

Consumer contracts under the Zambian Law: Does the legislation Provide Adequate Consumer Protection

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Abstract: Owing to the shift of the Zambian economy from a countrywide manipulative economic system to a free market economy, there has been neediness for the government to efficiently regulate the economic system to promote honest opposition and client safety. To achieve this, need the authorities enacted the Competition and Fair-Trading Act of 1994 which geared toward regulating anti-competitive practices and customer exploitations within the marketplace. Following some of the changes that have taken area within the Zambian financial system, Parliament enacted the Competition and Consumer Protection Act of 2010 which incorporates diverse revolutionary provisions which might be supposed to address modern financial demands inside the Zambian economic system. This paper focuses on establishing whether Consumer contracts under the Zambian Law if it Provides adequate Consumer Protection by evaluating its effectiveness within the selling and law of sincere competition, patron safety and financial increase in Zambia. It verifies whether the Competition and Consumer Protection Act has effectively and efficiently addressed winning social and financial desires of Zambia's monetary expedient. The findings were that Competition and Consumer Protection Act become enacted with numerous progressive provisions which were probably presupposed to cope with modern monetary conditions in Zambia. Through those upgrades, the Competition and Consumer Protection Act has quite addressed triumphing monetary desires in the Zambian economic operations. However, despite enhancing the Law, the legislation has not Provided Adequate Consumer Protection as evident by the increasing number of cases being recorded in Zambia regarding consumer protection.

I. INTRODUCTION.

Consumer right is an immensely important aspect to be considered by every business house. Because by protecting consumer rights, business develop welfare to consumer and ensure justice and personal freedom to them and thereby modern society can move towards an advanced state of social development. 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.

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 to promote fair competition and consumer protection. To achieve this need, the government established the Competition and Consumer Protection Commission (CCPC) a statutory body established with a unique dual mandate to protect the competition process in the Zambian Economy and also to protect consumers. The CCPC was established in 1997 under the name Zambia Competition Commission (ZCC). The name was then changed in 2010 to Competition and Consumer Protection Commission (CCPC) following the enactment of the new Act called the Competition and Consumer Protection Act (CCPA) No. 24 of 2010 and repeal of the old Act.²

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 to achieve fair competition and adequate consumer protection in the market structures. In 1994, the government endorsed the need for national legislation to create and safeguard market structures and encourage behavior 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

¹ <http://en.wikipedia.org/wiki/Competition>; and http://en.wikipedia.org/wiki/Consumer_Protection; visited on 2 December 2020

² 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

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

(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 this study to establish as to whether legislation provides adequate consumer protection.

II. THE THEORY UNDERLYING CONSUMER PROTECTION

Consumer protection is a form of government regulation which protects the interests of consumers, as well as all the activities of consumer organizations designed to ensure the protection and enforcement of consumer rights in the market place through advocacy and consumer education. Recognition that consumers could be at a disadvantage in contracting with businesses came as early as the nineteenth century. The earliest forms of consumer protection were designed to discourage fraudulent trading practices such as excessive pricing and short measure, and to protect the consumer from the dangers associated with such practices. In England, bread, beer, meat and fuel were singled out from the earliest times as being the commodities which the Crown, through the justices of the peace or other local courts, should regulate both as to quantity and quality.⁵ Thus in 1709, for example, a statute was passed to protect her majesty's subjects from 'covetous and evil disposed persons' who sold bread that was not the due assize or for more than it was worth. Short weight or quality was punishable by fine or, in more serious cases, flogging. The most efficacious penalty was excommunication.

The concept of consumer protection to the ordinary person throughout the eighteenth century would thus, at least mean (a) protection from excessive prices levied on primary commodities, and (b) protection from short measure.⁶ The nineteenth century, however, saw a rise in the maxim of caveat emptor (buyer beware) which was strongly called for by advocates of *laissez faire*. It was felt that it was only fair that each man should look out for himself and should not blame anyone when he purchased defective goods because he had the freedom of choice. However, due to the increase in the number of goods that could not be readily examined by the buyer, the courts began to limit caveat emptor. The courts began to imply terms into contracts, especially those for the sale of goods, which made sure the buyer got a fair deal by, for example, requiring that the goods were fit for their purpose. In 1893, the first Sale of Goods Act was passed which codified the existing case law. Most of the law protecting consumers was embodied in this Act. This was in the form of a number of implied warranties regarding

purchased goods. The Act thus contributed significantly to the weakening of caveat emptor⁷.

By the twentieth century, however, it was clear that the efficacy of the 1893 Act was not sufficient and more drastic action was needed. With the coming of industrialization and modernization came technologically complex goods and services, such as packaged foods, which the consumer could not easily inspect before purchasing⁸. The fact that businesses became richer and more powerful than their customers also meant that they had access to good lawyers, and as fast as the courts found terms to imply into contracts, businesses found ways to draw up contracts excluding themselves from liabilities. As a result, the Legislature in most countries such as the United Kingdom and the United States of America began to intervene in consumer contracts by passing a series of Acts designed to protect the interests of consumers. Such intervention was a move away from the traditional idea that the parties to a contract should be left to negotiate the best possible bargain for themselves, and was also a recognition that in many situations, ordinary consumers will be contracting with large, powerful organizations and effectively have no power to negotiate a favorable deal, or sometimes even a fair one⁹.

Thus, while the earliest forms of consumer protection were designed to discourage fraudulent trading practices and to protect the consumer from danger, the main justification for intervening on behalf of consumers today is that the nature of modern markets is such that consumers can no longer make prudent shopping decisions. The paternalism which legislation provides to protect the consumer, as Harvey notes, is therefore normally justified in modern times by the idea of inequality of bargaining power between the consumer and the vendor.¹⁰ In Australia, for example, an important consumer protection measure was justified as follows:

"In consumer transactions unfair practices are widespread. The existing law is still founded on the principle known as caveat emptor meaning 'let the buyer beware'. That principle may have been appropriate for transactions conducted in village markets. It has ceased to be appropriate as a rule. Now the marketing of goods and services is conducted on an organized basis and by trained business executives. The untrained consumer is no match for the businessman who attempts to persuade the consumer to buy goods or services on terms and conditions suitable to the vendor. The consumer needs protection by the law and this Bill will provide such protection."¹¹ Another aspect of consumer protection relevant to the philosophy behind the need to protect the consumer is

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.

⁵ 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

⁶ Ibid

⁷ Ibid

⁸ Zambia Competition Commission; Annual Report, 2006.

⁹ V. Musonda, *Market Enquiries in the Competition and Consumer Protection Act.* Page 18 Chapter 436 of the Laws of Zambia

¹⁰ B. W. Harvey, *The Law Consumer Protection Fair Trading.* p. 13.

¹¹ Banda, *Product Labelling, Price Display; Post Newspaper Article,* 30th August, 2010. Page 18 Section 50

the problem of claiming compensation against the large producer where the goods or services are defective. Litigation is disproportionately costly and troublesome to the small consumer. So, policy has been to encourage producers to adopt codes of practice where under legitimate complaints are promptly dealt with on the one hand, and also encourage small claims and arbitration procedures to solve actual disputes expeditiously, cheaply and relatively informally. The philosophy embodied in this type of consumer protection is now found in most of the developed jurisdictions in Europe and elsewhere in the Western world¹².

