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COMPETITION AND POVERTY REDUCTION

Contribution from Zambia

-- Session I --

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-- Zambia * --

1. General Introduction

1. Zambia is a developing southern African country that has for a long time suffered from this global phenomenon, poverty. Poverty levels in the history of the country hit 90.0% of the population (living below the poverty datum line of US \$1 per day) during the liberalization decade of the economy (1991 – 2000). During this decade (1991-2000), the Zambian economy recorded the worst macroeconomic performance in terms of all the key macroeconomic indicators. See comparison of key macroeconomic indicators for three decades from 1980 – 2012 in table 1 below:

Table 1. Developments in Key Macroeconomic Indicators

	Real GDP (RGDP)	RGDP per capita(USD)	GNS (% of GDP)	GIR ¹	Inflation
1980 - 1990	1.3	487.6	8.8	1.1	46.3
1991 - 2000	(0.1)	361.4	7.4	1.2	68.1
2001 - 2012	5.8	854.2	16.9	2.5	14.2

Source: IMF World Economic Outlook (WEO), released on 9th October 2012

2. This negative trend in the performance of the economy however, has been slowly reversing especially after the year 2000. Positive growth started to show in the economy and poverty levels started falling from a national average of 90.0% in the 1990's to 60.0% currently². According to the Central Investigations Agency (CIA) fact book, Zambia is ranked the 12th poorest nation in the world with 60.0% of its population living below the poverty datum line. In terms of GDP per Capita, the Global Finance Magazine ranks Zambia to be the 28th poorest nation in the world with an estimated GDP per capita of about US \$1,714.61 as at end 2012³.

3. The economy has continued posting impressive growth with an estimated GDP growth rate of above 6.0% for the last 6 years except in 2008 (5.8%). This year (2012), the economy is expected to grow at about 6.4%. This growth could be attributed to several factors but there is general consensus among scholars that the principal factor for this turn around in the economic performance of the country is due to

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¹ GIR data was downloaded from the world bank website; <http://databank.worldbank.org/ddp/home.do?Step=3&id=4>

² As at end year 2012. Of the 60.0% of the poor people in Zambia, 70.0% live in rural area while 30.0% live in urban areas.

³ <http://www.gfmag.com/tools/global-database/economic-data/12147-the-poorest-countries-in-the-world.html#axzz2G9aESZWP>

the liberalisation of the economy which opened up the economy to private sector investment which necessitated the establishment of commercial presence by several business enterprises both local and international.

4. The newly adopted economic management paradigm shift from command to a free market economy of the 1990's and the ensuing investment-friendly economic environment in Zambia witnessed the flow of foreign private capital by multi-national corporations (MNC's) especially in the mining sector⁴, cement sector, sugar sector, railway and road transport, retail and agricultural related investments, commercial banks etc. There was an avalanche of mergers and acquisitions in the economy especially in the above sectors which in turn led to the establishment of allied companies which are mainly locally owned. The entities under new management were recapitalised by new capital and increased their efficiencies and output and also offered more employment and business opportunities for the local people.

5. Some of the takeovers and acquisitions which took place before the Commission started its operations in 1997 led to the transfer of public monopoly companies to private monopoly companies. This development especially in the sugar and cement sectors is what has brought about concerns about high domestic prices of these products. In each of these sectors the new entrants have not yet reached the level where they could offer effective competition to the dominant incumbent firms.

6. The liberalisation of the economy came up with a new set of economic management policies including competition law. It is the Commission's submission that competition law can serve as a pivotal instrument in the alleviation of poverty by curbing anti-competitive trade practices engaged in by competitors especially through abuse of dominance and cartel behaviour. The paper will explore the instances in which the competition authority has attempted to prevent competitors from engaging in conducts that are detrimental to the consumers but more so to the poor people.

2. What is Poverty

2.1 Definition of Poverty

7. Poverty is a multi-dimensional concept which has been defined differently by different scholars and organisations. Poverty can be defined in two ways namely quantitatively and qualitatively. In the qualitative sense, some countries benchmark living below US \$1.25 per day to signify absolute poverty. However, in Zambia, quantitative definition of poverty uses a benchmark of living below US \$1 per day. As mentioned above, poverty is also defined qualitatively. The descriptive definition of poverty seems to capture the real concept of poverty as it covers a broad spectrum of factors that constitute poverty. The qualitative definition of poverty can also be desegregated in two parts; absolute and relative poverty. Generally, poverty can be defined in two ways namely absolute and relative poverty. The United Nations in 1995 after the World Summit on Social Development in Copenhagen adopted a definition of absolute poverty as;

“a condition characterised by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information. It depends not only on income but also on access to services⁵”.

