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Global Forum on Competition

COMPETITION POLICY AND THE INFORMAL ECONOMY

Contribution from Zambia

-- Session II --

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**ALLEGATION OF UNFAIR PRACTICES BY ZAMBIA BANANA TRADERS ASSOCIATION
AGAINST BANANA FARMERS**

--Zambia--

1. Information and relevant background

1. On 15th July, 2008, the Commission received a complaint from Zambia Banana Traders Association (ZABATA) against commercial banana farmers who had constructed cold rooms for treatment of bananas. Specifically, ZABATA alleged that there was a group of farmers who had stopped supplying them bananas and had instead opted to trade as both wholesalers and traders.

2. According to ZABATA, their refusal to supply has resulted in the association not having enough bananas to sell as they cannot source bananas elsewhere. ZABATA claimed that they needed about 35 tonnes a day to meet consumer demand. At the time of the complaint, the association was reportedly only able to access about 10 tonnes of bananas per week, which they were sourcing from small scale farmers.

3. The other concern by the association was that the commercial banana farmers were likely to drive them out of business as the traders were not able to compete with them as the farmers end up selling directly to consumers at relatively low prices which were not competitive for the middle men (i.e. the traders). Further, ZABATA wanted to know whether these farmers had obtained licenses from Government to engage in wholesaling and retailing as well.

2. Legal provisions and assessment tests

2.1 Section 9 of the Act states that:

“(1) It shall be an offence for enterprises engaged on the market in rival or potentially rival activities to engage in practices appearing in sub-section (2) where such practices limit access to markets or otherwise unduly restrict competition. Provided that this subsection shall not apply where enterprises are dealing with each other in the context of a common entity wherein they are under common control or where they are otherwise not able to act independently of each other.

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

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

.....

(f) concerted refusals to supply goods and services to potential purchasers.”

2.2 Assessment Tests

4. In view of the provision of Section 9, the following are the Statutory Assessment Tests:

(i) Whether there is rivalry or potentially rival activities in the relevant market Section 9(1.)

(ii) Whether there was concerted refusal to supply

(iii) Whether the defendant/s was/were the only feasible suppliers of the goods and services

3. Findings

3.1 Parties

3.1.1 Zambia Banana Traders Association (ZABATA)

5. ZABATA was formed in 2002 and was registered under the Registrar of Societies in the same year (ZABATA constitution is attached). ZABATA is situated at Soweto behind City Market. ZABATA has over 200 members who deal in treating and selling of bananas which are sourced from commercial farmers.

6. ZABATA submitted that the farmers had stopped supplying them with bananas as they opted to sell the bananas directly as wholesalers and retailers. ZABATA alleged that this has likelihood to drive them out of business as they are unable to compete with these farmers who are selling at low prices which are not competitive to the middle men. ZABATA also alleged that they are having shortages of supply as an association as before, they could access about 35tonnes of bananas per day from farmers but are currently accessing only about 10 tonnes of bananas per week. ZABATA, however, said that there was no shortage of supply of bananas to meet consumer demand as the farmers were selling instead of them.

7. ZABATA also clearly stated that these farmers were acting as individuals in their refusal to supply them with bananas.

3.1.2 Banana Farmers

8. These are commercial farmers distributed mainly on the Southern part of Zambia. They constitute more than half the number of total commercial farmers involved in banana production in Zambia. They include Chiawa Farms in Kafue District which runs a cold room at Citizen Breweries in the industrial area in Lusaka; Go-Banana in Mazabuka which runs a cold room opposite Mukupa Guest House about 500m away from Soweto Market; Hot Man of Sikongo in Siavonga which runs a cold room opposite Stanbic Bank in the Industrial area; Mafosholo of Siavonga which runs a cold room at Soweto market and Jerry Cabine of Chiawa who is into exporting of bananas.

3.1.3 The Zambia National Farmers Union

9. Zambia National Farmers Union (ZNFU) expressed ignorance of the existence of ZABATA and said that they did not appear in their data base. As such, ZNFU said they could not say that they ever had dealings with ZABATA.

3.1.4 The Relevant Product Market

10. The relevant market is the distribution of bananas to the middlemen (wholesalers and retailers)

3.1.5 The Geographic Market

11. The geographic market is Lusaka (the capital city of Zambia).

3.2 Competitors and Market Shares

12. The market for the production and supply of bananas is highly fragmented and it is difficult to ascertain and assign market share to each producer, more than that the sector is not formally organised – both from the producer and the retail trade. However, the principal suppliers of ZABATA are the banana

growing commercial farmers, whose competition is largely imports which trickle in through only two South African owned national retail outlets.

13. Apart from the formally organised commercial farmers, ZABATA has another source of bananas for resale and this is the micro and small scale farmers who are unable to satisfy their demand. Currently these farmers are reckoned to only supply ZABATA about 10 tonnes per week as opposed to about 35 tonnes per day that ZABATA would order from the farmers.

3.3 Major Customers

14. Major customers are the general public who buy banana at Soweto market. Soweto market is a mass market with both in-door and a massive outdoor market area of all informal traders dealing in all kinds of agricultural products. Over the years, the market has also began to cater of informal sector furniture, second hand clothes, car spare parts, and traditional medicinal herbs.

3.4 Ease of Market Entry

15. There seems to be easy entry in this sector as anyone can acquire a market stall from Lusaka City Council and trade. One can either be given a wholesale or a retail licence depending on the needs of the trader.

4. Analysis of the Case

16. It would appear from the market conduct that the banana farmers were acting in collusion - either an explicit or passive collusion to avoid selling bananas to the informal traders who for obvious, may not have been a steady and lucrative market and thus opted to add a bit more value to the bananas and trade directly with some of their valued customers.

17. However, the informal sector is not legally protected under the law and thus the accusation against the banana farmers did not appear to be legally enforceable against an "illegal" grouping of informal self-employed traders. The trend appeared to be targeted at reaching directly the formal trade of the market where the returns for the farmers were higher and steadier, thus eliminating the informal middle-man. The traders wanted to be protected using the competition law – which law could not protect them.

18. It has been submitted that through the farmers directly selling and by-passing the middle-men, the consumer ends up buying the product at a lower price. This achieves one of the major objectives of the Act, which is to achieve consumer welfare. This has a positive effect on the economy in general.

5. Conclusion

19. This case is a paradox of how a possible collusive conduct, which is prohibited outright, could not be enforced due to lack of a legal platform by the complainant – the informal trader – hence not considered an enforcement priority within the resources of the Commission.

20. The Commission also considered the fact that the banana farmers were actually adding value to the process and affording the consumer to buy bananas in a more conducive state and at a relatively lower price.

6. Commission decision

21. From the analysis above, the Commission resolved to discontinue the investigations and closed the case.