



Zimbabwe is a landlocked country situated in Southern Africa. It is bordered by South Africa, Mozambique, Botswana and Zambia. Harare is the capital city.

For years, it has been the world's third largest source of tobacco and is potentially a breadbasket for surrounding countries, which often depend on food imports.

The former Rhodesia has been the scene of much conflict, with white settlers dispossessing the resident population, guerrilla armies forcing the white Government to submit to elections, and the post-independence leadership committing atrocities in southern areas. The country's current challenges include the need to address political stalemate, the economic crisis and one of the world's highest rates of HIV/AIDS infection.

#### Economy<sup>1</sup> □

The Government of Zimbabwe faces a wide variety of difficult economic problems as it struggles with an unsustainable fiscal deficit, an overvalued exchange rate, soaring inflation, and bare shelves. Its 1998-2002 involvement in the war in the Democratic Republic of Congo, for example, drained hundreds of millions of dollars from the economy.

The country has failed to meet the budgetary goals, therefore, the support from the IMF has been suspended. Inflation rose from an annual rate of 32 percent in 1998 to 420 percent in 2004, whilst the exchange rate fell from 24 Zimbabwean dollars per US dollar to 4,455 in the same time period. The Government's land reform programme, characterised by chaos and violence, has badly damaged the commercial farming sector, the traditional source of exports and foreign exchange, and the provider of 400,000 jobs.

#### Competition Evolution and Environment

The competition regime in Zimbabwe has been shaped by the interaction of various socio-economic policies and

PROFILE	
Population:	13.1 million***
GDP (Current US\$):	17.8 billion***
Per Capita Income: (Current US\$)	470 (Atlas method)* 2,400 (at PPP)**
Surface Area:	390 thousand sq. km
Life Expectancy:	33.9 years**
Literacy (%):	90 (of ages 15 and above)**
HDI Rank:	147***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (* For the year 1999 (**) For the year 2002 (***) For the year 2003	

development objectives that have characterised the economic development of Zimbabwe. The main policies affecting the competition regime include industrial; labour; trade; finance and investment; consumer; regulatory; government procurement policies and public enterprise reforms amongst others. To get a clear background of the current state of competition in Zimbabwe, we discuss briefly the evolution, development and status of the above policies as they relate to the competition regime.

The need for a competition law in Zimbabwe became paramount when the country adopted economic reforms in the early 1990s. There was a growing concern in the Government and the business community that, despite economic reforms introduced, there was lack of competition in Zimbabwe domestically and, at the same time, its industries were not also internationally competitive. The full benefits of economic reforms were, therefore, felt to be better realised under conditions of fair competition which stimulate consumer awareness, and reward those firms that are more efficient; whilst punishing those that perform poorly.

\* Original paper done by Vikash Batham of CUTS in August 2004. Revised in March 2006

<sup>1</sup> <http://cia.gov/cia/publications/factbook/geos/zi.html>

Whilst it was expected that the economic reforms introduced would enhance competition in various sectors of the economy through lowering of both social and economic entry barriers, eliminating existing restrictive and unfair trade practices, there was no watchdog body to explicitly promote the competition. The Government realised that market forces alone might not be able to address all the problems in the market place, especially in situations of market failure, caused by market power and its abuse.

The need for a competition policy and law in Zimbabwe is not much different from that in most other countries of the world i.e. the desire to address problems of market failures. The fundamental economic reforms adopted worldwide have been motivated by recognition of the role of the market and private sector in the efficient functioning of economies.

Another important recognition is that the full benefits of economic reforms can be obtained under conditions of fair competition, which reward those enterprises that are more efficient and sanction those that perform poorly by using more resources than necessary. However, business enterprises have incentives to acquire market power, which may be gained by limiting competition through erection of barriers to commerce; entering into collusive arrangements to restrict output and share markets; and other forms of anticompetitive business practices.

The existence of such practices in Zimbabwe was confirmed by a study undertaken in 1991 by a team of local and foreign consultants. This study identified the extent of RBPs and issues that needed to be addressed in competition legislation. The drafting of the competition legislation took into account the findings of this study, in addition to the experiences of other countries. The basic objectives of competition policy in Zimbabwe are maintaining and encouraging competition, to promote efficient use of scarce resources and protecting the freedom of economic action of various market participants.