⁴ The mainstream of the Zambian economy which is the single most predominant contributor to foreign exchange earnings

⁵ Contained in “Indicators of Poverty & Hunger”, Dr David Gordon Professor of Social Justice, School for Policy Studies, University of Bristol, Expert Group Meeting on Youth Development Indicators, United Nations Headquarters, New York, 12th – 14th December 2005

8. Relative or overall poverty on the other hand was considered as taking various forms. These included;

“lack of income and productive resources to ensure sustainable livelihoods; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments and social discrimination and exclusion. It is also characterised by lack of participation in decision making and in civil, social and cultural life. It occurs in all countries: as mass poverty in many developing countries, pockets of poverty amid wealth in developed countries, loss of livelihoods as a result of economic recession, sudden poverty as a result of disaster or conflict, the poverty of low-wage workers, and the utter destitution of people who fall outside family support systems, social institutions and safety nets, (UN, 1995)⁶”.

9. Further, the United Nations statement which was signed by heads of all UN agencies in June 1998 defined poverty as;

“Fundamentally, poverty is a denial of choices and opportunities, a violation of human dignity. It means lack of basic capacity to participate effectively in society. It means not having enough to feed and cloth a family, not having a school or clinic to go to, not having the land on which to grow one’s food or a job to earn one’s living, not having access to credit. It means insecurity, powerlessness and exclusion of individuals, households and communities. It means susceptibility to violence, and it often implies living on marginal or fragile environments, without access to clean water or sanitation⁷”.

10. From the foregoing formal definitions of poverty, it is evident that poverty is indeed a multi-dimensional concept and its definitions may vary by gender, age, culture, and other social and economic contexts. For instance, men may associate poverty with a lack of material assets, whereas for women, poverty may be defined as food insecurity; Younger men may consider the ability to generate an income as the most important asset, whereas the status connected to a traditional agricultural lifestyle may be the most important for older men. Nonetheless, despite these formal definitions of poverty, the underlying intuition of poverty can be summarised in lack and deprivation of various material, social and economic privileges.

2.2 Causes of Poverty

11. Poverty never results from the lack of one thing but from many interlocking factors that cluster in poor people’s experiences and definitions of poverty. Perceived causes of poverty are affected by one’s status and location. For example, poor farmers may link poverty to drought; the poor in the city to rising prices and fewer employment opportunities; the rich to “deterioration in domestic and international terms of trade, neglect of traditions and norms, lack of motivation among certain classes and groups of people, price liberalization and devaluation, lack of education and absence of governance among other things. The causes of poverty are just as multi-faceted as its definition. In our analysis of the many causes of poverty, we shall explore four categories namely social, economic, political and external factors.

⁶ Ibid

⁷ Opcit

2.2.1 *Social Factors*

2.2.1.1 Overpopulation

12. Overpopulation is defined as the situation of having large numbers of people with too few resources and too little space. Overpopulation can result from a high population density (the ratio of people to land area), from low amounts of resources, or from both. A high population density pressures the available resources, as the resources can only support a certain number of people. The causes of overpopulation which have aggravating consequences on poverty comprise of high birth rates which is characteristic of many developing countries as children are viewed as sources of labour, lack of access to birth control facilities and generally anti-birth control traditions and societal norms.

13. This situation is further aggravated by low productivity especially agricultural productivity which is the mainstay of the majority of the rural poor. As opposed to some of the smaller countries in Western Europe, such as the Netherlands and Belgium, which have high population densities as well but these countries practice mechanized farming and are involved in high-tech industries which support the dense populations. This is not the case in many sub-Saharan African countries including Zambia most of whom have relatively low population densities but lack the economic resources and technology to boost productivity.

