



**UNIVERSITY of LUSAKA**

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**SCHOOL OF LAW**

**AN ANALYSIS OF THE APPLICABILITY OF COMPETITION LAW PRINCIPLES TO  
SPECIAL INCENTIVES GRANTED TO FOREIGN INVESTORS IN ZAMBIA.**

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**LLB20119629**

**AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN  
PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE  
BACHELOR OF LAWS (LLB) DEGREE.**

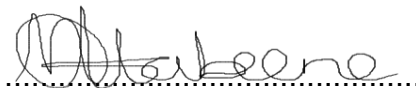
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## DECLARATION

I declare that this dissertation entitled, **AN ANALYSIS OF THE APPLICABILITY OF COMPETITION LAW PRINCIPLES TO SPECIAL INCENTIVES GRANTED TO FOREIGN INVESTORS IN ZAMBIA**, which is hereby submitted in partial fulfilment of the requirement for the award of a Bachelor's Degree at the University of Lusaka is my own original work and it has not been previously submitted for the award of a degree at this university or any other tertiary institution.

I understand what plagiarism entails and I'm aware of the University's policy in this regard. Thus, where other peoples work is cited, I have duly acknowledged. The errors or omissions in this work are solely mine.

MELINDA MARYJAY HABEENE

A handwritten signature in black ink, appearing to read 'Melinda Maryjay Habeene', is written over a horizontal dotted line.

2025

## **SUPERVISOR RECOMMENDATION**

I CHIPASHA MULENGA, recommend that this dissertation prepared under my supervision entitled, **AN ANALYSIS OF THE APPLICABILITY OF COMPETITION LAW PRINCIPLES TO SPECIAL INCENTIVES GRANTED TO FOREIGN INVESTORS IN ZAMBIA** be accepted for examination. I have checked it carefully and I'm satisfied that it fulfils the requirements pertaining to the format laid down in the regulations governing directed research.

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**2025**

**PROF CHIPASHA MULENGA (LLD, AHCZ)**

## **ACKNOWLEDGEMENT**

Firstly, I would like to thank God, the almighty, who has granted countless blessings, knowledge, and opportunity to me so that I have been finally able to accomplish the dissertation and make it this far.

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Lastly, my gratitude is extended to those whose names are not mentioned but still helped me to realize that I can do all things through hard work and God's grace.

## **DEDICATION**

This dissertation is dedicated to God and My siblings.

## ABSTRACT

This thesis is on an analysis of the applicability of competition law principles to special incentives granted to foreign investors in Zambia. Foreign Direct Investment (FDI) is widely promoted as a catalyst for economic growth in developing nations. Leading countries like Zambia to offer substantial incentives packages including tax holidays, customs duty exemptions and regulator concessions to attract foreign capital. These incentives are primarily governed by the Investment, Trade and Business Development Act No. 18 of 2022. however, this thesis argues that such preferential treatment for foreign investors create a critical tension with the foundational principles of Zambia's competition law, The Competition and Consumer Protection Act No. 24 of 2010.

The core of this conflict lies in the violation of the principle of competitive neutrality. While foreign investors in priority sectors or economic zones benefit from significant fiscal advantage, domestic small and medium enterprise (SMEs) operate under the standard tax and regulatory regime. This policy inconsistencies creates and an uneven playing field, allowing subsidised foreign firms to possibly undercut local competition, thereby stifling domestic business growth and distorting the market competition. This practice raises crucial legal and policy questions regarding coherence of Zambia's economic governance framework.

The main objective of this research is to critically analyse the regulatory consistency between Zambia's investment promotion framework and its competition law objectives. It examines the tangible effects that the incentives given to foreign investors have on the competitiveness and market access to local businesses. This study examines the role and capacity of the Competition and Consumer Protection Commission in mitigating these anti-competitive distortions. The researc concludes by proposing a framework and practical recommendations to harmornise the goals of investment attraction while maintaining a fair and robust competitive market by ensuring that the attraction of FDI does not come at the expense of Zambian enterprises and longterm economic sustainability

## **TABLE OF STATUTES**

### **Statutes (Zambia)**

Investment, Trade and Business Development Act No. 18 of 2022.

Competition and Consumer Protection Act No. 24 of 2010.

