A Critical Evaluation of the Competition Laws on the Zambian Banking Sector

1.1 Introduction

The liberal policies in 1991 under the Movement for Multiparty Democracy (MMD) provided a platform for a competitive economy for Zambia which runs on a market economy. This type of economy thrives on the principle of demand and supply with respect to the market. The market is a factor instrument in the determination inter alia prices of goods and services. If any country is to see socio-economic development, the concept of competition becomes a factor, and further the need for regulations to promote competition. Among the major Acts that grace this area of the law is the Competition Act No. 24 of 2010 and Financial and Banking Services Act No. 7 of 2017. These laws are enacted not only to prevent the anti-competitive practices in the country but also generally to promote competition. It goes without saying that the attention given to competition is due to the many advantages that comes with it in relation to the growth of an economy among them innovation, quality goods and services, the lowering of prices, economies of scale, competitive advantage, etc. Competition affects all sectors and the banking sector has not been left out.

The paper critically evaluates the impact or influence that competition laws have on the banking sector with a special bias to bank charges being one of the issues in contention in Zambia. The legal and policy framework among other things will be test to ensure answers to the many questions.

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1.2 Research Background

1.2.1 History

For over 20 years until the early 1990s, Zambia was predominantly using interventionist economic policies which entailed extensive government ownership and administrative controls over markets, including financial and banking markets. Interventionist policies, combined with a steep fall in the external terms of trade, which led to economic decline, and a major programme of market oriented economic reforms was adopted in the early 1990s that included financial sector reforms.

The financial system in the mid-1960s was dominated by foreign commercial banks mainly serving the credit needs of foreign and expatriate businesses. The general purpose of financial policies after 1968 was to enable government to exert greater control over the financial system and to ensure that credit allocation was more supportive of the government’s overall economic strategy. Financial policies consisted of three main parts; nationalization of foreign financial institutions, establishment of government owned banks, development of financial institutions, administrative controls over interest rates and to a limited extent, loan allocation.

ZANACO was established by the government in 1969. Its aim included the provision of credit to Zambians and the extension of bank branches into the rural areas. The government, however,

soon realized that ZANACO would be unable to expand rapidly enough to meet the expectations placed on it, and in 1971 announced plans to nationalize all the foreign financial institutions, including the commercial banks.

The objective of nationalization was to control the 'commanding heights' of the economy and to prevent capital flight. Most of the non-banking financial institutions were nationalized and amalgamated to form financial parastatals such as the State Insurance Corporation and Zambia National Building Society (ZNBS). But with one exception (the Nederland Bank) the banks were not nationalized because the foreign banks threatened to withdraw their expatriate management and the Zambian government was not confident that it could manage the banks without them.

Several other banks and non-banking financial institutions were set up by the government to serve various purposes. For instance, the Indo-Zambia Bank was established in 1984 as a joint venture between the government and three state owned Indian banks, and in 1987 the Zambia Export and Import Bank was founded to supply trade finance. Development finance institutions were set up to provide concessional and long-term finance to priority sectors with funds mobilized from the government or external sources. These included; the Zambia Agricultural Development Bank and Agricultural Finance Company, which were amalgamated to form the Lima Bank in 1987, and the Development Bank of Zambia.

The third part of the government's financial policies consisted of the imposition of administrative controls over financial institutions. With the exception of interest rates however, direct administrative controls over resource allocation in the banking system were not extensively employed by the government as there were no detailed sectorial credit guidelines. The government attempted to channel more credit towards Zambians by requiring banks to seek permission from Bank of Zambia (BOZ) before lending to foreign companies and by imposing lower maximum gearing ratios on foreign borrowers than Zambian borrowers. This failed to induce a major expansion of lending to private sector Zambians, and in an attempt to rectify this, the government established a credit guarantee scheme for small scale industries in 1987.

In the beginning of the mid-1960s, the deposit and lending rates of the commercial banks were controlled by the Bank of Zambia which maintained a policy of low interest rates in order to minimize borrowing costs. Until 1984, commercial bank deposit rates were held within a range of 3.5 percent and 8.5 percent and lending rates between 7 percent and 13 percent. In addition, a preferential rate was stipulated for agricultural lending from 1978. Nominal rates were generally held below the rate of inflation, which averaged 10 per cent during the 1970s and 20 percent between 1980 and 1984.

The Zambian private sector first entered the banking industry in 1984 when Meridien Bank, was founded. By mid-1995 there were around 13 banks owned by local private sector investors operating in Zambia. Most of these banks began operating during the first half of the 1990s. At a time when most sectors of the economy were suffering from recession, the banking sector experienced remarkable growth.