2.2.1.2 Distribution of Resources

14. It is widely documented that the world's poorest nations also have the most uneven distribution of resources. This observation is clearly evident in Zambia. It is not uncommon to see highly affluent communities living side-by-side with extremely poor communities who spend literally everything they earn on food, which in many instances cause social upheavals. The dichotomy of economic growth in Zambia and many developing countries is that as more wealth and resources have become available, only a small proportion of the population have access to these resources. Many analysts attribute this apparent dilemma to the cost associated with obtaining these resources which increases with the increase in wealth, resulting in unequal access to them. Those living at the middle, lower, and bottom of the income brackets find it more difficult to sustain a viable quality of life.

15. Such unevenness in the distribution of resources is clearly inefficient from the point of view of the world as a whole. Torsten Persson and Guido Tabellini's study of 56 countries finds a strong negative relationship between income inequality and growth in GDP per head⁸. Since the 1970s, the poorest 20 percent of all U.S. households have earned an increasingly smaller percentage of the total national income (generally less than 5 percent) while the wealthiest 5 percent of households have earned an increasingly greater percentage (about 45 percent of the total)⁹.

2.2.1.3 Lack of Education

16. Lack of a good education is often associated to poverty. At a micro level, an uneducated individual will find it difficult to find a well-paying job. In addition, people with an education have many survival skills and acumen which are not available to uneducated people. According to the sixth national development plan (2011 – 2015), the national average enrolment rate for the year 2006 was estimated at about 50.2% for pupils starting their first grade while the completion rate was estimated at 48.1%¹⁰ for

⁸ <http://futureobservatory.dyndns.org/5200.htm>

⁹ <http://www.fightpoverty.mmbrico.com/poverty/economic.html>

¹⁰ Republic of Zambia, Sixth National Development Plan 2011 – 2015: “Sustained Economic Growth and Poverty Reduction”, January 2011

pupils completing their 12th grade. Clearly, this is a gloomy picture for a country that is fighting poverty especially that there is empirical evidence regarding the positive correlation between education and poverty reduction.

2.2.1.4 Environmental degradation

17. Environmental degradation is the deterioration of the natural environment, including the atmosphere, bodies of water, soil, and forests. While environmental degradation affects all sectors of the community, its effects are most pronounced on the poor. As forests, land, air, and water are degraded, people who live directly off these natural resources suffer most from the effects. For instance, in rural Zambia, people depend on agriculture and forests as a source of food and other resources. Soil degradation and deforestation simply damages or eliminates the supplies and perpetuates/deepens poverty levels.

18. Environmental problems have led to shortages of food, clean water, materials for shelter, and other essential resources which disproportionately affect the poor more than anybody else as the poor spend most of their income on these essential facilities. Further, the poor may not afford conveniences such as air and water filters, refined fuels, and industrially produced and stored foods to buffer themselves from the effects of environmental degradation.

2.2.1.5 Demographic shifts

19. The concept of “demographic shifts” or “demographic change” describes a population’s age structure adjusting to changes in living conditions. Consequently, changes in the composition of a society’s age structure are the result of social shifts¹¹. Demographic shifts have led to increases in poverty among children. In the United States, for instance, typical family structures have changed significantly, leading to an increase in single-parent families, which tend to be poorer¹².

2.2.2 *Economic Factors*

2.2.2.1 High Rate of Unemployment

20. Unemployment is a major cause of poverty especially in today’s market based economies. Globally, poverty has been closely associated with high rates of unemployment. Countries with high rates of unemployment also record high levels of poverty. When people are not employed, they lack an income to sustain a decent livelihood. Further, high unemployment levels lead to Government not collecting enough tax resources to embark on poverty alleviating social programmes.

2.2.2.2 Economic Trends

21. This cause of poverty is more relevant to developed countries than developing countries. Economic trends or economic cycles cause many people to fall in poverty. The point in case is the recent global financial and economic crisis which led to significant reductions in incomes and loss of jobs.

¹¹ Demographic change in Europe -An Overview. Working paper no. 4 of the Observatory for Sociopolitical Developments in Europe, August 2010

¹² <http://povertyhci.weebly.com/causes-of-poverty.html>

2.2.2.3 Unfair Trade

22. Unfair trade results in sub-optimal economic outcomes and therefore contributes to poverty in both developed and developing nations. For instance, high agricultural subsidies and protective tariffs in the developed world not only drains public money but also increases prices for consumers in both the developed and developing world. It further decreases competition and efficiency by preventing exports by more competitive agricultural sectors in the developing world and the developed world due to retaliatory trade barriers. Maximising the gains from international trade can substantially reduce poverty as individuals, companies and nations take advantage of their comparative advantage to trade with each other thereby creating employment and incomes.