## **Regional and International Instruments**

Common Market for Eastern and Southern Africa (COMESA) Competition Regulations (2004). Lusaka: COMESA Secretariat.

Southern African Development Community (SADC) Protocol on Finance and Investment (2006). Gaborone: SADC Secretariat.

Treaty on the Functioning of the European Union (TFEU), Articles 107–109.

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## **CHAPTER ONE**

### **GENERAL INTRODUCTION**

#### **1.1 INTRODUCTION**

In developing nations like Zambia, foreign direct investment (FDI) is essential for promoting economic growth, industrialisation, and employment. Through the Investment, Trade and Business Development Act No. 18 of 2022 (Investment Act), the Zambian government offers a number of advantages, such as tax holidays, exemptions from customs duties, and preferential access to land and industrial zones, in order to draw in and keep such investment. These incentives are intended to boost national growth and make Zambia a competitive investment destination.

However, the Competition and Consumer Protection Act No. 24 of 2010 (CCPA) aims to preserve market fairness and safeguard consumer welfare. While the Investment Act concentrates on encouraging investment.

When incentives provided by the Investment Act it unintentionally creates an unfair playing field, which results in conflict, especially between domestic Small and Medium Enterprises (SMEs) who are subject to regular tax responsibilities and international investors who obtain fiscal benefits. The idea of competitive neutrality, which maintains that all businesses should compete on equal terms regardless of ownership or origin, could be undermined by this special treatment, which runs the danger of distorting market competition.

Therefore, the fundamental legal and policy issue is the inconsistency between Zambia's framework for investment promotion and competition regulation. Investment incentives can inadvertently promote anti competitive practices by allowing dominant or subsidised enterprises to undercut local competitors, even if they are crucial for drawing FDI.

This dynamic not only discourages domestic businesses but also challenges the effectiveness of Zambia's competition law in safeguarding fair market participation. The relationship between the Competition and Consumer Protection Act No. 24 of 2010 and the Investment, Trade and Business Development Act No. 18 of 2022 is examined critically in this study. It evaluates whether Zambia's current legal system adequately

avoids anti competitive, discriminatory consequences and investigates ways to amend the law to better align investment promotion tactics with the principles of competition law. In order to achieve a cohesive, inclusive and equitable economic framework that strikes a balance between attracting international investment and maintaining domestic competition, the report suggests workable reforms based on comparative jurisdictions including South Africa, the United Kingdom and the United States.

## **1.2 STATEMENT OF THE PROBLEM**

Governments use investment incentives as a strategic tool to attract capital, stimulate economic growth and promote sectoral development. In Zambia, the Investment, Trade and Business Development Act No. 18 of 2022 provides the framework for such incentives. While these measures are to stimulate productive activity and foster market competition, their design and implementation raise serious concerns under the Competition and Consumer Protection Act No. 24 of 2010 whose objective is to promote fair competition, prevent anti competitive conduct and protect consumer welfare. At the core of competition law, is the principle of competitive neutrality, which ensures that no business gains an unfair advantage simply because of its nationality, ownership structure or preferential treatment from the state. In practice, investment incentives in Zambia often disproportionately benefit foreign or large scale investors at the expense of local small and medium-sized enterprises (SMEs), who find themselves excluded from these benefits.

This disparity can distort market dynamics by enabling market dominance and crowding out smaller competitors. The problem presented is the apparent mutual exclusivity of the ITBD 2022 and CCPA 2010 which, if not harmonized, continues to affect level playing field for all market participants, thereby causing harmful market distortions.

## **1.3 OBJECTIVES OF THE STUDY**

1. To underscore the relationship between investment law and competition law.

2. To examine the extent to which the Investment, Trade and Business Development Act No. 18 of 2022 and the Competition and Consumer Protection Act No. 24 of 2010 are to foster anti-competitive and non discriminatory grant of incentives.
3. To propose how legislation can be reformed to harmonise investment promotion strategies with competition law principles, which ensure both foreign direct investment and fair competition.

### **1.3 RESEARCH QUESTIONS**

1. How does investment law and competition law interact in regulating market behaviour.
2. To what extent does Zambia's Investment, Trade and Business Development Act (2022) and the Competition and Consumer Protection Act (2010) prevent anti-competitive and discriminatory incentives.
3. How can Zambia's legal framework be reformed to better align investment promotion strategies with competition law principles, ensuring both FDI attraction and fair market competition.