III. 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.¹³

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.] 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.¹⁴

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 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 practices¹⁵.

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 license, like that of modern patent. At that time the court established, in the landmark case of *Darcy v Allin*¹⁶ 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.*¹⁷ 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.¹⁸

Modern competition law begins with the United States legislation of the Sherman Act of 1890 and the Clayton Act of 1914.¹⁹ 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.²⁰ 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 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.²¹ 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 monopolize any part of such trade or commerce.²² The violation of the Act subjected the offender to equity proceedings or criminal prosecution or both.²³

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

¹⁷ Ac 535

¹⁸ M. Sinyinda, *Consumer Protection in Zambia; Obligatory Essay*, 1995. Page 6

¹⁹ Public Health Act no. 24 of 2010

²⁰ The Zambia Information and Communication Technology Authority, Act No. 15 of 2009

²¹ http://en.wikipedia.org/wiki/Consumer_Protection; visited on 2 December, 2020

²² http://en.wikipedia.org/wiki/Consumer_Protection; visited on 2 December, 2020

²³ Weights and Measures Act, Chapter 403 of The Laws of Zambia

¹² C. Sampa, *The Competition and Consumer Protection Act no. 24 of 2010*; Post Newspaper Article, 8th November, 2010. Page 18

¹³ The Energy Regulation Act Chapter 436 of The Laws of Zambia

¹⁴ 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.

¹⁵ Zambia Competition Commission; Annual Report, 2004. Page 2

¹⁶ (1602) 74 ER 1131

monopoly.²⁴ 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.²⁵ The treaty in Article 81(1) contained a provision meant to prevent the restriction or distortion of competition within the common market²⁶.

In Zambia, the introduction of competition law was by way of the enactment of the Competition and Fair-Trading Act²⁷ of 1994 following the liberalization of the economy and largely because of conditions set on Zambia by the International Monetary Fund and the World Bank.²⁸ Prior to the liberalization 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 delink age 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 Communication²⁹

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. 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 protected³⁰.

IV. CONSUMER PROTECTION.

This is a form of government regulation which protects the interests of consumers, as well as all the activities of consumer organizations designed to ensure the protection and enforcement of consumer rights in the market place through advocacy and consumer education³¹.

Consumer protection is linked to the idea that consumers have rights by virtue of being consumers, and to the formation of consumer organizations which help consumers make better choices in the market place. Generally, consumer rights have been considered by³² Consumer International to include the right to safety from product-related hazards, the right to information about products, the right to reject unsatisfactory products or services, and the right to redress when the complaint is justified. Consumers also have the right to choose from a variety of products in a market place free from control by one or few sellers and are entitled to be heard in governmental decision-making that affects them and to be assured that their interests will receive full sympathetic consideration in the formulation of policy. In addition, have a right to a clean and healthy environment: consumers need to be assured that supplier of goods and services will not pollute or destroy the environment³³.

Brief History Of Consumer Protection Law In Zambia

Consumer protection law in Zambia became recognized 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, 1960.³⁴ 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 Act^{and} the Zambia Bureau of Standards Act.³⁵ In 1977, there was also a development in consumer protection when the Consumer Protection Association of Zambia was formed as a voluntary organization aimed at protecting consumers.

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 recognized 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.

²⁴ http://en.wikipedia.org/wiki/Consumer_Protection; visited on 2 December, 2020

²⁶ Y. Musonda, 'Market Enquiries in the Competition and Consumer Protection Act'; Post Newspaper Article, 2010. Page 18

²⁷ Chapter 417 of the laws of Zambia, now repealed by the Competition and Consumer Protection Act no. 24 of 2010

²⁹ Zambia Competition Commission; Annual Report, 2004

³⁰ Ibid

³¹ Ibid., Section 25 and 27

³² Ibid., Section 35

³³ C. Sampa, The Competition and Consumer Protection Act no. 24 of 2010; Post Newspaper Article, 8th November, 2010. Page 18

³⁴ The Energy Regulation Act Chapter 436 of the laws of Zambia

³⁵ Subordinate Courts Act cap 28 of the laws of Zambia

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.³⁶ Consumers in Zambia have also been protected in other statutory laws which include the Public Health Act³⁷; the Energy Regulation Act³⁸; the Zambia Information and Communication Technology Act³⁹; the Water Supply and Sanitation Act; the Standards Act and the Weight and Measures Act.⁴⁰

Statutes On Consumer Protection

The issue of consumer protection in Zambia has become acute especially since the liberalization of the Zambian economy in the early 1990s. After the adoption of the consumer guidelines in 1985 by the UN, Zambia being a member has shown significant efforts in meeting the set guidelines in consumer protection by taking steps such as the establishment of the Zambia Competition Commission, which is vested with the powers to investigate consumer abuses, consumer education, and consumer redress as well as promoting and protecting the economic interests of consumers. However, since then the Republic of Zambia has put in place a number of statutory instruments such as the Sale of Goods Act 1893, Control of Goods Act Cap 421, The competition and Consumer Protection Act. Additionally, several sectoral regulatory boards such as the Drug and Poisons Board, the Energy Regulation Board, Zambia Bureau of standard and Communications Authority have been put in place.

The Zambia Bureau of Standards (ZABS) is a statutory national standards body for Zambia established under an Act of Parliament, the Standards Act, Chapter 416 of the Laws of Zambia. The main function of the Bureau is to prepare Zambian standards for products and to promote their use. A "standard" is a document approved by a recognized body that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process, or production method.⁴¹ ZABS is the major provider of standards for different products such as mineral water, beer, soaps, canned foods, and various household electrical appliances.

The Bureau also decides and provides facilities for the examination and testing of materials and substances from which commodities are manufactured or processed and

conducts pre-export inspection of commodities. Products that have been certified by the Bureau as meeting the set quality standards have a certification mark or logo on them which consumers can check to see whether the product is of certified standard or not.

The Zambia Competition Commission (ZCC) is a statutory body corporate established under Section 4 of the Competition and Fair-Trading Act. The Competition and Fair-Trading Act was enacted to, inter alia, encourage competition in the economy by prohibiting anti-competitive trade practices, to regulate monopolies and concentrations of economic power, and to protect consumer welfare. In striving to regulate competition the government realized that the law on competition should deal directly with the interests of consumers by protecting consumers' rights, especially the right to full and accurate information when purchasing goods and services. This is what led to the inclusion in section 12 of Cap 417, the prohibition of unfair trading practices that violate consumer rights and the granting, to ZCC, of authority enforce these provisions.

The Zambia Consumers Association (ZACA) was first officially registered in 1977 under the Societies Act. Then it was called the Consumers Protective Association of Zambia.

ZACA is a voluntary organisation dedicated to the protection of the consuming public. It is an independent and non-profit making body with its offices located in Kitwe in the Copperbelt Province of Zambia.