2.2.3 *Political Factors*

2.2.3.1 Poor Governance

23. Good governance is an essential pre-condition for pro-poor growth as it establishes the enabling regulatory and legal framework in which private economic activity can thrive. Governance is defined as the manner in which power is exercised in the management of a country's social and economic resources for development. It implies a capacity to turn public income into human development outcomes. Poor governance does not only result in inefficiency in the delivery of public services but can also erode business confidence which results in deteriorating economic growth with its disproportionate impact on the poor.

2.2.3.2 Prejudice and Inequality

24. This refers to social inequality that stems from cultural ideas about the relative worth of different genders, races, ethnic groups, religious and social classes. This ascribed inequality places individuals in different social categories at birth which automatically determine the opportunities both social and economic available to disfavoured groups. The apartheid laws in South Africa clearly made people of colour worse-off by discriminating against them in both social and economic opportunities.

2.2.3.3 Corruption

25. Corruption can be both a consequence and a cause of poverty. It directly causes poverty by misappropriating resources meant for developmental activities. Corruption impacts the poor directly as they may not have the means to penetrate corrupt systems to access public services. By flouting formal processes, corruption increases the cost of business through the price of illicit payments, the management cost of negotiating with officials, and the risk of breached agreements or detection. This stifles economic growth which ultimately affects the poor more than well-off persons.

2.2.4 *External Factors*

2.2.4.1 Civil War

26. War diverts scarce resources from fighting poverty to maintaining the military. Apart from inflicting direct damage to infrastructure and social services, it disrupts economic activity and leads to stunted economic growth. This has direct implications on poverty.

2.2.4.2 Historical

27. A lack of reliable basic infrastructure, such as roads and communication systems constrain the development process especially in developing countries. Further, the historical legacy of colonialism where

colonies were largely viewed as merely cheap sources of natural resources and labour to support development in colonising countries has been attributed to the lack of development in countries which are former colonies.

2.2.4.3 Natural Disasters

28. Droughts, floods, hurricanes, earthquakes cause significant damage to economic infrastructure and economic activity. They also divert resources from economic activity to reconstruction efforts. In some worst case scenarios, natural disasters such as droughts have led to famines often with disastrous consequences especially on the poor who are less able to cope with the disaster.

2.2.4.4 Other Factors

29. At a micro-level, other causes of poverty may include disability or ill-health, gender, being a member of minority ethnic groups, living in a remote or very disadvantaged community.

3. Competition Law and Poverty Reduction

30. Competition law and policy is a set of rules and regulations that govern market operations in a free market economy. It sets out minimum standards and objectives that ensure that there is free and fair competition in the economy. Its principal aim is to ensure that corporates compete fairly by prohibiting market behaviours that may prevent, distort and restrict competition in the relevant market.

31. The direct link between competition law and poverty reduction lies in the power of competition law to regulate competition in a free market economy. This is achieved in controlling, monitoring and prohibiting anti-competitive trade practices that adversely affect competition in the economy leading to undesired competitive outcomes such as high prices for essential goods and services.

32. In addition, apart from the application of the enforcement mechanism to redress competition law infringements, a non-enforcement mechanism called advocacy can be used to reverse some policy and legal frameworks that are at variance with the principles of competition law which encourages and promote efficient allocation of resources to achieve desirable competitive outcomes that are beneficial to the consumers and the economy as a whole.

33. Competition law and policy is just one of the important Government instruments that could be used to reduce poverty. As mentioned above, poverty has many definitions and causes and as such competition law is a necessary but not sufficient tool to alleviate poverty as a stand-alone policy instrument. It is only efficient if used in conjunction with other supporting policies and legal frameworks as well as steady political support from Government and other relevant stakeholders.

3.1 *Poor People as Consumers*

34. This section of the paper discusses competition law as an instrument that could be used to protect and enhance the economic life of poor people in our society. While inflationary pressure could be caused by other factors other than anti-competitive conducts by corporates, abuse of dominance and cartel behaviour could also contribute to high prices for essential goods and services. Poor consumers/people are the most vulnerable to price fluctuations especially price increases. As such, artificial price increases due to anti-competitive behaviour by competitors such as abuse of dominance, cartel behaviour and mergers need to be checked as these may lead to increased poverty.