### **1.4 SIGNIFICANCE OF THE STUDY**

For Zambian law scholars, legislators, regulatory bodies, and stakeholders in economic development, this work is extremely important. It provides important insights into the relationship between competition legislation and investment incentives, a topic that hasn't gotten much scholarly or policy attention in Zambia.

First, by analysing the conflicts between Zambia's investment laws—specifically, the Investment, Trade and Business Development Act No. 18 of 2022—and the Competition and Consumer Protection Act No. 24 of 2010, the study will advance legal scholarship. Although the goals of both legal systems are to advance economic growth, they could clash if state-sponsored incentives skew competitive neutrality.

Second, the Zambia Development Agency (ZDA) and the Competition and Consumer Protection Commission (CCPC), among other regulatory agencies and policymakers, can benefit greatly from this research. In order to prevent policy inconsistencies that

advantage foreign investors at the expense of domestic businesses, it emphasises the necessity of more interagency collaboration and legislative harmonisation.

Third, by elucidating the ways in which investment incentives impact market access and fairness, the results could be helpful to advocacy organisations and local company owners. This could enable local stakeholders to take a more active role in economic development initiatives and legislative change processes.

Lastly, the study contributes to Zambia's policy discourse on how to promote inclusive development that strikes a balance between the demands of foreign investors and the preservation and expansion of domestic businesses by addressing more general issues of economic justice, equity, and sustainability.

## **1.5 SCOPE OF THE STUDY**

This study's focus is restricted to Zambia's legal and policy framework that regulates competition and investment incentives. It mostly concentrates on two fundamental laws: the Competition and Consumer Protection Act and the Investment, Trade, and Business Development Act.

## **1.6 METHODOLOGY**

The doctrinal technique of legal analysis is the main emphasis of this study, which takes a qualitative approach to legal research. In order to interpret and assess the legal relationship between investment incentives and competition law in Zambia, the doctrinal method looks at legislation, case law, regulations, and policy documents

## **1.7 LITERATURE REVIEW**

The link between the Investment, Trade and Business Development Act No. 18 of 2022 and the Competition and Consumer Protection Act No. 24 of 2010 is examined critically in this study. In contrast to previous research, it particularly assesses whether Zambia's dual legal structure prohibits discriminatory and anti competitive effects resulting from

investment incentives. It also suggests legal changes to align competition legislation with investment promotion. This study places Zambia's problems in the context of global governance by using comparative models from South Africa, the United States and the United Kingdom. A perspective that is frequently absent from previous studies.

According to Whish and Bailey<sup>1</sup>, the major goal of competition law is to "maintain and encourage the process of competition in order to maximise consumer welfare." Preventing restrictive agreements, abuse of dominance, and other private-sector wrongdoing that compromises consumer choice and economic efficiency is a major emphasis of their work. However, developed countries like the UK and EU serve as a major foundation for their study. They do not examine the possibility that state led investment incentives in developing nations could lead to anti competitive distortions. In contrast to Whish and Bailey, this paper applies competition law theory to Zambia, where the greater threat to market fairness comes from government created incentives rather than private cartel activity.

The OECD's (competitive neutrality principle states that all businesses, whether domestic or international, public or private, should compete fairly without taking advantage of selective governmental benefits.<sup>2</sup> Although the OECD has a comprehensive framework, its recommendations are specific to developed nations with well established institutional capability. In economies like Zambia, where investment promotion and competition regulation handled by separate statutory framework. This study looks into how Zambia can bring competitive neutrality into its laws through reforms like making Zambia Development Agency ZDA and Competition and Consumer Protection Commission CCPC work together and doing competition impact evaluations.

Ncube and Roberts analyse the dynamics of competition in African marketplaces and contend that state industrial policies, such as targeted incentives, might inadvertently solidify market dominance among big, frequently foreign companies in many developing

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<sup>1</sup> Whish, R. & Bailey, D. (2015). *Competition Law*. 9th ed. Oxford: Oxford University Press.

<sup>2</sup> OECD (2012). *Competitive Neutrality: Maintaining a Level Playing Field Between Public and Private Business*. Paris

economies.<sup>3</sup> They stress the need for African regulators to incorporate competition analysis into the formulation of industrial policy. Although their research focusses on market concentration in regional value chains, this study especially addresses Zambia's legal mismatch between two domestic legislation, which is in line with the concerns of this study.