The main aim of ZACA is the protection of consumers' rights. It does this through advocating for consumer rights and providing information to consumers about products and services which it thoroughly tests. ZACA educates consumers through various media such as the press and gives consumers an independent appraisal through the medium of the electronic newsletter, 'Consumer Watch', a joint initiative of the Consumer Unity & Trust Society-Africa Resource Centre (CUTS-ARC) and the Zambia Consumer Association, published with the objective of enhancing consumer welfare through sensitization, information dissemination and capacity building of consumers, business entities and government.

Application of the Statutes

The enactment of Statutes such as the Food and Drugs Act, the Standards Act and the Competition and Fair-Trading Act have played a vital role in promoting and protecting the health and rights of consumers. With the enactment of the Standards Act, for example, most consumer products are now subject to certain minimum standards which manufacturers must satisfy before their products can be certified fit for sale to the public. Despite the existence of such legislation, however, the practice of producing low quality goods is still evident among manufacturers in Zambia, especially in the beverage sector. Complaints about people having found foreign matter in beer or soft drinks and of adulterated flavoured drinks are often

³⁶ Weights and Measures cap 403 of the laws of Zambia

³⁷ Public Health Act Cap 295 of the laws of Zambia

³⁸ D. Walker, Oxford Companion to Law. (Oxford: Clarendon Press, 1980). Page 281

³⁹ The Zambia Information and Communication Technology Authority, Act No. 15 of 2009

⁴⁰ Weights and Measures cap 403 of the laws of Zambia

⁴¹ According to the World Trade Organisation and Conformity Assessment Quality Infrastructure.

reported.⁴² About two years ago a story was unleashed by a ZNBC reporter where Shoprite, one of the largest supermarkets in the country, was revealed to have stocked rotten vegetables and eggs in their back store of their Livingstone branch. In another recent incident, a story was carried by the Sunday Post on May 20, 2007, in which one of the opposition political parties were reported to have taken the management of Spar supermarket, Arcades, to task over alleged recycling of expired foodstuffs.

These are just a few of the reported cases that clearly show a contravention of section 3(b) and (c) of the Food and Drugs Act which prohibits the sale of sale of poisonous, unwholesome or adulterated food. Such conduct is also a breach of section 14(2) of the Sale of Goods Act which implies a condition that a seller's goods must be of merchantable quality, and section 12(e) of the Competition and Fair-Trading Act which prohibits the supply of any product which is likely to cause injury to health or physical harm to consumers, when properly used.

The non-adherence to the law by manufacturers and sellers is also coupled by certain defects in the law itself in as far as protection of consumer rights and interests is concerned. This is particularly so with the Sale of Goods Act.

One major shortcoming of the Sale of Goods Act arises from the theory that the duties of the seller are imposed, not by the general law, but as terms implied in the contract of sale. The contract of sale is between the seller and the buyer, and thus the seller can be made liable only to the buyer and to no one else.⁴³ There is clearly a need, at least in the context of consumer protection, to reconsider this rule that benefits under a contract can only be enforced by a party to the contract.

Another major defect in the protection afforded by the Sale of Goods Act is perpetuated by the principle of freedom of contract in section 55 which permits the parties to exclude any of the implied conditions in the Act by a simple clause in the contract or order form. Although exclusion clauses are not common in cash sales, it is common to find in several retail shops notices stuck to the customers' attention stating that once a good is bought and taken 'no return of it or refund will be accepted'. In the motor trade, it is usual for the seller to require the buyer to sign an order form which contains conditions of sale. Among these conditions, almost invariably, is to be found something like 'All conditions and warranties, express or implied, statutory or otherwise, are hereby excluded.' It may be unrealistic to pretend that this is no major injustice which the Sale of Goods Act permits. Sellers should not be permitted to exclude all their obligations in such a manner.⁴⁴

From the provisions of section 14(3) of the Sale of Goods Act, it will also be noticed that there is no duty imposed on the

seller if the goods are sold under a patent or other trade name, even if their purpose is known. This is an unfair exception on the consumer's part especially in the light of the large number of pirated and imitated products from the Far East that flood the markets today which are very difficult for the consumer to detect due to the great technological 'skill' that product imitators are investing. A good example is the 'Sony' label which has been falsely used on a number of electrical appliances such as DVD players, CD players and television sets which are not genuine Sony products. A buyer who, for example, requests for a Sony DVD player cannot rely on section 14 if the product turns out not to be fit for its intended purpose. Indeed, the Maloney Committee on Consumer Protection had no hesitation in saying that the 'patent or other trade name' provisions ought to be deleted.⁴⁵ The English Sale of Goods Act 1979 has since omitted this provision in section. Further the requirement that goods be of 'merchantable quality' in section 14(2) ought to be changed to a more precise phrase like 'satisfactory quality' because 'merchantable quality' is too imprecise. The limitation of the Food and Drugs Act on the other hand is that it only covers food, drugs, cosmetics, and medical devices.

The above concerns are worsened by the fact that a considerable number of Zambians are semi-literate and do not particularly take keen interest in understanding Statutes. To most Zambians, therefore, the provisions of the Sale of Goods Act and other legislation mentioned above remain irrelevant. Besides, the majority sales take place in open local markets where individual buyers and sellers openly strike oral bargains, examine the goods, and payment of and delivery effected simultaneously.⁴⁶ It will therefore be a question of whether one has got a good bargain at that point. Where goods are sold by street vendors, neither party could truly identify and locate the other should either party be unhappy with the bargain. Even where the sale takes place in a shop, the primary concern of the parties is to conclude the deal and move on without any contemplation of possible consequences of breach of any sale condition or warranty.³⁵ Also Zambian people are generally not very litigious. Courts are the last places many people would like to go. Besides, litigation is costly and inconveniencing and many people try to avoid it. Moreover, many consumer sales transactions in Zambia involve small sums of money, the kind of money that would not justify full-scale litigation.

From these observations consumer protection law in Zambia is not very well developed and as such very few people are aware of their rights as consumers. This calls for concerted efforts on consumer education by both the governmental and nongovernmental consumer welfare institutions. A pertinent

⁴² (LRF News, Issue No. 25, March 2001)

⁴³ G. Borrie and AL. Diamond, *The Consumer, Society and the Law*, 1964, p. 66.

⁴⁴ *Ibid*

⁴⁵ G. Borrie and AL. Diamond, *The Consumer, Society and the Law*, 1964, p. 63.

⁴⁶ M. Malila, *Commercial Law in Zambia*, 2006, p.

⁵³ Zambia Competition Commission; Annual Report, 2004 section 25 and 27

question, as Malila notes,⁴⁷ is, therefore, whether the interpretation of the Sale of Goods Act 1893 should take cognizance of the local circumstances.

Performance Analysis Of The Institutions

The three institutions discussed above all thrive to do their level best in the promotion of consumer welfare in Zambia. The performance of these institutions, however, is not very effective and this has culminated into little success in as far as promoting and enforcing consumer rights is concerned. This is because these bodies suffer chronic under funding and, regarding ZCC and ZABS, also have a shortage of qualified and experienced workforce as professionals leave to work in developed countries for new economic opportunities. As a result, ZABS and ZCC, for instance, cannot carry out regular inspections in stores to ensure that products being offered for sale to the public are of good quality. On the most, the task is left to the unsatisfied consumer to take his/her complaint to the Commission or the Bureau if they are unsatisfied about the goods or services they buy and want to seek redress. Looking at the attitude of the Zambian consumers very few would be willing to enforce their rights to such an extent of reporting their complaints to authorities such as ZCC or ZABS. This explains the little number of complaints that these two institutions record monthly and the large influx of substandard electrical and other consumer products (mostly from the east) on the Zambian market⁴⁸.