3.1.1 *Cartel behaviour and high prices*

35. In a cartel situation, independent enterprises (not belonging to the same economic entity) coordinate their actions to pursue a common business/economic interest. The following are some of the activities of cartel behaviour;

- a. Market allocation (division/partitioning); Market allocation prevents intra-brand competition which normally results in a higher price of the product which adversely affects consumers more so the poor people.
- b. Price Fixing; Here, the competitors agree to fix the price of a commodity. The fixed price is normally higher than the competitive price hence harming the welfare of poor consumers.
- c. Collusive tendering; Tenders are normally higher than normal due to collusion of the bidders.

36. As indicated above, cartel behaviour lead to high prices which are inimical to consumer welfare and lead to poor people deep into poverty. The Zambian competition legislation prohibits cartels per se.

3.1.2 *Abuse of Dominance*

37. Abuse of dominance leads to a myriad of anti-competitive trade practices that may lead to either exclusionary or exploitative abuse of market power. The instances may include: - excessive pricing, predatory pricing, refusal to deal, discriminatory pricing etc. This paper is concerned with excessive pricing in which a dominant firm exercises its market power to increase and maintain high prices on the relevant market for a commodity which should be essential. This erodes consumer welfare especially the poor who remain weak.

3.1.2.1 *Exploitative Abuse*

38. As an example of exploitative abuse of dominance, the aspect of excessive pricing will be given as an example. This is where a dominant firm exploits the consumers by charging unreasonably high prices. I.e. prices that cannot prevail if there was effective competition in the market. Excessive pricing adversely affect consumer welfare especially the poor consumers. It mainly occurs in the absence of local effective competition and import competition as well as ineffective competition law/authority to investigate the abuse.

3.1.2.2 *Exclusionary Abuse*

39. This is where an incumbent dominant firm adopts a strategy to exclude its competitors from the market. This is evidenced in the case of predatory pricing where the dominant firm sells its products below the cost of production with intent to force its smaller competitors to exit the market. The effect of predatory pricing is that after the smaller competitors exit the market, the price for the commodity is increased to above competitive levels which is detrimental to the poor consumers to the benefit of the dominant firm.

40. Another example of exclusionary abuse of dominance is marginal squeeze. Here the Dominant firm confers undue competitive advantage to its subsidiary operating in a downstream market against its independent competitors. It would achieve this by say, selling the critical input required by all players in the downstream market at different prices with a lower price given to its subsidiary. This would ultimately squeeze the margins of the independent players in the downstream market for them to be able to compete effectively with the subsidiary.

41. The net result may be that the independent companies may exit the market especially if they do not have an alternative source of the critical input. This may result in high prices for the consumer in the long run.

3.1.3 Mergers

42. Failure by competition authorities to foresee (predict) that a merged entity post merger may lead to increase in prices in the relevant market lead to this problem. Anti-competitive mergers may be consummated leading to the formation of an entity that may have market power to increase prices and may also lead poor people into more poverty.

43. In the Zambian scenario, three examples will be given in which the competition authority intervened in abuse of dominance cases and cartel behaviour in the cement, sugar and fertiliser sectors. The three (3) cases are illustrated below.

A. Excessive Pricing of Sugar

44. Sugar is a source of energy for many people including the poor and in Zambia it has been selected as a vehicle for the transmission of vitamin A. The Commission's main objective to intervene in the sector was to stop the excessive pricing of this essential commodity and make it affordable to the consumers (poor people).

Box 1. Excessive Pricing of Sugar

In the year 2006, the Commission made investigations into the allegations of high sugar prices on the Zambian domestic market meant for household consumption. This sugar is fortified with vitamin A (which the ministry of health say is lacking in the population especially the old, young and expecting mothers).

The findings of the commission were that indeed the domestic prices of sugar were excessive and concluded that the sugar firm abused its power (had a market share of about 93.0%). The commission made the following recommendations: - that import competition be allowed to discipline incumbent domestic player. Recommended to Government to reduce the import duty to allow more sugar to come into the country.

Note: The Commission's investigative report never went to the board for decision making. Towards the end of the investigations, the Commission was advised by Government that the matter would be resolved through policy measures. However, to date, the situation has not changed.

