



Malawi is a landlocked, highly indebted, LDC located in Southern Africa. Established in 1891, the British protectorate of Nyasaland became the independent nation of Malawi in 1964. After three decades of one-party rule, the country held multiparty elections in 1994 under a provisional constitution, which took full effect the following year.

Economy

The economy is predominately agricultural, with about 90 percent of the population living in rural areas. The economy depends on substantial inflows of economic assistance from the IMF, the World Bank, and individual donor nations. The Government faces strong challenges, e.g., to spur exports, to improve educational and health facilities, to face up to environmental problems of deforestation and erosion, and to deal with the rapidly growing problem of HIV/AIDS.

Further, the economic performance of Malawi has remained quite unsatisfactory in the past number of years. Relative stability and growth have been experienced but only to limited extent. The major reasons for this are numerous and include high level of inflation, fiscal imbalance, external shocks, depreciation of Kwacha (Malawi currency), high interest rates etc.

Competition Evolution and Environment

The elimination of trade restriction through the liberalisation programme has led to surge in imports, often of cheap and substandard goods. Importation of expired goods like drugs, canned food, powdered milk and tires as well as re-labelling and repacking of such goods pose health and safety threats to the consumers and the economy at large. These developments have raised complaints of unfair competition mainly due to either comparative inefficiency of domestic firms or dumping by foreign sellers.

The Malawian economy depicts some of the structures that characterise imperfect markets. Most goods in Malawi are

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| Population: | 11 million*** |
| GDP (Current US\$): | 1.7 billion*** |
| Per Capita Income: (Current US\$) | 160 (Atlas method)*** 580 (at PPP)** |
| Surface Area: | 118.5 thousand sq. km |
| Life Expectancy: | 37.8 years** |
| Literacy (%): | 61.8 (of ages 15 and above)** |
| HDI Rank: | 165*** |
| Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003 | |

produced and distributed under monopoly, monopolistic competition and oligopolistic conditions. Notwithstanding, the market structure remains imperfect and there are a lot of restrictive practices as in certain instances businessmen collude to avoid competition.

Malawi is also liberalising and privatising some sectors, which aims at creating an environment in which public enterprises will ultimately be converted into private commercial entities. This will enhance competition. One of these is the power sector. There is an apprehension that in some sectors where privatisation is taking place, private monopolies may replace public monopolies.

In facing these challenges, Malawi undertook a number of policy reforms. In 1990s, Malawi Government adopted a policy of economic liberalisation and formulated competition policy. The competition policy for Malawi was approved in 1997 with a broad policy objective to promote economic efficiency and protect consumer interests, comprising of three broad strategies namely lowering barriers to entry; reducing RBPs; and protecting the consumer.

The policy focused on four specific areas, namely:

- First, on uncompetitive business behaviour (fixing, collusive tendering or customer allocation and tied sales) aimed at eliminating or reducing competition.
- Second, unfair business practices aimed at taking unfair advantage of consumers. Examples of these unfair business practices include:
 - ◆ hoarding of producer and consumer goods for the purpose of bringing about a price increase
 - ◆ misleading the public as to the nature, price availability, characteristics, suitability for a given purpose, or quantity or quality of any product or services
 - ◆ supply any product which is liable to cause injury to health or physical harm to consumers when properly used, or which does not comply with consumer safety standards
- Third on market structures which permit abuse by a dominant enterprise; and
- Fourth is on Government legislation, which may impact on the free market.

The policy called for the enactment of a law that would make unfair business behaviour an offence and also protect the consumer by making a manufacturer or importer liable for defective or sub-standard products or services. It also called for the establishment of a trade remedial system where civil and criminal suits for the purpose of recovery of damages suffered as a result of an uncompetitive or RBP could be dealt with.

Specifically, the policy called for:

- Creation of an autonomous Competition Commission whose role will be to administer restrictive business practices legislation and consumer protection legislation; and
- Establishment of a specialised tribunal to resolve contentious issues in certain specific fields subject to judicial review on matters of law.

Competition Law and Policy

The Government's effort is evident from the resultant enactment of Competition and Fair Trading Act (1998), which was brought into legal force on January 28, 2000, and the Consumer Protection Act (2003). The Competition and Fair Trading Act (CFTA) has the following principal objectives:

- promoting competition and enhancing efficiency in Malawi's economy;
- regulating and monitoring monopolies and concentrating economic power, addressing the interest and needs of consumer and identifying price mechanism, M&As and restrictive trade practices, such as collusion and price fixing and determining whether the quality and prices of goods and services are justifiable; and

- promoting or participating in consumer education programmes and activities and disseminating consumer information to the public.

CFTA aims at encouraging competition in the economy by prohibiting anticompetitive trade practices; providing for the establishment of the Competition Commission; regulating and monitoring monopolies and dominant firms; protecting consumer welfare; strengthening the efficiency of production and distribution of goods and services; securing the best possible conditions for the freedom of trade; and facilitating the expansion of the base of entrepreneurship among others.

