recommends that the Competition and Consumer Protection Commission should embark on a vigorous campaign through various media such as television and radio advertisements as well as social media campaigns to sensitise the public on their consumer rights. The Commission should further develop brochures, leaflets, and pamphlets that clearly outline consumer rights, including the right to request for refunds. In addition, the information materials should be distributed to the public especially in rural areas.

6.4 Clause 23 - Repeal and replacement of section 51

The Committee notes that clause 23 seeks to amend section 51 of the Principal Act, and prohibits a person or enterprise from charging more than the displayed price. The Committee welcomes this provision because it protects consumers from unfair practises in relation to

relation to displayed prices and provides for the remedy of refund. However, the Committee is concerned that some multinational corporations' price their products in denominations in which consumers cannot be provided with change.

In this regard, the Committee recommends that the Competition and Consumer Protection Commission in collaboration with the Bank of Zambia must implement consumer protection laws that explicitly address the issue of pricing in denominations without the ability to provide change. This can empower consumers and hold businesses accountable for unfair pricing practices. The Committee further recommends that fines or penalties must be imposed on businesses that fail to comply with regulations related to pricing and providing change. The penalties will serve as a deterrent and incentivise adherence to the rules.

6.5 Clause 24 – Amendment of section 52

The Committee notes that clause 24 seeks to amend section 52 of the principal Act by prohibiting a person or enterprise from selling, supplying, importing or displaying expired products.

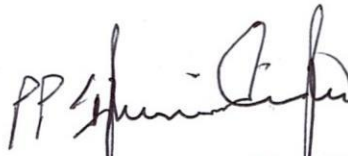
However, the Committee observes that most rural areas have become a dumping ground for expired products as most consumers in the rural parts of the country do not pay particular attention to check expiry dates for products they purchase.

The Committee, therefore, recommends that the Competition and Consumer Protection Commission establishes mechanisms for reporting businesses that are selling expired products. There should be a dedicated hotline or a reporting platform that will be accessed by people from all parts of the country. In addition, the Commission should establish its presence at district level so as to carry out frequent inspections regarding the quality of products that consumers are accessing.

7.0 CONCLUSION

The Competition and Consumer Protection Bill was introduced in Parliament to amend the Competition and Consumer Protection Act, 2010 so as to revise the Commission's functions, among other things. The bill aims at enhancing effective fair trading on the markets so that consumers are protected and their rights and obligations are clearly defined and legally backed. In addition, the Bill also aims to provide for the manner in which the Commission will operate. Further, it will categorically spell out the scope of applicability of the provisions of the Act.

We have the Honour to be, Madam, the Committee on National Economy, Trade and Labour Matters mandated to consider the Competition and Consumer Protection (Amendment) Bill, N.A.B. No. 10 of 2023, for the Third Session of the Thirteenth National Assembly.


Ms Sibeso Kakoma Sefulo, MP
CHAIRPERSON

November 2023
LUSAKA

APPENDIX I List of National Assembly Officials

Mr Charles Haambote, Principal Clerk of Committees (FC)
Mrs Angela M Banda, Deputy Principal Clerk of Committees (FC)
Mr Charles Chishimba, Senior Committee Clerk (FC 1)
Ms Chitalu R Mulenga, Senior Committee Clerk (FC2)
Mr Emmanuel Bwalya, Committee Clerk
Ms Hellen Namuchimba, Administrative Assistant II
Mr Danny Lupiya, Committee Assistant
Mr Muyembi Kantumoya, Parliamentary Messenger

APPENDIX II List of Witnesses

Hon Minister of Commerce, Trade and Industry
Ministry of Health
Ministry of Justice
Competition and Consumer Protection Commission
Jesuit Centre for Theological Reflection
National Pension Scheme Authority
Zambia Federation of Employers
Zambia Institute for Policy Analysis and Research
Zambia Qualifications Authority