The first local banks in Zambia were established during a period when financial policies were not particularly conducive to private sector investment in banking. Interest rates were tightly controlled, together with high reserve requirements, depressed profit margins, and bank licenses were very difficult to obtain, apparently because of political considerations rather than any stringency in the legal requirements of the Banking Act. Nevertheless opportunities did exist

to exploit the gaps left in banking markets by the inefficient provision of services and the conservative orientation of the established public sector and foreign banks, as was demonstrated by the rapid growth of the economy. Some local investors were able to obtain banking licenses, including Andrew Sardonnis who founded Meridien. Four more banks were set up in the second half of the 1980s, including Finance Bank in 1987 and Capital Bank in 1989.

After the Movement for Multiparty Democracy (MMD) took over power at the 1991 elections it became much easier to obtain a banking license. Furthermore, inflation had reduced the real value of the minimum capital requirement to around $300,000 in 1991, and little more than $50,000 by the end of the following year. Hence the entry requirements into the banking industry were substantially reduced and this allowed around nine new banks to be set up by local private investors, and to commence operations between 1991 and 1995.

The primary motivation for the establishment of most of these banks was the large profits to be earned from foreign exchange dealing, and from investing borrowed money in treasury bills, rather than from conventional lending activities. The liberalization of foreign exchange markets beginning in 1990 and extended in 1992 allowed the banks to deal in foreign exchange and fund external trade. The large government domestic borrowing requirement combined with the introduction of market determined interest rates led to very high Treasury bill interest rates; 91-day Treasury bill yields rose to 182 percent in June 1993 after the Treasury bill auction was introduced. The extent to which the local banks relied on treasury operations to generate their earnings is indicated by the fact that government securities were among the largest component of the asset portfolios of almost all of the local banks (and some of the foreign banks as well) between 1992 and 1993.

1.2.1 The Current Situation

On the 18th May 2018, the date when the Banking and Financial Services Commencement Order Statutory Instrument No. 38 of 2018 was signed, brought into effect the Banking and Financial Services Act No.7 of 2017 reinforcing competition in the Banking Sector. This has been continued from the previous law and new enhancements has been made. The endorsement of the statutory instrument was to bring to an end of the Banking and Financial Services Act of 1994.

Similar to the old banking code, the new banking code prohibits financial service providers from engaging in collusive conduct in relation to interest rate levied on deposits; the interest rate or charge levied on credit facilities; the amount charged on financial service provided; the provision of, or refusal to provide banking or financial services to a person and the division of markets by allocating customers.

Anti-competitive conduct is a criminal offence and a financial service provider found guilty is liable to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both. And of course the prohibition of collusive conduct does not mean that financial service providers cannot collaboratively work together. Hence the new banking code has continued exempting the following activities from the definition of collusive conduct;

1. The syndication or agreement for the provision of banking or financial services to a person by two or more financial service providers;
2. The underwriting or distribution of security by a bank or financial institution or a group of persons, including a financial service provider
3. The exchange of statistics or audit information,
4. The development and use of systems, forms, methods, procedures and standards,
5. The use of common facilities, joint research and the development.

The above listed are the situations where financial service providers are allowed to work together. On the other hand, the Act of 2017 provides that a financial service provider shall not engage in anti-competitive practices and that a financial service provider that enters into any agreement or makes a decision or engages into a concerted practice whose objective or effect is to prevent, restrict or distort competition to an appreciable extent in the financial sector shall be considered to have engaged in an unsafe or unsound practice.

However, anti-competitive behavior unfortunately does not permit the market forces to operate and dictate the prices. Consumers are affected when competition among suppliers are eliminated and further reduces competitiveness, thereby negatively impacting on the overall performance of a country's economy.

1.3 Statement of the Problem

Competition Law is a law that promotes or seeks to maintain market competition by regulating anti-competitive conduct of companies. The Competition and Consumer Protection Act of 2010 and the Banking and Financial Services Act No. 7 of 2017 are important for the regulation of anti-competition in the Zambian banking sector provided by section 42 of the CCPA. This is because it compels the suppliers of goods and services to offer the least possible price or the best possible service for the going price.