Similarly, Sweeney questions the global use of investment incentives in developing nations, claiming that they often distort local markets and damage small enterprises unless backed by effective competition oversight.<sup>4</sup> Sweeney emphasis for better openness and accountability in state funding but does not offer jurisdiction specific legal reforms. By proposing specific statutory changes to the CCPC Act and the Investment Act to lessen distortions, this study expands on Sweeney's criticism.

In the investment law literature, Morisset and Pirnia argue that incentives such as tax holidays, duty exemptions and subsidised infrastructure are essential tools for attracting foreign capital to high-risk developing economies.<sup>5</sup> Their analysis puts emphasis on incentives as economic stimulants but does not take into account the potential for such incentives to distort competition or entrench dominant foreign firms. This research fills that gap by demonstrating, through analysis of Section 30 of the Investment Act. That Zambia's capital based incentive thresholds risk excluding local SMEs and privileging larger foreign owned firms, thereby undermining competition and domestic economic participation.

Organizations like UNCTAD<sup>6</sup> and the World Bank<sup>7</sup> caution that poorly crafted incentives might erode tax bases, reduce domestic competitiveness and fail to produce development

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<sup>3</sup> Ncube, P. & Roberts, S. (2016). "Market Structure and Competition in Africa's Retail Sector." *Journal of African Economies*, 25(Supplement 1), pp. 1–23

<sup>4</sup> Sweeney, G. (2019). "Investment Incentives and Their Distortive Effects in Developing Economies." *Journal of International Development Policy*,

<sup>5</sup> Morisset, J. & Pirnia, N. (2001). *How Tax Policy and Incentives Affect Foreign Direct Investment: A Review*. Washington, DC: World Bank Group

<sup>6</sup> UNCTAD (2015). *World Investment Report 2015: Reforming International Investment Governance*. Geneva: United Nations Conference on Trade and Development.

<sup>7</sup> World Bank (2020). *Global Investment Competitiveness Report 2019/2020: Rebuilding Investor Confidence in Times of Uncertainty*. Washington, DC: World Bank.

gains. Although they remain high level and suggest general caution without putting forth specific legal procedures for balancing investment incentives with competition safeguards. Their criticisms highlight the necessity of balanced policy making. In order to convert these broad policy concerns into enforceable regulatory frameworks appropriate for Zambia. This study enhances the literature by suggesting practical legal reforms, such as including competition effect evaluations and creating a statutory ZDA and CCPC monitoring council.

## **1.8 OVERVIEW OF CHAPTERS**

### **Chapter One: General Introduction**

- Introduces the research topic by outlining the tension between Zambia's *Investment, Trade and Business Development Act No. 18 of 2022* and the *Competition and Consumer Protection Act No. 24 of 2010*.
- States the research problem, objectives, research questions, and significance of the study.
- Presents a brief review of relevant literature and outlines the research methodology adopted.

### **Chapter Two: The Nature of Competition Law and Investment Law**

- Examines the conceptual and legal foundations of investment and competition law.
- Analyses their convergence in promoting economic growth and their divergence in implementation.
- Highlights how investment incentives designed to attract capital may conflict with competition principles aimed at maintaining market fairness.
- Concludes that lack of coordination between the two frameworks results in policy and regulatory tension.

### **Chapter Three: Investment and Competition Laws on Incentives in Zambia**

- Investigates how provisions under the Investment Act and Competition Act interact in practice.
- Evaluates the create the criteria eligibility and structures incentives in Section 30 of the Investment Act and their impact on SMEs and market equity.
- Identifies weaknesses such as unequal access to incentives, institutional fragmentation between the ZDA and CCPC and the absence of competition assessments.
- Concludes that though both laws aim for economic development, the current legal framework inadvertently promotes anti competitive and discriminatory outcomes.

#### **Chapter Four: Legal and Policy Reforms for Harmonising Investment Promotion and Competition Law in Zambia**

- Proposes reforms aimed at aligning investment incentives with competition law principles.
- Draws comparative insights from South Africa, the United Kingdom and the United States. Highlighting best practices in state aid control, ex ante competition assessment, and inter agency coordination.
- Makes recommendations on the introduction of Competition Impact Assessments, statutory coordination mechanisms between ZDA and CCPC and harmonisation with regional frameworks such as COMESA and SADC.