The Competition Commission and its Competencies

The functions of the Competition Commission include:

- carrying out investigations on its own initiative or at the request of any person who may be adversely affected by a proposed merger;
- taking such action as it considers necessary or expedient to prevent or redress the creation of a merger or the abuse of a dominant position by any enterprise; and
- providing information for the guidance of consumers regarding their rights under this Act.

The powers of the Commission include:

- to summon and examine witness;
- to call for and examine documents; and
- to administer oaths.

The Act also enumerates what constitutes anticompetitive trade practices, and these include:

- (a) Making the supply of goods or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods or the provision of competing or other services;
- (b) Imposing restrictions where or to whom or in what form or quantities goods supplied or other goods may be sold or exported;
- (c) Resale price maintenance; and
- (d) Predatory behaviour towards competitors including the use of cost pricing to damage, hinder or eliminate competition.

Sectoral Regulation

Presently, the regulatory framework consists of:

- Establishment of the National Electricity Council in October 1998;
- Changing the functions of the Petroleum Control Commission from importing fuel to controlling and regulating the fuel sub-sector in May 2000;
- Establishment of the Malawi Communication Regulatory Authority (MACRA) in May 1999;
- Licensing and operation of a second cellular phone service provider in 1999;
- Splitting of the former Malawi Posts and Telecommunication Corporation (MPTC) into the

Malawi Posts Corporation (MPC) and Malawi Telecommunications Limited (MTL) as separate businesses in May 2000.

For example, *MACRA* under the Ministry of Information, Posts and Telecommunications regulates the telecommunication sector in Malawi. In line with the need to open up the sector, a Communications Bill was processed by Parliament and includes the establishment of criteria and a formal procedure for tendering and issue of communication licences, as well as establishing a regulatory body to oversee them. However, MTL is still the sole operator of basic services in Malawi's telecommunication market and its privatisation has been put on hold after some irregularities were discovered in its sale.

Anticompetitive Business Practices

There has not been any comprehensive study on anticompetitive practices in Malawi. However, the problem of anticompetitive practices appears to be quite pervasive. The anticompetitive practices are being carried in the following manner:

Cartels

Cartels operate openly in many sectors, and are suspected of operating under cover in many more. Cartels that seem to have sprung up in response to price liberalisation on the Governments' part are the major problem. These are in effect attempts by the cartel members to appropriate the benefit of price decontrol in the form of monopoly rents instead of allowing them to accrue to the public in the form of competitive prices.

Restrictive Business Practices (RBPs)

Most RBPs are well hidden in Malawi. However, one instance of RBP that has been detected is in the service sector. In the mid-90s, the Malawi Government encouraged the formation of association in the service sector including the professions (legal, education, building etc). This was to promote development of the relevant services and to safeguard standards. However, the activities of the associations tend to include those that are clearly RBPs to the detriment of consumer welfare and sometimes even the promotion of the services. Typically minimum charges are prescribed and sometimes market sharing arrangements are also made. There is also a potential predatory and exclusionary behaviour.

Abuse of Dominance

Malawi's domestic activity is characterised by high market concentration with tendency towards monopoly or oligopoly particularly in the plantation agriculture, manufacturing, financial and other services. The ownership of assets in manufacturing is concentrated in the hands of few domestic and foreign investors. SoEs are the dominant domestic investors. A few domestic investors have historically been state-owned companies charged to invest

by statute. Their dominance has not substantially changed despite subjecting their investments to a divestiture programme under the Privatisation Act.

The enactment of Privatisation Act did not ensure complete competition in the economy as three major corporations: Agricultural Development and Marketing Corporation (ADMARC), Malawi Development Corporation (MDC) and Press Corporation limited (PCL) were not (immediately) privatised. As a result, the new private firms found it difficult to compete with the trio that was already enjoying economies of scale and some Government subvention.

Another development is state-owned monopolies simply ended up being private monopolies following public reforms. For example, the state-owned Petroleum Control Commission (PCC) that relinquished its monopoly on petroleum imports was replaced by a cartel-inspired Petroleum Importing Company. This is essentially a joint company that a few petroleum importers formed to be charged with the importation of fuel – the very activity PCC was undertaking.

Apparently due to lack of competition law, the privatisation programme was badly designed and implemented to the extent that in most cases it was virtually the transfer of the Government monopoly to private monopoly.

Unfair Trade Practices

There are number of UTPs in Malawi. These include misleading advertisements, hoarding, and selling of counterfeit goods. The Consumer Protection Bill though not yet passed shows some Government effort to curb such unfair trade practices that are detrimental to consumer welfare as misleading adverts and counterfeit goods.

Consumer Protection

The Consumer Protection Act (CPA) contains provisions for regulating fair business practices. The consumer is given protection under this, among other things, against:

Box 47.1: Offensive Advertisement

There are a number of UTPs in Malawi. There was a case regarding UTPs where Population Services International (PSI) was being accused by the Malawi Censorship Board for showing a nude woman on billboards advertising *Chishango* condoms.