B. Abuse of Dominance in the Cement Sector

45. Cement is one of the essential materials used in the construction of social economic infrastructural development projects such as roads, bridges, hospitals, schools, real estate, etc and a basis for industrial development. Given its importance to national development, the Commission instituted an investigation into the sector following allegations of cement shortages on the market causing price distortions.

46. At this time, the cement company had 98.0% market share with 2.0% held by another small entrant into the sector. There were no imports coming into the country.

Box 2. Abuse of Dominance in the Cement Sector

From 2001 after Lafarge acquired Chilanga Cement Company owned by the common wealth development corporation, the Commission has been monitoring the market behaviour of the enterprise. In 2003, the Commission observed a shortage of cement on the market and increasing prices of the commodity. At that time, there was very high demand for cement following the many infrastructural rehabilitation and construction projects by the Government, real estate development, and also demand from the mining sector.

As a result of public outcries and continued shortages and high prices, the Commission intervened and found that all industrial sales of cement were curtailed as the cement company was receiving orders from the export markets.

The commission found that the cement company abused its market power by limiting supply on the domestic market which brought about cement shortages on the market and price increases. The commission ordered the cement company to change its strategy and restore supply on the local market and stabilise the prices of the commodity

C. Cartelistic Behavior in the Fertilizer Sector

47. Fertilizer is an essential raw material in crop production in the agricultural sector. It's the most expensive raw material. The Zambian Government is currently running a pro-poor subsidy programme by cushioning the poor small scale farmers from high prices of fertilizer. Three quarters of the cost is paid by the Government.

48. Government contracts private fertilizer companies to source appropriate fertilizer for resale to Government for its agriculture subsidy programme to small scale farmers. There are several fertilizer companies but only two (2) have been winning the tender for the last 8 – 10 years. The Commission was concerned and suspected a cartel:-

Box 3. Cartelistic Behaviour in the Fertilizer Sector

In November 2012, the Commission carried out a dawn raid on the two firms suspected to have been involved in a cartel. A lot of documents containing implicating evidence were collected. In the middle of the investigation, Government intervened citing concerns that the investigations would disrupt the supply of fertiliser thereby causing food shortages and food insecurity in the country. Investigations have therefore been deferred.

49. The Commission's suspicions were that the two firms were involved in cartelistic behavior as a result of which the Government was paying a higher price for the commodity.

50. It is the Commission's considered view that proper appreciation and administration of competition law can bring about enhanced economic welfare for the poor. Apart from the enforcement of the law, advocacy can be useful especially in countries where there is poor political will. While the Commission was not successful in the sugar case to enforce the law, the message has reached the policy makers and the Commission plans to engage Government officials on the importance of competition law through advocacy. From the three cases given above, the role of a competition authority cannot be overemphasized in ensuring that there is free and fair competition in the economy which may lead to market conditions delivering competitive market outcomes which are beneficial to the consumer and poor people in particular.

3.2 *Poor People as Entrepreneurs and Workers*

51. Before 1991 when the economy was run on the socialist fundamental principles of economic management, the Zambian economy was closed with high tariff barriers, quotas, anti-dumping duties and burdensome bureaucratic processes. Government ran businesses and there were very few private individuals with private investment in the country. Everyone depended on Government provision of goods and services.

52. However, this trend changed following the Government pragmatic change of economic management from the command economy to the free market economy. This period brought about a different regime of policies governing the economy. Government adopted a policy of “private led growth”. Thus, Government stopped running businesses which were thought to be suitable for private entrepreneurs. The Government’s duty was only to create an environment suitable for private sector development which included the formulation of various policies.

53. Several sectors of the economy responded to these policy changes that created an opportunity for private sector investment. Currently, there are a number of micro and medium sized enterprises spread through-out the country which have created job opportunities for poor people. The enterprises cover all sectors of the economy such as ICT, Agriculture, Tourism, Retailing, Mining, Construction, Manufacturing, etc. These ventures have helped people move out of poverty. They are at least earning an income which ensures food security, cover medical and school fees and build decent houses.

54. However, the incorporation of these enterprises is one thing and their growth and development is another. The competition Commission’s duty is to ensure that incumbent dominant firms do not abuse their market power to prevent the growth of these small entities and/or foreclose the markets. Common among the strategies that incumbent dominant firms with market power use are exploitative and exclusionary strategies. However, what is relevant in this scenario is to prevent the growth of small enterprises, foreclose entry and force some micro, small and medium enterprises to exit the market is exclusionary abuse of market power.