#### **Chapter Five: Findings, Conclusions, and Recommendations**

- Summarises the objectives, key findings and conclusions from each chapter.
- Presents consolidated conclusions emphasising the need for legal coherence between investment promotion and competition enforcement.
- Provides recommendations focusing on amending the Investment Act and Competition Act to enhance competition review, transparency and institutional integration.

## **CHAPTER TWO**

### **THE NATURE OF COMPETITION LAW AND INVESTMENT LAW**

#### **2.0 INTRODUCTION**

The link between investment and competition law has emerged as a key issue in legal and economic studies. Both legislative regimes aim to promote economic growth and market efficiency, but from distinct perspectives. Investment law aims to provide an welcoming environment for capital inflows, by offering incentives and protections to investors, whereas competition law focuses on maintaining fair market practices, preventing abuse of dominance, and safeguarding consumers. Although both regimes seek to foster development, they sometimes clash. For example, investment law incentives may provide certain investors with an unfair advantage, which goes against the principle of competitive neutrality that's central to competition law.

In Zambia, this duality is mirrored in the Investment, Trade, and Business Development Act<sup>8</sup>, which encourages investment through a variety of incentives. And the Competition and Consumer Protection Act<sup>9</sup>, which guarantees that markets remain fair and competitive. This chapter examines the philosophical, theoretical and legal foundations of both systems, identifying points of convergence and variance. It also examines where these two laws align and where they differ. It also looks at scholarly disputes and comparative experiences to demonstrate how these two areas of law interact to create or impede competitive markets.

#### **2.1 COMPETITION LAW**

Competition law is a set of legal rules, laws and principles that govern the behaviour of enterprises in the marketplace with the goal of fostering fair competition, preventing anti competitive behaviours and safeguarding consumer welfare.<sup>10</sup> In some jurisdictions, like the United States, this body of law is known as antitrust law, whereas in the European Union (EU), it is commonly referred to as competition policy. Regardless of the

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<sup>8</sup> Act No. 18 of 2022

<sup>9</sup> Act No. 24 of 2010

<sup>10</sup> Richard Whish and David Bailey, *Competition Law* (9th edn, Oxford University Press 2015)

nomenclature, the basic objective is the same: to keep markets dynamic, open, and fair, which improves overall economic efficiency and customer choice.

At its core, competition law is built on the economic assumption that markets function best when businesses compete freely and fairly.<sup>11</sup> Effective competition fosters efficiency (firms are driven to allocate resources optimally), innovation (enterprises develop new products and processes to gain market advantage), cost reduction, and quality improvement. These outcomes ultimately benefit consumers by providing lower prices, better quality goods and services, and a wider variety of choices.<sup>12</sup>

## **2.1.1 PURPOSE OF COMPETITION LAW**

Competition law pursues several key objectives, which can be grouped into four broad functions:

### **1. Preventing Anti-Competitive Agreements**

This includes outlawing agreements between businesses that limit competition, such as cartels, collusion, price fixing, and bid rigging.<sup>13</sup> Such agreements are called "hardcore restrictions" in competition policy since they artificially raise prices and restrict output, causing direct harm to consumers.<sup>14</sup>

### **2. Regulating Abuse of Dominance**

Competition law also prohibits companies with strong market power from engaging in tactics that exclude competitors or exploit customers.<sup>15</sup> Examples include predatory pricing (selling below cost to force competitors out of the market), tying arrangements (requiring customers to purchase one product in order to access another), and

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<sup>11</sup> Jain, A. K., (2019), Competition Law: Leading Cases and Materials and Q.A (2nd Edition), New Delhi: Ascent Publications

<sup>12</sup> OECD, OECD Policy Roundtables: Competition and Consumer Protection (OECD 2018)

<sup>13</sup> Dunne, N., (2015), Competition Law and Economic Regulation Making and Managing Markets, Cambridge: Cambridge University Press.

<sup>14</sup> UNCTAD, United Nations Conference on Trade and Development: Model Law on Competition (UNCTAD 2010).