### **Competition Law and Institutions**

Zimbabwe's competition law, enshrined in the *Competition Act (No.7 of 1996)*, was passed by the Parliament in 1996, and came into force in 1998. In adopting competition policy and law, Zimbabwe became the fifth country in Southern and Eastern Africa after South Africa, Kenya, Tanzania and Zambia to do so.

The institution responsible for the administration and enforcement of competition policy and law was established in 1998. In 2000, the Government took a decision to merge the Industry and Trade Competition Commission and Tariff Commission. The new name is the Competition and Tariff Commission. To facilitate the merger of the two commissions, a new *Competition Act, 2001* (No. 29 of 2001) became effective on June 01, 2002.

In addition to merging the functions of the two Commissions, the new Act addresses deficiencies identified in the old Act.

The Competition Act provides for the establishment of the Industry and Trade Competition Commission, and its work with other sectoral regulators. An Administrative Court exists to hear appeals by parties aggrieved by a decision of the Commission. The role of the Commission is to protect the process of competition rather than individual competitors. The focus of the Commission is, therefore, on the business behaviour of the enterprises rather than on the size of enterprises. There are also provisions for public interest considerations such as employment creation and the generation of foreign currency.

The Act distinguishes two types of prohibition: *per se* and *rule of reason* prohibition. UTPs, which require only proof that the act was engaged in, are *per se* prohibited. These include collusive agreements between competitors, predatory pricing, bid rigging and undue refusal to distribute goods or services.

Restrictive practices fall under *rule of reason* prohibition. They require an evaluation to determine whether the practices are pro- or anti-competitive. Examples include agreements or arrangements, whether enforceable or not, to restrict competition directly or indirectly.

Companies are required to apply for authorisation of M&As and RBPs prohibited by the Competition Act.

The basic objectives of competition policy in Zimbabwe are maintaining and encouraging competition to promote efficient use of scarce resources, and protecting the freedom of economic action of various market players.

The broad objectives of competition legislation in Zimbabwe are: "to promote and maintain competition in the economy of Zimbabwe; to establish the Industry and Trade Competition Commission, and to provide for its functions; provide for the prevention and control of restrictive practices; the regulation of mergers; the prevention and control of monopoly situations and the prohibition of UTPs; and to provide for matters connected with or incidental to the foregoing".

Specific objectives of the competition legislation are stated in the statutory functions of the Commission, which are to:

- encourage and promote competition in all sectors of the economy;
- reduce barriers to entry into any sector of the economy or to any form of economic activity;
- investigate, discourage and prevent restrictive practices;
- study trends towards increased economic concentration, with a view to the investigation of monopoly situations

and the prevention of such situations, where they are contrary to the public interest;

- advise the Minister of Industry and International Trade in regard to all aspects of economic competition, including entrepreneurial activities carried on by institutions directly or indirectly controlled by the State, and the formation, co-ordination, implementation and administration of government policy in regard to economic competition; and
- provide information to interested persons on current policy with regard to restrictive practices, acquisitions and monopoly situations, to serve as guidelines for the benefit of those persons.

### Anticompetitive Business Practices

Under the Competition Act, UTPs include restrictive practices. The Act defines a restrictive practice or method that restricts competition in that the action:

- restricts the production or distribution of any commodity or service;
- enhances or maintains the price of any commodity or service;
- prevents the production or distribution of any commodity or service by the most efficient or economical means;
- prevents or retards the development or introduction of technical improvements in regard to any commodity or service; and
- prevents or restricts the entry into any market of persons producing or distributing any commodity or service for the development of new markets.

Restrictive practices are considered under the rule of reason approach where an attempt is made to evaluate the pro-competitive features of the restrictive practice against its anticompetitive effects in order to decide whether or not the practice should be prohibited.

The opposite of the rule of reason approach is to declare certain business practices illegal *per se*. Under this approach, it only requires proof that the practice was engaged into, declare it illegal and prohibited, no analysis of the competitive effect is required. Under the Competition Act, certain specified unfair trade practices such as (a) misleading advertising; (b) false bargains; (c) distribution of commodities or services above advertised price; (d) undue refusal to distribute commodities or services; (e) bid rigging; and (f) collusive arrangements between competitors are *per se* prohibited.