55. In the Zambian scenario, we have not had any specific cases worth citing involving exclusionary abuse of market power by an incumbent dominant firm against smaller market players. However, it suffices to say that the competition authority is wary of these schemes by big firms to adopt anti-competitive strategies that may lead to the prevention, restriction and distortion of competition that may adversely affect the small enterprises and poor consumers through high pricing.

56. A proper combination of other policies and competition law can surely move a lot of people out of poverty especially small enterprises need to be involved as they are the seed bed for future corporations. As such, anti-competitive practices need to be stopped at all costs to allow the growth of these firms that have potential to promote further employment opportunities and drive people out of poverty.

4. Other Important Considerations

57. Much as the factors causing poverty are many, there cannot be a single measure/approach that can be employed to alleviate poverty. A multifaceted approach will have to be adopted to fight poverty and competition law is one of the instruments that could be employed in contributing to poverty alleviation. In terms of competition law application and enforcement to tackle poverty especially in a developing country like Zambia, several considerations need to be put in place as illustrated below:-

4.1 Importance of Advocacy

58. The common practice to stop anti-competitive trade practices by firms by competition authorities is to adopt an enforcement mechanism. However, there is a general consensus among scholars and competition law practitioners that the understanding and appreciation of competition law principles and hence benefits to the economy by relevant stakeholders is important/cardinal. To create this understanding, different advocacy approaches need to be adopted by competition authorities to disseminate information regarding the role of competition law in a liberalized market economy. Most importantly, this information should be propagated to Government officials such as the politicians, policy makers and law enforcers and the private sector as well as the general public. In the Zambian scenario, during the early days of the introduction of competition law, the Commission spent its resources and directed its energies in creating awareness to the above stakeholders for them to understand and appreciate the benefits of competition law. For example, one success story in which advocacy was successfully used in Zambia was in the telecommunications sector.

59. The telecommunications sector in Zambia has three (3) mobile service providers. Two (2) of these firms are privately owned while the other one is owned by Government which also provides the telephone landline service. Before 2010, the Government owned company was the only one that owned an international gateway facility and the other two privately owned mobile phone providers did not have their own international gateways to allow their subscribers to make international calls.

60. The Zambian competition authority realized that the Government owned firm had an undue advantage over its competitors in terms of international calls due to the fact that it was able to offer the international call service cheaper than its competitors by virtue of owning the international gateway.

61. Against this backdrop, the competition Commission of Zambia felt that it needed to level the competition playing field in terms of international calls. As such the Commission used advocacy to Government to allow for the liberalization of the international gateway. It made several advocacy efforts to the Government's parliamentary committee on telecommunications and the ministry responsible for communications. It took a period of about 6-7 years for the Commission to convince Government that the liberalization of the international gateway was of benefit to the consumers and the economy as a whole.

62. In 2010, the international gateway was liberalized and the cost of international calls reduced by 70.0%. This cost reduction constituted a benefit to the poor consumers who could not afford to make international calls.

4.2 Pro-Poor Government Subsidy Programme

63. The Government of the republic of Zambia has been running an agricultural subsidy programme for the last 8 years for the small scale farmers. The rationale for this programme is premised on the fact that fertilizer prices are too high for a small scale farmer. In the effort to ensure national and household food security, the Government saw it prudent to subsidize the farmers throughout the country. For these years that the programme has been in place, there have been harvests above average. The extra grain is sold to Government, a situation which has created an opportunity for earning income to meet the social and economic needs of the farming households. This programme has to some extent pushed down poverty levels in rural areas.

64. However, while the policy is good for the poor farmer, the competition authority has reservations as to the real benefit of this programme to the economy. This subsidy programme gobbles huge sums of tax payers' money in billions of kwacha. The Commission's contention with regards to this programme is the amount of resources spent to produce the maize grain viz a vis the benefits. Whilst the country has been

registering increased production in terms of maize grain, there has not been a positive effect on the price of both maize grain and maize meal as these have continued increasing over time and these high prices of maize meal have adversely affected the welfare of poor urban households with low incomes. These resources could be used to meet other social and economic needs.