ZACA has the further disability of lack of authority to enforce its aims and objectives. Its efforts only go as far as advocating for the observance consumer rights and can only seek the intervention of authorities such as ZCC and ZABS to enforce these rights. Their efforts, therefore, if not backed by such intervention may be futile⁴⁹.

In addition, these institutions are not available in all nine provinces of Zambia. ZCC and ZABS are in Lusaka, with ZABS only having inspectors of imported products in selected border towns, while ZACA's office is in Kitwe. This severely limits the consumer's access to these bodies whenever he/she has a complaint to report. As a result, liberalisation versus a weak regulatory regime is leading to a flood of poor-quality goods in the country and that is a big concern. Furthermore, it must be noted, from the provisions and arrangement of Cap 417, that ZCC's main concerns appears to be the regulation of competition among businesses and not consumer welfare. As a result, the Commission only pays lip service to consumer issues as their attention is more focused on ensuring fair competition among various players in various businesses sectors⁵⁰.

In conclusion, it can be said that ZCC, ZABS and ZACA play important roles in promoting and enforcing consumer rights. The contribution of these institutions in achieving these aims, however, is very limited due to the poor funding and manpower shortage that these institutions face that limit their operations. These problems are coupled with the centrality location of the institutions which makes access to them by consumers in all nine provinces of the country difficult. There is, therefore, urgent need to adequately finance these bodies and open up even at least one branch in every province, or perhaps have a specific institution tasked with the enforcement of consumer rights.

The next and last chapter concludes the study and provides recommendations of what measures can be taken to strengthen the legal and institutional framework for the better protection of consumer rights.

Application Of The Statutes On Consumer Protection.

The enactment of Statutes such as the Food and Drugs Act, the Standards Act and the Competition and Fair-Trading Act have played a vital role in promoting and protecting the health and rights of consumers. With the enactment of the Standards Act, for example, most consumer products are now subject to certain minimum standards which manufacturers must satisfy before their products can be certified fit for sale to the public. Despite the existence of such legislation, however, the practice of producing low quality goods is still evident among manufacturers in Zambia, especially in the beverage sector. Complaints about people having found foreign matter in beer or soft drinks and of adulterated flavored drinks are often reported.⁵¹ About two years ago a story was unleashed by a ZNBC reporter where Shoprite, one of the largest supermarkets in the country, was revealed to have stocked rotten vegetables and eggs in their back store of their Livingstone branch. In another recent incident, a story was carried by the Sunday Post on May 20, 2007, in which one of the opposition political parties were reported to have taken the management of Spar supermarket, Arcades, to task over alleged recycling of expired foodstuffs⁵².

These are just a few of the reported cases that clearly show a contravention of section 3(b) and (c) of the Food and Drugs Act which prohibits the sale of sale of poisonous, unwholesome, or adulterated food. Such conduct is also a breach of section 14(2) of the Sale of Goods Act which implies a condition that a seller's goods must be of merchantable quality, and section 12(e) of the Competition and Fair-Trading Act which prohibits the supply of any product which is likely to cause injury to health or physical harm to consumers, when properly used⁵³.

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

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

49 Ibid

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

51 (LRF News, Issue No. 25, March 2001)

52 V. Bunda, "No Return, no Refund" Disclaimer: Post Newspaper Article, 28th February, 2011. Page 18 Section 53 (l)

53 Ibid

The non-adherence to the law by manufacturers and sellers is also coupled by certain defects in the law itself in as far as protection of consumer rights and interests is concerned. This is particularly so with the Sale of Goods Act.

One major shortcoming of the Sale of Goods Act arises from the theory that the duties of the seller are imposed, not by the general law, but as terms implied in the contract of sale. The contract of sale is between the seller and the buyer, and thus the seller can be made liable only to the buyer and to no one else.⁵⁴ There is clearly a need, at least in the context of consumer protection, to reconsider this rule that benefits under a contract can only be enforced by a party to the contract.

Another major defect in the protection afforded by the Sale of Goods Act is perpetuated by the principle of freedom of contract in section 55 which permits the parties to exclude any of the implied conditions in the Act by a simple clause in the contract or order form. Although exclusion clauses are not common in cash sales, it is common to find in several retail shops notices stuck to the customers' attention stating that once a good is bought and taken 'no return of it or refund will be accepted'. In the motor trade, it is usual for the seller to require the buyer to sign an order form which contains conditions of sale. Among these conditions, almost invariably, is to be found something like 'All conditions and warranties, express or implied, statutory or otherwise, are hereby excluded.' It may be unrealistic to pretend that this is no major injustice which the Sale of Goods Act permits. Sellers should not be permitted to exclude all their obligations in such a manner⁵⁵.

From the provisions of section 14(3) of the Sale of Goods Act, it will also be noticed that there is no duty imposed on the seller if the goods are sold under a patent or other trade name, even if their purpose is known. This is an unfair exception on the consumer's part especially in the light of the large number of pirated and imitated products from the Far East that flood the markets today which are very difficult for the consumer to detect due to the great technological 'skill' that product imitators are investing. A good example is the 'Sony' label which has been falsely used on several electrical appliances such as DVD players, CD players and television sets which are not genuine Sony products. A buyer who, for example, requests for a Sony DVD player cannot rely on section 14 if the product turns out not to be fit for its intended purpose. Indeed, the Maloney Committee on Consumer Protection had no hesitation in saying that the 'patent or other trade name' provisions ought to be deleted. The English Sale of Goods Act 1979 has since omitted this provision in section 14 of the Act. Further the requirement that goods be of 'merchantable quality' in section 14(2) ought to be changed to a more precise phrase like 'satisfactory quality' because 'merchantable quality' is too imprecise. The limitation of the Food and Drugs Act on

the other hand is that it only covers food, drugs, cosmetics, and medical devices.

The above concerns are worsened by the fact that a considerable number of Zambians are semi-literate and do not particularly take keen interest in understanding Statutes. To most Zambians, therefore, the provisions of the Sale of Goods Act and other legislation mentioned above remain irrelevant. Besides, the majority sales take place in open local markets where individual buyers and sellers openly strike oral bargains, examine the goods, and payment of and delivery effected simultaneously. It will therefore be a question of whether one has got a good bargain at that point. Where goods are sold by street vendors, neither party could truly identify and locate the other should either party be unhappy with the bargain. Even where the sale takes place in a shop, the primary concern of the parties is to conclude the deal and move on without any contemplation of possible consequences of breach of any sale condition or warranty. Also, Zambian people are generally not very litigious. Courts are the last places many people would like to go. Besides, litigation is costly and inconveniencing and many people try to avoid it. Moreover, many consumer sales transactions in Zambia involve small sums of money, the kind of money that would not justify full-scale litigation.