<sup>15</sup> Jain, A. K., (2019), Competition Law: Leading Cases and Materials and Q.A (2nd Edition), New Delhi: Ascent Publications

unreasonable refusal to provide. The principle is to govern the abuse of power, rather than punishing dominance itself.<sup>16</sup>

### **3. Overseeing Mergers and Acquisitions**

Mergers and acquisitions are extensively supervised to ensure that they do not significantly reduce competition or result in monopolies.<sup>17</sup> On one hand mergers can increase efficiency and economies of scale. On the other hand, they can also restrict competition if they create market dominant corporations. Therefore, many competition frameworks, including Zambia's, require pre-merger notification and clearance.<sup>18</sup>

### **4. Protecting Consumers**

Consumer protection overlaps with competition law, which ensures fair trading practices, prohibits deceptive advertising and protects consumer rights. While the consumer protection function is frequently secondary to regulating enterprises, it is increasingly regarded as fundamental to competition policy in emerging countries.<sup>19</sup>

Zambia's competition law is enacted under the Competition and Consumer Protection Act.<sup>20</sup> This statute repealed the previous Competition and Fair Trading Act of 1994, bringing Zambia's framework in line with international best practices. The Act prohibits agreements that significantly restrict competition, abuse of dominance, and unfair trade practices, and its other role is to also govern mergers and acquisitions.

The Competition and Consumer Protection Commission (CCPC) is the independent institution in charge of investigating and enforcing the law.

The CCPC may:

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<sup>16</sup> Richard Whish and David Bailey, *Competition Law* (9th edn, Oxford University Press 2015)

<sup>17</sup> *ibid*

<sup>18</sup> Competition and Consumer Protection Commission (CCPC), *Annual Report* (Lusaka, 2022).

<sup>19</sup> OECD, *OECD Policy Roundtables: Competition and Consumer Protection* (OECD 2018).

<sup>20</sup> Act No. 24 of 2010

- Conduct investigations into restrictive trade practices.
- Impose administrative fines on violators.
- Block mergers that may lessen competition.
- Impose **structural remedies**, such as requiring divestiture of assets, in cases of serious violations.

The Act also places significant importance on consumer welfare, this illustrates that competition is not only about regulating business conduct but also about ensuring that consumers benefit from lower prices, higher quality and fair treatment.

Despite the law's broad scope, enforcement is difficult in Zambia. One significant issue stems from state granted benefits under investment legislation. For example, when foreign investors receive tax breaks, customs duty reliefs or subsidies under the Investment, Trade, and Business Development Act<sup>21</sup>, they can price their products lower than local competitors. While this action may not necessarily violate the wording of the CCPA, it may undermine the spirit of competition law by distorting the fair playing field. These scenarios emphasise the conflict between investment promotion and competition enforcement.

### **2.1.2 PRINCIPLE OF COMPETITIVE NEUTRALITY**

Competitive neutrality is a fundamental premise of competition law. This principle states that all enterprises, whether domestic or international, public or private, state-owned or privately held, should compete under same market conditions.<sup>22</sup> Market success should be judged by efficiency, innovation, and consumer preferences, not than artificial advantages like governmental subsidies or favourable tax treatment.

Zambia's competitive neutrality is especially crucial given the dominance of foreign multinational corporations in areas such as mining, retail and telecommunications.

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<sup>21</sup> Act No. 18 of 2022

<sup>22</sup> OECD, Competitive Neutrality: Maintaining a Level Playing Field between Public and Private Business (OECD Publishing 2012).

Without careful balancing of investment incentives and competition enforcement, domestic firms, particularly small and medium-sized enterprises (SMEs), risk being at a structural disadvantage.

## **2.2 INVESTMENT LAW**

Investment law refers to the body of rules, regulations and policies that govern the admission, protection, and regulation of investment within a state.<sup>23</sup> It provides the legal framework for how both domestic and foreign investors are treated, aiming to balance the need to attract investments with the government's duty to regulate economic activity in the public interest. In Zambia, the Investment, Trade and Business Development Act<sup>24</sup> serves as the primary domestic investment framework. This Act updated Zambia's investment system by integrating other elements from previous statutes and bringing them in line with the country's industrialisation and diversification agenda.

The Act establishes the Zambia Development Agency (ZDA) as the primary authority, whose purpose is attracting investment and implementing incentive programs.