However, with respect to the banking sector, this seems to be a legal paradox as Zambia has seen an increase in bank charges despite having provisions of section 8 of the CCPA prohibiting anti-competitive practice, agreement or decision for the setting of prices. Similarly, BFSA spells out anti-competitive activities and consumer protection in the financial sector under Section 101 (1) by prohibiting collusion between financial institutions in deciding prices of bank products and services. It does seem as though this sector lacks the efficacy of the law regulating competition in Zambia and this tends to bring concerns as to whether the competition law has an impact on the banking sector. This is because it has reached the extent of government proposing an intervention through the Minister of Finance, Hon. Margaret Mwanakatwe last year in 2018 for a uniform bank charge for all banks in Zambia. And in the bid of regulating the bank charges in Zambia, this step has received negative response from the Bank Association of Zambia as a violation of the set competition laws.

Hence, the main purpose of this study is to critically evaluate the law as relating to the banking sector in Zambia.

1.4 Research Objectives

1.4.1 General Objectives

Competition is healthy in a nations' economy that desires to better the lives of its people and the wealth. The paper will generally focus on the impact and influence of competition laws on the banking sector.

1.4.2 Specific Objectives

1. To examine the laws that address competition in the banking sector.
2. To establish the effectiveness of these competition laws in the banking sector.
3. To establish the extent to which competition laws are applicable in Zambia.

1.5 Research Questions

1. What legal and policy framework addresses competition law in the banking sector in Zambia?
2. How effective is the law that addresses competition law in the banking industry in Zambia?
3. To what extent is the competition law applicable to the banks in Zambia?

1.6 Significance of Study

This study is premised on the idea that competition is necessary for the growth of the banking sector and the economy at large. This study is important as it necessitates changes in the law that will provide for uniform bank transaction charges for all banks in Zambia combating against the exorbitant bank transaction charges. Not only does this study provide answers to the many question that we may have but the research also adds to the body of knowledge in areas of how competition laws influences the banking industry. The details of this study will inculcate in-depth knowledge and understanding of competition and its relevance to the banking sector.

This study will further enhance literature as it highlights pertinent and salient features of the Banking and Financial Services Act No.7 of 2017 with respect to competition and banking practices and its relevance to the growth of the banking sector and the economy at large.

1.7 Scope of the study

This research is aimed at analyzing whether competition law has effectively impacted on the banking sector. The Banking and Financial Services Act No.7 of 2017 is the legal framework adopted to regulate the banking and financial service providers alongside the Competition Act of 2010 which provides against anti-competitive practices but does not regulate bank charges on withdrawals. The emergence of more financial institutions was meant to create competitiveness with respect to quality and pricing of goods and services provided by the banking sector.

1.8 Limitation of the study

The problems encountered during this research bare;

1. Finance: Financial constraints for the cost of transport, internet services and other materials required for the project.

2. Time: Time was very difficult to allocate with other work and school programs
3. Ignorance: Some personnel from some of the banking industry had little knowledge about competition in the banking industry.
4. Skepticism: Some personnel show little interest and mistrust with researcher in relation to the subject matter.

1.9 Summary of Chapters

Chapter One

This chapter will commence with introduction, the background, and statement of the problem, research objectives and the significance of study. Chapter 1 of this paper states the impact or influence that competition laws have on the banking sector with a special bias to bank charges being one of the issues in contention in Zambia. The legal and policy framework among other things will be test to ensure answers to the many questions.

Chapter Two

This chapter contains Literature review and theoretical framework. The works of other scholars in this area will be analyzed in the pursuit to analyze the gap. It will briefly compare between the legal scholars who have propounded on the above subject. In making comparison between legal scholars, a broader perspective is taken into consideration as it also considers other factors affecting competition in the banking industry with an emphasis on the current consumer exploitation by banks.

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Chapter Three

Methodology The research ultimately will use qualitative and quantitative methods. In addition to a questionnaire, interviews will be conducted. This chapter specifically looks at the research methodology which takes a scientific or systematic approach that will lead to verification the facts aforementioned in this research. This chapter aims at analyzing the research methodology used in this study, it explains the sample selection and also further aims to describe the procedure used in designing the research mechanisms and method of data collection. In this chapter, the results of the data analysis are presented. The data was collected and respectively processed in response to the problem posed in chapter one of this research. The findings in this chapter aims to provide an explanation of the procedures used to analyze the data and potential bias and limitations.

Chapter Four

DATA analysis. This chapter analyses the data to get to the answers of some of the concerns that are borne in the mind of the researcher. After gathering of sufficient information, a resolve is made in this chapter in comparison with the information gathered. A combination of the proponents and a critique and discussion.

Chapter Five

This chapter contains general Conclusion and Recommendations are given in relation with the

research topic to provide as solutions to the given problem. Finally, a conclusion will be made and commendations made.

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