From these observations consumer protection law in Zambia is not very well developed and as such very few people are aware of their rights as consumers. This calls for concerted efforts on consumer education by both the governmental and nongovernmental consumer welfare institutions. A pertinent question, as Malila notes, is, therefore, whether the interpretation of the Sale of Goods Act 1893 should take cognizance of the local circumstances.

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 market economy.⁵⁶ 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,⁵⁷ 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.⁵⁸ They are a form of government regulation which aims at protecting the interests of consumers in the market economy. Consumer

⁵⁴ G. Borrie and AL. Diamond, *The Consumer, Society and the Law*, 1964, p. 66.

⁵⁵ Ibid

⁵⁶ Standards (Amendment) Act, Cap 416 of the Laws of Zambia

⁵⁷ Weights and Measures Act, Cap 403 of the Laws of Zambia

⁵⁸ D. Walker, *Oxford Companion to Law*. (Oxford: Clarendon Press, 1980). Page 281

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.⁵⁹

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. 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.

Concept Of Consumer Rights

The concept of consumer protection law is a part of and originated from the concept of consumerism.⁶⁰ The word "Consumerism" means the protection of the rights and interests of consumers and ensuring right standards for the goods and services for which one makes a payment.⁶¹ 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.⁶² 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. 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 to 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 organizations and opportunity of such organizations to present their views in decision-making processes affecting them and the promotion of sustainable consumption patterns.⁶³

⁵⁹ Ibid

⁶⁰ [Htt://en.wikipedia.org/wiki/consumer_protection](http://en.wikipedia.org/wiki/consumer_protection): consumer protection Law term paper, Research paper and college essay

⁶¹ E. Phiri, Consumer Right; post Newspaper Article, 2nd August 2010. Page 18

⁶² E. Phiri consumer Rights, Page 18

⁶³ Ibid

Consumer international, a world-wide consumer movement came up with eight basic consumer rights which persuasively a Zambian consumer can enjoy.⁶⁴ 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 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.

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.

Statement Of The Problem

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 consumer's exploitation, 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. 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. It has been further observed that consumers are mostly on a weaker bargaining side with experienced traders and therefore may not get fair dealings

⁶⁴ Ibid

Objective Of The Study

The ultimate objective of this research was 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. However, the study was based on the following specific objective: To establish whether 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.

Rationale And Justification Of The Study

The transition of the Zambian economy from a national control economy to a free-market economy has left business and commercial practices to be operated by the private sector. This kind of economic structure has resulted in various unfair and anti-competitive trade practices as well as consumer's exploitation, which need serious attention by putting in place adequate and effective statutory regulations. This study, therefore, aimed at establishing the CPC the legislation Provide Adequate Consumer Protection

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 effectively protects the rights of the consumers adequately.

V. RESEARCH METHODOLOGY

Introduction

This part of the document covers the methodology of the study. It constitutes the research design, location of the study, target population, sample size, sampling methodology, research instruments, data collection procedure, data analysis and ethical consideration.

Research Design

Research design can be described as a broad framework that states the methods and procedures used in collecting and analyzing measures of the variables specified in the study being conducted. The research design helps in providing a plan of study that effectively assesses the cause-and-effect relations between independent and dependent variables. It specifies specific theories referred to in the study, the objectives of the study, data collection and analysis methods,

ethical considerations, probable outcomes, and actions to be undertaken to ensure that the study produces the desired results.

The study used a qualitative methodology employing an evaluation research design. The design was chosen because of the evaluative nature of the study. Evaluation design according to Ali (2006), seeks to provide data for making value judgement about some events, objects, methods, and materials within the context of the phenomenon evaluated. This design is considered appropriate for the present study because the study is aimed at determining the value, worth, and relevance of the learning management.

Population

Hair et al. (2013:137) define populations as entire groups of elements in which researchers are interested, and which can be used in their studies. Elements within populations can take many forms, such as people, products, or organizations. Study populations are defined by sets of common characteristics which their members share, and which are related to research problems and objectives (Zikmund and Babin 2010:301). The population of the study comprised 100 different Literature with information regarding the subject matter.

Sample Size

A sample could be described as "the selection of a representative group of subjects for a survey" (Chakrapani and Deal, 1992:101). According to Carr, (2018), sampling is one of the most important factors which determine the accuracy the study result. If anything goes wrong with the sample chosen, then the result will be directly affected. It can also be described as a group of people that are taken from a large audience. To this study the study utilized a sample size of 50 documents were reviewed.

Sampling Techniques

Sampling is a procedure, process, or technique of choosing a sub-group from a population to participate in the study Ogula (2005). It is the process of selecting several individuals for a study in such a way that the individuals selected represent the large group from which they were selected. Simple random sampling and Purposive sampling will be used to select the respondents. According to Mungenda (2013) "purposive sampling technique refers to the process by which a researcher selects a sample basing on the experience or knowledge of the group that is to be sampled". He further defines simple random sampling as "a sampling technique where every item in the population has an even chance and likelihood of being selected in the sample" (mungenda 2013: 234). Here the selection of items entirely depends on luck or probability, and therefore this sampling technique is also sometimes known as a method of chances. The study will purposively select legal practitioners serving in Ndola district. With respect to the selection of the cases to be reviewed, simple random sampling procedure was used to ensure that case documents selected

had an equal chance of being selected and included in the study.

Research Instruments

The study employed document analysis as a means of collecting data. Document Analysis was involving examination of various case law and other documents with regards to the study question.

Data Collection Procedures

The major method of data collection that was deployed in carrying out this study was desk research. The findings of this research were based on information from books on the subjects, enacted legislation, draft legislation and judicial decisions and case reviews. Articles from journals and newspapers as well as student dissertations will also referred to. In addition, interviews with officers concerned with consumer welfare will be conducted. Sources from the internet will also be used.

Data Analysis

The study was based on secondary information and the sources included statutes, judicial decisions, textbooks, Journal articles, newspaper articles, dissertations, internet sources, research and Commissions annual reports. The Data collected was organised into significant themes to reveal the essence of the data.

Ethics

Ethics may be defined as 'set of standards by which a particular group or community decides to regulate its behaviour. (Flew, 1984:112 as quoted in May, 1997:54) Cohen and Manion (1997:359) further define ethics as "matter of principled sensitivity to the rights of others". Good research is judged by the ethical standards observed by the researcher. Research ethics are described as " a set of standards and principles displaying what is acceptable and right and what is wrong and unacceptable when conducting research" (Sarantakos, 2005:432) Observance of ethics in conducting this research was considered crucial because it is argued that almost all research undertaken depends upon the co-operation of the many individuals the researcher comes into contact in pursuit of information and it is for this reason that any research conducted does not injure the reputation of the respondents such as those cited in this study..

In pursuit of information for this research, reasonable constraint will be made so that the dignity of those being researched was maintained. Confidentiality was considered paramount in carrying out the research. In this case, universal ethics will be followed. Where information given will be sensitive or confidential, the identity of the correspondents will be withheld in this study especially if the information being sought hinges on the operation of the organisation in the sample to avoid victimization. It is in this light that since the research involved all players in the legal fraternity, an informed consent from all parties to be researched will be

necessary, as this represents "an implicitly, contractual relationship between the researcher and the researched" (Cohen and Manion, 1997:352) so that the rights of those being researched are respected.