The board and some members of the public argued that the advert was immoral and aimed at misleading the public. The Board, therefore, ordered PSI to remove the adverts from the billboards.

Source: Why is a Competition Law Necessary in Malawi? CUTS 2002

- (a) excluding liability for defective goods;
- (b) claiming payment for unsolicited goods or services;
- (c) engaging in unconscionable conduct in carrying out trade in goods or services;
- (d) engaging in pyramid selling;
- (e) engaging in bait selling;
- (f) offering gifts or prizes with no intention of supplying them; and
- (g) putting out an advertisement, which is misleading or deceptive.

The Act also provides for the establishment of a *Consumer Protection Council*. The Council is charged with the responsibility of protecting the consumer from a host of unfair trade practices. It also provides for channels consumers can take for trade remedies arising from unfair trading practices by suppliers of goods and services.

Functions of the Council can be enumerated as follows:

- to investigate any complaint received regarding consumer protection, and where appropriate, refer the complaint to a competent authority and ensure that action is taken by the competent authority to whom the complaint has been referred;
- to carry out investigations or inspections on its own initiative or at the request of any person regarding matters relating to consumer issues;
- to identify price mechanisms in Malawi to determine whether the prices are justifiable and to monitor the frequency and magnitude of price increases;
- to co-ordinate and network consumer activities and liaise with consumer associations and organisations, any competent authority and agencies within and outside Malawi to protect consumer interests;
- to formulate and submit to the Minister, policy and legislative proposals in the interest of consumers, consider and examine, and wherever necessary, advise the Minister on the modification, consolidation or updating of legislation providing protection to consumers in the areas covered under, or related to the CPA or any other written law;
- to provide advice to consumers on their rights and responsibilities under the CPA and any other written law and make available to consumers general information affecting their interests;
- to carry out, promote or participate in consumer education programmes and activities;
- to create or facilitate the establishment of conflict resolution mechanisms on consumer issues;
- to advocate for the effective implementation of the CPA and any other written law affecting consumers;
- to maintain a complaints register;
- to disseminate consumer information to the public;
- to collaborate with other institutions to ensure that the quality of technology, goods and services imported into the country comply with the Malawi Standards; and

Box 47.2: Hike in Rentals

The Malawi Housing Corporation (MHC), the country's housing utility company, has lost a major lawsuit against its tenants on the corporation's decision to hike rentals on its housing units aimed at making it operate on a commercial basis.

The High Court ruled that the MHC, which raised rents by more than 100 percent, violated Section 7 of the Malawi Housing Act, which states that the organisation is a non-profit making entity.

The MHC increased rents in April 1996 by more than 100 percent in a bid to make the institution operate on a commercial basis and to enable the organisation to put up more housing units as well as improve the maintenance of existing houses. Some MHC tenants with the help of the Consumers Association of Malawi challenged the increase of the rentals in court.

In his ruling, Justice Duncan Tambala ordered that the tenants be credited the rents paid since April 01 last year.

Source: Malawi News Online (29)

- to recommend to Government, where appropriate, minimum standards for basic or essential needs

Concluding Observations and Future Scenario

Malawi has the Competition and Fair Trading (C&FT) Act, which is aimed at curbing all anticompetitive practices in the market. It also has a Consumer Protection Act aiming at protecting consumer welfare. Although these two legal instruments constitute the major components of competition policy, the problem is that the institutions that would make the legal instruments effective have not been put in place. Some movement has been detected regarding the Competition Commission as Government has appointed the Commissioners in early 2005. However, there is no Secretariat and it may take another year before the Secretariat is functional. There is no movement towards the establishment of the Consumer Protection Council. The following conclusions follow from this state of affairs:

- Most of the laws existing in Malawi lack enforcing mechanism; Government should, therefore, address these shortfalls to ensure an effective regulatory regime in a liberalised economy. These laws will complement the C&FT Act in ensuring a level playing field in the economy; and
- Consumer movement in collaboration with all stakeholders (e.g. Malawi Bureau of Standards (MBS), Ministry of Commerce & Industry) should be accelerated

to educate the public on anticompetitive practices and their effect on consumer welfare and economy.

The telecommunications, utilities (electricity and water) and others are known to be less efficient due to limited competition. In some of these sectors like electricity and telecommunications, there seem to be competition-friendly legislation and regulations put in place yet there is slow progress towards implementation of the necessary reforms.

Even with the two bodies in operation (CC and CPC), more work will be needed. The market structure requires some solution in order to lessen the burden the two bodies are

likely to bear. There may be a need to harmonise sector-specific regulations with competition principles. Currently, the relationships between sector regulations and the competition regime are not yet clear. Further, the work and indeed the functions and powers of two bodies themselves may need to be harmonised to maximise their impact and cost-effectiveness.

The consumer movement needs to vigorously lobby for the establishment of the C&FT Commission and the enactment and operationalisation of the Consumer Protection Law, which is still at the Bill stage.

Suggested Reading

CUTS: Why is a Competition Law Necessary in Malawi?

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