### Sectoral Regulation

In addition to a competition authority mandated to look at broad competition issues, there are a number of sector regulators in Zimbabwe responsible for regulating sector on specific activities and some are on the way. Government embarked on the SAP in the early 1990s that embraced such policies as domestic deregulation, parastatal reform

### Box 60.1: Predatory Practices in the Beer Sector

Nesbitt Brewery (Pvt) Limited, a small brewing company located at Chiredzi, Zimbabwe, lodged a complaint with the Competition Commission that National Breweries Limited was engaged in predatory pricing, having drastically reduced the price of clear beer in Chiredzi to unprofitable levels, with the intention of driving Nesbitt Brewery out of the market.

Investigations revealed that the clear beer industry in Zimbabwe was highly concentrated, with an HHI index in excess of 8,000. Nesbitt Brewery was a new entrant into the market, challenging the long-standing monopoly position of National Breweries, which held a market share of 90 percent. National Breweries has a national distribution network, whilst Nesbitt Brewery only operates in Chiredzi.

Investigations further revealed that the National Breweries had organised a beer promotion in Chiredzi from May 1999 to April 2000, when the Competition Commission started gathering information on the case. The promotion included free snacks and T-shirts, lucky draw tickets, free beers and substantial price reductions. The promotion was only held in Chiredzi, where Nesbitt Brewery is based and also sells the bulk of its beer. The National Breweries retail prices for its beer, in Chiredzi during the promotion period, were below its normal landed costs in that town.

The Competition Commission conducted a full-scale investigation under section 28 of the Competition Act of 1996. The alleged practices were found to be predatory within the terms of Section 2 of the Act. Although National Breweries stopped their promotion activities as soon as they became aware that they were being investigated, the Competition Commission made them sign an undertaking that they would desist from future promotional activities primarily aimed at driving Nesbitt Brewery out of the market.

*Source: UNCTAD Intergovernmental Group of Experts on Competition Law and Policy, Geneva, July 03-05, 2002*

and privatisation. The reforms include the enactment of an appropriate legal framework and setting up of appropriate sector regulators to spearhead development in these sectors. The developments have been necessitated by the desire.

### Power Sector<sup>2</sup>

Government's objective in this sector has been mainly development with a focus on the provision of social and infrastructure requirements. The Zimbabwe Electricity Supply Authority (ZESA) was formed by an Act of Parliament in 1985, and given the mandate to generate, transmit and distribute electricity throughout the whole country. The country's rate of electrification is very low

2 <http://www.afrepren.org/Pubs/WorkingPapers/pdfs/wpp296.pdf>

with only 40 percent of the population having access to electricity.

Government and ZESA have recognised their inability to meet these challenges and have initiated the reform programme in order to open up the power sector to private sector investors. Functions of the former Central African Power Corporation (CAPCO) of generation and transmission was given to ZESA.

ZESA currently operates under the Electricity Act 1985. The Act has been amended to allow the incorporation of the Zambezi River Authority, a corporate body owned by Zimbabwe and Zambia and responsible for the operation and maintenance of the Kariba Dam.

Under the current scenario, regulation is shared between the Government and ZESA. The proposed new *Electricity Act* will regulate the reformed electricity sector. The Act will provide the legal framework for the unbundling and privatisation of electricity sector assets, the entry of new private investors into the sector, the independence, powers and accountability of the Zimbabwe Electricity Regulatory Commission (ZERC) and establishment of the Rural Electrification Fund (REF), which will accelerate the pace of electrification in remote rural areas.

The proposed Act is very clear on the distinct roles and responsibilities of the Energy Commission and the Competition and Tariff Commission. It recognises the Competition Act and explicitly states that all issues relating to competition will be referred to the Commission for consideration.

### ***Financial Services***

The regulator in the financial services is the Registrar of banks and financial institutions, a department under the Ministry of Finance. The enabling legislation is the Banking Act, 1999, which provides for the registration, supervision and regulation of institutions conducting banking business and financial activities in Zimbabwe. The regulator ensures that financial institutions comply with various statutory requirements. The regulator works closely with the Reserve Bank of Zimbabwe on the supervision of financial institutions. Because of the realisation that the roles of the sector regulator and the Commission are in fact complementary the two institutions work together.