VI. PRESENTATION OF FINDINGS

Introduction

The discussion was based on an evaluation of the effectiveness of the statutory laws and statutes among them 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. It 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 analyzing salient provisions in the Act that are devoted to promoting economic growth in the economy.

Findings Of The Study

To gather the required information and to align the discussion with the findings, the researcher recalled the objective of the study which was to.

Establish whether 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 which gave rise to the question from which the theme came from.

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.

The Competition and Fair-Trading Act was enacted in 1994. Over the years, several developments have taken place in competition and consumer protection. Therefore, it was necessary to determine whether the new Act has adequately addressed the prevailing economic conditions of the country's modern economy. To arrive at conclusions to the study question, the researcher sought to establish the existing statutory regulations on consumer protection.

The study established that there are several statutory regulations that have been put in place to enhance consumer protection

At a regional level the study established that Zambia is a signatory of several international bodies hence the need to establish what is in place at a regional level. The study established that Zambia is a signatory to the following agreements:

- i. The 2002 southern African Customs Union (SACU) agreement
- ii. 2004 COMESA competition Regulations and,
- iii. The 2009 southern African Development Community (SADC) Declaration on regional cooperation in competition and consumer policies

At country level the study established that significant effort has been made to ensure fair play in the business environment thus the following were put in place:

- i. Competition and Fair-Trading Act, Cap 417 of 1994.
- ii. Control of Goods Act, Chapter 421 of the Laws of Zambia.
- iii. Disposal of Uncollected Goods Act. Chapter 410 of the Laws of Zambia
- iv. English Law (Extent of Application) Act, Chapter 1 1 of the Laws of Zambia
- v. Food and Drugs Act, Chapter 303 of the Laws of Zambia
- vi. Prices and Incomes Commission Act No. 9 of 1981
- vii. Sale of Goods Act 1893
- viii. Standards Act, Chapter 416 of the Laws of Zambia
- ix. Trade Marks Act

In addition to the Laws stated above the study further established that there existed several statutory instruments in that regard which included the following:

- i. Control of Goods (Agricultural Products Prices) Regulations SI No 390 of 1967
- ii. Control of Goods (Petrol Prices) Order, S.I. No 232 of 1967 and S.I. No. 220f 1968
- iii. Food and Drugs (Warranty) Regulations 1972
- iv. Standards (Compulsory Standards) (Declaration) Order, 2003
- v. Standards (Imports) (Quality Monitoring) Regulations, 2003
- vi. Telecommunications (Consumer Protection) Regulations 2004

The provision of the Laws and statutory instrument is to ensure fair participation and upholding of individual human rights with regards to competition and consumer protection. However, despite the provision of several Laws and statutory instruments the study established that there had been a violation of consumer rights and unfair competition.

The study establishes that Cases involving unfair trading practices and consumer protection outnumber by far all the other cases and have been on the increase since 1998. Cases involving restrictive business practices were a distant second, closely followed by those involving mergers and acquisitions. The Commission's caseload from 1998 to 2010 was a total of 1,996 cases, of which 923 cases (or 46.24 per cent of the total cases) involved unfair trading practices. 386 cases (19.34 per cent) involved restrictive business practices, while 331 (16.58 per cent) were mergers and acquisitions, and 235 (11.77 per cent) involved relocation of plant and equipment.

The study further established that there have been variations in term of cases recorded each year from the year 2018 to 2020 as indicated in the table below.

Table 4.1: Distribution By Complaints

CATEGORIES OF CONSUMER COMPLAINTS	YEAR			TOTAL
	2018	2019	2020	
Unfair Trading	629	627	362	1618
Misrepresentation	279	344	472	1095
Disclaimers	20	12	13	45
Defective Goods	392	410	388	1190
Unsuitable Services	745	975	1158	2878
Product Labelling	2	1	2	5
Price Display	14	17	30	61
Product Safety	26	1	21	48
Unfair Contract Terms	49	69	76	194
TOTAL	2156	2456	2522	7134

Source: CCP Annual Reports from 2018 to 2020

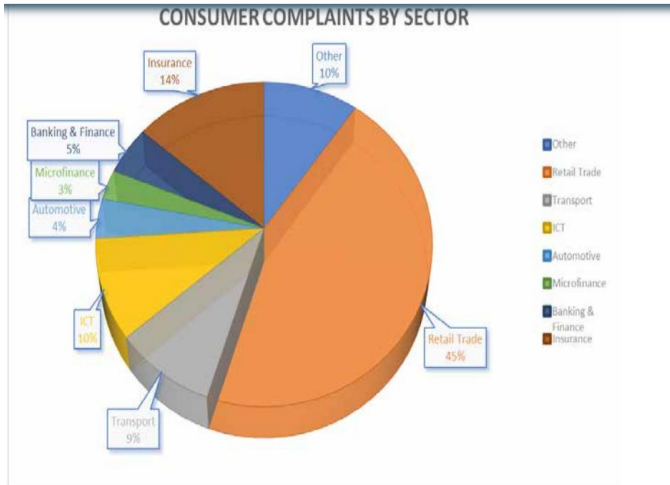
The data presented above indicated that there has been an increase in the total number of cases recorded from 2018 to 2020. In 2018 the total number recorded was 2156, in 2019 it recorded 2456 indicating an increase from the 2018 reported cases. In 2020 the total number recorded was 2522 which was also far much higher from the total number recorded in 2019. The 2018, 2019 and 2020 reports indicated variation in terms of cases among the following, unfair Trading, Misrepresentation, Disclaimers, Defective Goods, Unsuitable Services, Product Labelling, Price Displays, Product Safety and Unfair Contract terms with Unsuitable Services being the highest in all the three years recording 745 cases in 2018, 975 in 2019 and 1158 in 2020.

Over a period of three years from 2018 to 2020 unsuitable Services still recorded the highest cases with a frequency rate of 2878 followed by Unfair Trading with a cumulative frequency of 1618 cases followed by Defective Goods with a cumulative frequency of 1190. Unfair Trading despite being the second in number of cases in 2018 with a frequency rate of 629 cases, in 2019 627 cases the commission recorded a reduction in 2020 with a frequency standing of 362 cases recorded. It was further established from the data presented that Product labelling recorded the least cases among the cases recorded by the commission as compared to other categories.

The researcher further sought to establish the distribution of cases recorded by sector in 2017, 2018, 2019 and 2020. The

Tables and figures Extracted from the annual reports are as shown below.