4.3 Focus of competition authority:- production chain

65. A product will reach the final consumer/end-user through vertical distribution which constitutes a chain from production, wholesale, retail and finally the consumer. In a sector devoid of anti-competitive practices, where market players are thought to compete on the merit, the competition authority has no incentive to intervene in such a market. However, the chain may be marred by vertical restraints which may prevent, distort and restrict competition and bring about adverse effects on the consumer such as high prices.

66. In terms of where the competition authority should focus its attention along this chain in order to reduce poverty, the appropriate approach is to focus on the whole chain and see where the vertical restraint is. By focusing on the whole chain, the source of the prevailing anti-competitive practices will be traced and appropriate measures be instituted.

67. In Zambia, there was a case in 2007 in the cement sector where there was a public outcry about high prices of the commodity on the domestic market. The immediate reaction of the Commission was that the producer of the commodity had hiked the price and was abusing its market power. However, the investigations revealed that the cement producer had not increased the price of the commodity but the problem was at retail level where the prices and the margins were very high.

68. During the meeting between the cement producer representatives and the Commission officials, the Commission had asked the respondents as to why there were high cement prices on the domestic market. One of the representatives of the cement company said:

“We sell cement at relatively low and affordable price but the problem is at retail level, we do not have power to control prices at this level as retailers are independent business firms.”

69. Against this background, the Commission learnt that when assessing a competition case involving a production chain, it was important to focus attention on the whole production chain from production all through to retail level.

5. Competition Policy and Other Policies

70. Competition law and policy cannot work in isolation to achieve or produce desired outcomes. This is because it is part of the many complementary policies that have to be blended appropriately to achieve better results/economic conditions for the economy. Such policies as privatization policy, trade policy, commercial and industrial policies etc are important as they create an environment that lead to a competitive market environment that encourages and promotes the growth and development of the economy at large. In 2007, the competition Commission in Zambia was faced with a case in the sugar industry. This was a case of excessive pricing of the commodity on the domestic market and the Commission thought that import competition would be the solution. The Commission recommended to Government to reduce the import duty on sugar to facilitate its importation into the country.

71. The above example shows that the harmonization of policies and legal frameworks can deliver more desired competitive outcomes that are beneficial to the economy. Generally, the results will be good for the poor people.

6. Conclusions

72. Several conclusions were drawn from this paper and these include:-

- a. Competition law and policy cannot be used as a standalone instrument to alleviate poverty. It is just one part of the several Government Instruments that can be used to fight poverty. An appropriate blend between competition law and policy with other policy and legal frameworks can deliver better results beneficial to the economy and the poor people in general.
- b. Competition law and policy can be used as one of the complementary Government instruments to fight poverty as long as it has sufficient provisions and competent authority as well as political will.
- c. A better application of competition law leads to increased competition in the market which results in;
 - i. Increased innovation leading to the production of a variety of products hence increasing consumer choice, including the poor.
 - ii. Increased competition forces firms to be efficient in their production and distribution processes leading to lower prices, good for poor people.
- d. The competition legislation should confer competition authorities with adequate power to be able to enforce the law. The law should provide punitive sanctions so that they act as a deterrent to would be offenders
- e. Effective competition law enforcement leads to the control of abuse of dominance which leads to exploitative and exclusionary abuse of market power and hence control such practices that may lead to price increases such as predatory pricing, marginal squeeze and excessive pricing. These conducts are detrimental to poor consumers.
- f. Competition law enforcement also leads to identification, investigation and successful prosecution of cartels. Cartel behaviour mainly leads to high prices of essential goods and services that affect the livelihoods of poor consumers.
- g. Effective merger review prevents the consummation of anti-competitive mergers that may lead to high market prices that adversely affect the economic lives of poor people.
- h. Collusive Tendering marred with corrupt practices in Government procurement may cost the Government dearly. This complicates and frustrates investigations by the competition authority especially when Government officials are involved in the vice.
- i. A non-enforcement mechanism of competition law, advocacy, remains a critical tool to create awareness to the relevant stakeholders regarding the importance of competition law in a free market economy.
- j. Competition delivers positive results on employment creation, increase wages and post reasonable growth results of the economy and hence, reducing poverty.
- k. Multinational corporations have lobbying power over Governments which may produce anti-competitive outcomes that may affect the welfare of poor consumers especially as a result of high prices for essential goods and services. Their lobbying power actually may perpetuate the existence of anti-competitive practices on the market as long as they are protected by Government from being investigated by a completion authority.