### ***Insurance Industry***

The regulator for the insurance industry is the Commissioner of Insurance, which is responsible for the administration of the Insurance Act. Its broad mandate is to ensure that the organisations carrying out insurance business are financially sound and that public funds are protected. Like the regulator in the banking sector, the Commissioner of Insurance is also responsible for sanctioning mergers and acquisitions in the sector. The

regulator is concerned about ensuring that public funds are protected and will not be compromised by these transactions.

### ***Telecommunications Sector***

The new Postal and Telecommunications Act of 1999 provides for the establishment of the Postal and Telecommunications Authority of Zimbabwe (POTRAZ), as the sector regulator. It also provides for the licensing and regulation of cellular, postal and telecommunications services. The specific functions of POTRAZ are, among others, licensing, setting tariffs, allocating frequency, setting standards, to maintain and promote effective competition between persons engaged in the provision of postal and telecommunication services and any activities connected therewith.

### ***Broadcasting Services***

The Broadcasting Services Act, 2001 established the Broadcasting Authority of Zimbabwe (BAZ). The Act provides for the regulatory framework for the allocation and management of the broadcasting frequency spectrum and for broadcasting services in Zimbabwe. Its specific mandate is the planning, management, allocation, regulation and protection of the broadcasting frequency spectrum and the licensing of broadcasting services and systems. One of the functions of the BAZ, which has a bearing on competition is monitoring of tariffs charged by broadcasting licensees with a view to eliminating unfair trade practices among licensees and to protect the interests of consumers.

### ***Transport Sector***

The regulator in the transport sector is Government through the Ministry of Transport and Communication. The Ministry is responsible for policy formulation and ensuring that a conducive environment for the various players exists. However, in the aviation sub sector, the Department of Civil Aviation is directly in charge of registering and coordinating the various players.

### ***Consumer Protection***

Whilst the Competition Act in Zimbabwe does not include a division dealing with consumer protection, there are some provisions of the Competition Act that do serve to protect the interests of consumers. The Act includes six categories of conduct that are classified as 'unfair trade practices', which are criminal offence. Three of these categories relate to advertising, misleading advertising, false bargains and the distribution of commodities or service at above the advertised price. Advertisements are defined broadly to include statements attached to products offered for sale, including their wrapping or container.

In an attempt to minimise the negative effects of monopolistic and oligopolistic RBPs that, for a long time, have affected consumers in Zimbabwe, the Government

has, since independence, put in place legislation to protect consumers. The law takes into account eight consumer rights: rights to basic needs; to be informed; to choose; to be heard; to redress; to consumer education; to a healthy environment; and the right to be safe. There are four main laws designed specifically to protect consumers namely:

- The Competition Act, 1996 (No. 7 of 1996);
- The Consumer Contract Act: Chapter 8:3 (1994);
- The Class Actions Act, July 1999; and
- Small Claims Court Act, 1992.

The Consumer Council of Zimbabwe (CCZ), with branches all over the country, is at the forefront in defending consumer interests; initiating pro-consumer legislation; empowering consumers by monitoring product quality and service; and ensuring adherence to reasonably accepted standards and legislation.

The main objectives of the CCZ are to:

- lobbying and advocating for an effective consumer protection, legislation and policies;
- improving consumer rights awareness through education, communication and advice;
- providing research-based information and services;

- increasing the membership base through extensive and aggressive image building campaigns; and
- upgrading the human-resource skill base through relevant in-house and external training.

#### **Concluding Observations and Future Scenario**

Although the competition law is still in its early stages in Zimbabwe, the Competition Commission has managed to make some major inroads towards the prevention and control of anticompetitive practices and regulation of mergers.

However, in the period that the Commission has been operating, it has encountered two major problems in implementing the Competition Act. Firstly, given the fact that competition law is a relatively new concept in Zimbabwe, there has been some suspicion from the private sector and the business community, in general. This has made the implementation of the Competition Act slightly difficult due to lack of cooperation from the latter groups. Secondly, this lack of cooperation could, however, be attributed to lack of information because the Commission has not been in a position to actively publicise its objectives and activities to the business community.