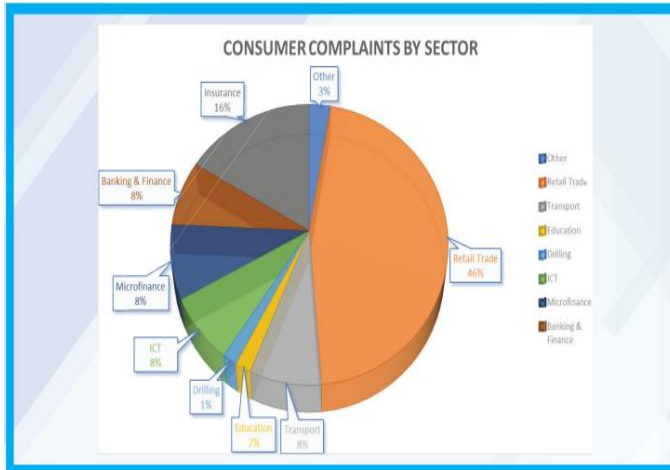
Figure 4.1: Consumer Complaints by Sector 2017



Source: CCP 2017 Annual Report

From the data presented in the figure above indicates that the greatest number of cases were from Retail and Trade accounting to 45% of the total cases recorded in 2017 followed by insurance with 14%, ICT and other both with 10% each, Transport with 9% and the least being Microfinance with 5%.

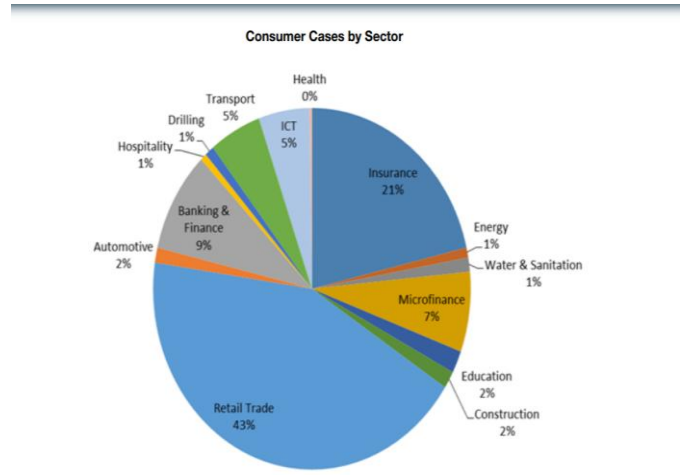
Figure 4.2: Consumer Complaints by Sector 2018



Source: CCP 2018 Annual Report

Similarly in 2018 from the total number of cases recorded Retail and Trade accounted for 46% followed by Insurance with 16%, Banking and Finance, Microfinance, ICT and Transport accounted for 8% each from the total cases reported while Education had 2% and Drilling had 1%.

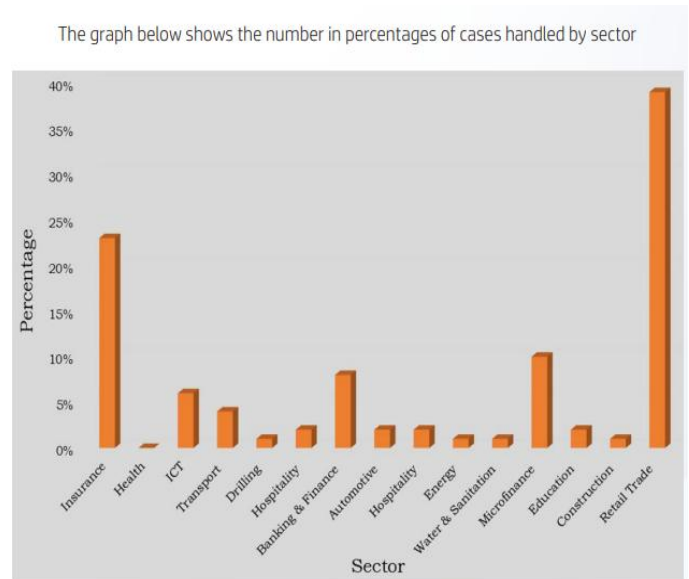
Figure 4.3: Consumer Complaints by Sector 2019



Source: CCP 2019 Annual Report

The data provided indicated that the commission recorded a similar trend in terms of case distribution from the years 2017 and 2018. The data provided showed that Retail and Trading had the highest number of cases recorded as compared to other sectors. Retail and trading accounted for 43% followed by Insurance 21%, Banking and Finance 9%, Microfinance 7% while Energy and Water and Sanitation had recorded the least cases with 1% representation.

Figure 4.3: Consumer Complaints by Sector 2020



Source: CCP Annual Report 2020

As depicted from the previous years in 2020 the Commission recorded a similar trend in terms of cases recorded by sector in 2020. The data indicated that Retail Trading, Insurance, Microfinance and Banking and Finance recorded the highest cases as shown in figure 4.3 above.

The study further established that despite the country recording a variation and significant number of Cases involving unfair trading practices and consumer protection which outnumber all the other cases. Several measures have been put in place by the commission, thus the Commission has wide advocacy responsibilities under the Act. Under section 5 of the new Act the Commission is the “primary advocate for competition and effective consumer protection in Zambia”. It also has the functions of: (a) Advising Government on laws affecting competition and consumer protection; (b) Providing information for the guidance of consumers regarding their rights under the Act; (c) Advising the Minister on agreements relevant to competition and consumer protection and on any other matter relating to competition and consumer protection, and; (d) Cooperating with and assisting 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 the Act. 69. The Commission makes itself visible to the business community and public through the media (both print and electronic). It engages with the Government in what it is doing through representations on discussions under the auspices of trade negotiation forums such as the World Trade Organization and the Economic Partnership Agreements with the European Union. It also has held joint stakeholder workshops with various organizations such as the Law Association of Zambia, the Zambia Association of Chambers of Commerce and Industry, the Chamber of Mines, the Manufacturers Association, and the Pensions and Insurance Authority. Its other advocacy and awareness work has included the following: (a) Publication of a weekly column on competition and consumer issues in The Post newspaper, which has the largest circulation in Zambia; (b) Appearing on television, and speaking on the country’s two main radio stations, on consumer protection issues; (c) Touring the country’s nine Provinces on awareness campaigns, and (d) Releasing press releases on case handling. It is also publishing a quarterly newsletter with a wide local and international circulation.

While the Commission is doing a lot in sensitizing the business community and public on competition and consumer protection issues, some stakeholders still feel that not enough is being done. There are concerns that the visibility of the Commission is still low and that the Commission needs to have physical representation in all the major centers of the country. There are also expectations that the Commission should educate and sensitize the business community on various anti-competitive practices and the general implementation of competition policy and law, as well as on its responsibilities to consumers.

Despite these attempts most of the modern business houses, in most instances they have frequently violate the consumer rights by supplying inferior goods, creating artificial food scarcities, providing incomplete information about the product and deceptive advertising. The law of the free marketplace causes competition among the various businesses, which

creates variations in the quantity, quality and cost of the products that are in demand by the consumer. These products are marked in several ways that it is often difficult for the consumer to judge their quality adequately. Again, more varieties of the same product encourage false advertising which claims and give the consumer a false sense of choice. On the other hand, poor distribution and underutilization of food grains have led to violation of human rights by artificially creating food scarcities in the country.

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. Additionally, after liberalization of the economy, there has been a decline in formal employment sector implying an increase in informal business arrangements. 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 Extent To Which Fair Competition And Consumer Rights Going To Be Realised Under Competition And Consumer Act.

The study further established that there is significant amount of effort by the competition authority of Zambia to cooperate with other similar agencies worldwide at both multilateral and bilateral levels as evidenced by entering into several agreements at regional level such as the 2002 southern African Customs Union (SACU) agreement and the 2004 COMESA competition Regulations. The cooperation at a multilateral level is done under the auspices of various international and regional organizations, such as UNCTAD, the International Competition Network, COMESA, SADC, the Southern and Eastern Africa Competition Forum, and the African Competition Forum. Literature indicates that the Zambian competition authority has also received valuable technical assistance from various cooperating partners since its inception. In that regard, UNCTAD’s capacity-building and technical assistance programme has played a prominent role.

The implementation of competition policy and law in Zambia, including consumer protection, has developed considerably over the years, and that development has been much facilitated by the new Competition and Consumer Protection Act, 2010. The business community in Zambia is generally receptive to the country’s competition and consumer protection law. In particular, the Commission’s consumer protection work is highly appreciated. The new Act removes most of the weaknesses in the legal framework that were prevalent in the old Act. Very few things were found to be going wrong in the implementation of competition and consumer protection policy and law in Zambia.

VII. DISCUSSION OF FINDINGS

Introduction

This chapter provides the discussion based on the findings presented in chapter four. The discussion was based on the four research questions as presented in chapter one

Discussion Of Findings

Based on the findings presented in chapter four, the act is not a reality. Facts are that during the period under review the study established a significant variation in cases in different sectors with a significant increase in most cases. Additionally, amidst of the COVID 19 pandemic the Act was unable to protect the rights of the consumers as it was overridden by the Public Health Act, Cap 295 of the Laws of Zambia and guided by the two Statutory Instruments, SI 21 of 2020 which designates Coronavirus Disease 2019 (COVID-19) as a fortifiable disease and SI 22 of 2020 which provided additional regulations to facilitate management and control of COVID-19 both issued on March 14th of 2020 which compelled all institutions of learning, Night clubs, restaurants barbershops among the many places to close in order to prevent the spread of COVID-19. Ministries responsible for public instruction strongly recommended that schools, colleges, and universities close prematurely. This is a clear indication the CCPC Act was insignificant as much emphasis was put on upholding the SI 21 of 2020 and SI 22 of 2020 at the expense of the rights of consumers. This restricted access to good and services which further resulted in unethical business practices and a spike in prices for goods and services due to scarcity of some services and goods. Business houses to a greater extent resulted to use compromised means of selling their merchandise. Furthermore, the situation and the SI in place resulted in some business houses such as bars, restraints and saloons being closed thereby reducing access to individuals wanting to access merchandises and services being sold and offered from such places. Additionally, this resulted to unfair competition as only a few of such places could operate while others were under close instructions. From the forgoing the Act has not helped the situation hence it is the view of the researcher based on the finding indicated in the previous chapter that the Act has not been a reality. This is also evident by the number of cases recorded regarding unfair competition and poor service delivery.

From the data presented in terms of the cases as provided above in chapter four, the data indicated that there is need to enhance the Law to protect consumer's rights and enhance fair competitions. Furthermore, as indicated it is evident that consumer rights in Zambia and other countries, has not been respected as indicated by the number of cases recorded.

It has been all nations concern to enhance fair competition and trading practices as evidenced by the enactment of various Acts and SI. Unfair trading practices (UTPs) have become an important reference point both in political debates as well as in academic research. Several concerns have been expressed

that UTPs may result in outcomes which are undesirable from the point of view of the whole society. In consequence, the presence of UTPs is often argued to be a good reason for government intervention and serves as a justification for some precautionary or remedial measures.

Among other purposes of prohibiting unfair trade practices, it is a market ethic of second order, the first order being Intellectual Property Right and related issues which are tangibly embodied into laws. It is a truism that absence of competition not only harms the general businesses, but it also impedes the consumer choice. Presence of many competitors is single best guarantee of consumer satisfaction in long run which perhaps is unachievable by any law as such. So, the two aspects as we talked about entanglement when seen from lens of consumer are aspects of the same thing. In general, price and quality of goods and services depend crucially on how far unfair trade is regulated in an economy. In this neoliberal era, when governments have stopped providing even most basic goods and services, consumers cannot be assured of quality and proper pricing without a legal enactment

The Competition and Consumer Protection Act was enacted in a detailed and comprehensive manner. The Act gave comprehensive descriptions and definitions of legal terminologies used in its provisions. This innovation was meant to 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. The direct effect of this was difficulties in identifying and enforcing all aspects of trade practices in competition law. As indicated above the changes made were clear indications that the Act even then was not able to protect the rights of individuals also promoting a fair playing ground for competing business houses and firms. Several innovations have been put in place to correct the situation though very little results have been accrued from the innovations.

Despite the provision of the Act been stated clearly indicating the need by the government to ensure consumer rights are protected this has only been achieved to a lesser extent. This is evidenced by the existing business environment, which is chaotic, with there trying his best to existence of cutthroat competition, where each seller is trying to survive and thrive by dominating the market. To maximize profits sellers have gone to great extent which are unethical and subsequently harmful. Subsequently, it has been established that the competition and consumer policies have not enhanced consumer welfare and that it has not helped in protecting consumers economic interests. It has also failed to prevent conducts that interfere or lessen competition in the markets as evidenced from the data presented in chapter four. It is also clear to state that amidst the Covid 19 pandemic with the SI on Covid 19 in place with its provisions prohibited consumer policies to ensure that consumers have a wider choice of

goods and services at competitive prices. The instruments furthermore did not create a conducive environment by creating a monopolistic business environment as other players on the market were forced to close a situation which created a hike in prices of commodities.

The concept of consumer protection is linked to the idea of consumer rights. 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. From the data presented in chapter clear shows that the Act has very little impact on our economy as a lot of individuals have continued being unfairly serviced and that there has been unfair competition among business players. Additionally, as stated above the SI 21 and SI22 enforcement created unfavorable platform for conducting business. Several business houses were closed down while other enjoyed and took advantage of the situation.

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 subsection 1 of the Zambia Development Agency Act captures this principle. It provides that:

"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.

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. The Competition and

Consumer Protection Act recognizes the importance of promoting a competitive economy and consumer welfare as being among the fundamental 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 authorizing 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 unauthorized 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. 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 bring out or fails to comply with any condition upon which the exemption was granted, the Commission is empowered to revoke the exemption.

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. Authorized 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. The future of Zambia's economic growth remains in attracting 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 crisscrossing 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.

However, in as much as it is recognized 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-centered gains at the expense of economic growth, development and consumer welfare. For this reason, the Act contains provisions for assessing, monitoring, controlling, and analyzing all mergers and acquisitions that occur in the Zambian economy.

VIII. CONCLUSION

In conclusion, the Competition and Consumer Protection Act has innovations that have, to a lesser 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. Despite we are still far from achieving its intentions. The Act was meant to 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 which has just been a dream as evidenced by the number of cases and unfavorable business environment that has always existed. Furthermore, the Competition and Consumer Protection Act is more punitive than the repealed Act. Although it has significantly not help much in ensuring total compliance with the Act by business players. The establishment of the tribunal has to a lesser extent contributed 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 to the enforcement of the Act, through the increased reports to the Commission.

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