Among the key incentives available to qualifying investors are:

- **Tax holidays and exemptions**, including corporate income tax relief for several years.
- **Customs duty exemptions** on imported machinery, equipment, or raw materials.
- **Preferential access to land or facilities in Special Economic Zones (SEZs)** and industrial parks.
- **Licensing facilitation**, designed to reduce bureaucratic bottlenecks and encourage speedy business start-ups.

These incentives are aimed at encouraging businesses to invest in new locations, increase employment develop new products. while also reducing the cost of doing

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<sup>23</sup> Rudolf Dolzer and Christoph Schreuer, Principles of International Investment Law (2nd edn, Oxford University Press 2012).

<sup>24</sup> Act No. 18 of 2022

business and communicating to foreign investors that Zambia is a favourable destination for capital inflows.

### **International Dimension of Investment Law**

Investment law does not only apply domestically, but also internationally and regionally. Zambia is a party to multiple bilateral investment treaties (BITs), which provide reciprocal investor protections between the two states.<sup>25</sup> These bilateral investment treaties often provide for fair and equitable treatment, nondiscrimination and access to international arbitration processes such as the International Centre for Settlement of Investment Disputes (ICSID).

Zambia is a member of the Common Market for Eastern and Southern Africa (COMESA) and the Southern African Development Community (SADC), both of which have frameworks<sup>26</sup> in place to safeguard and promote investment.<sup>27</sup> The aim of these agreements is to strengthen regional integration and to establish larger, more appealing marketplaces for investors.

### **2.3 RELATIONSHIP BETWEEN COMPETITION AND INVESTMENT LAW**

The relationship between competition and investment law is complex, involving both area of synergies (convergence) and disputes (divergence). While both laws aim to stimulate economic growth and improve efficiency, their methods and mechanisms can at times overlap or contradict one another. Understanding how these two laws interact w is critical to determining whether Zambia's current regulatory framework strikes a balance between encouraging investment and maintaining fair competition.

#### **Convergence**

##### **1. Shared Objective of Economic Growth and Efficiency**

Both investment and competition laws both aim to promote economic growth. Investment law does this by attracting capital inflows, lowering company costs and

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<sup>25</sup> Peter Muchlinski, *Multinational Enterprises and the Law* (2nd edn, Oxford University Press 2007)

<sup>26</sup> Southern African Development Community (SADC) Protocol on Finance and Investment.

<sup>27</sup> Common Market for Eastern and Southern Africa (COMESA) Treaty

promoting industrialisation. Meanwhile, competition law assures that this progress continues by creating efficient market structures that reward productivity and innovation. In Zambia, the Investment, Trade, and Business Development Act<sup>28</sup> promotes industrial development, while the Competition and Consumer Protection Act<sup>29</sup> assures that such development occurs in a fair and competitive environment.

## **2. Market Entry and Consumer Benefits.**

The Investment laws facilitates market access by lowering barriers for investors, such as tax breaks or customs exemptions. This entry may increase the number of firms in the market, promoting competition. Competition legislation supplements this by making sure that, new market entrance results in tangible consumer benefits such as lower costs, increased product diversity, and better service delivery. For example, the introduction of “international firms in Zambia's retail and telecoms industries has enhanced consumer choice, but only competition legislation assures that these benefits are not undermined by collusive or predatory practices.”<sup>30</sup>

## **3. Indirect Promotion of Consumer Welfare**

Although their approaches differ, both frameworks prioritise consumer welfare. Competition legislation accomplishes this directly by outlawing conduct that raises prices or reduces output. Investment law, on the other hand, indirectly improves well being by stimulating investment in productive capacity, which raises the supply of commodities and services. For example, agricultural investment incentives can enhance food production and contributing to food security while also lowering consumer prices.

### **Divergence**

#### **1. Selectivity vs Universality**

Investment regulation is fundamentally selective, more often providing preferential incentives to specific industries, such as mining or agriculture) or types of investors

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<sup>28</sup> Act No. 18 of 2022

<sup>29</sup> Act No. 24 of 2010

<sup>30</sup> Competition and Consumer Protection Commission (CCPC), Annual Report (Lusaka, 2022).

(such as foreign direct investors.<sup>31</sup> while, competition law on the other hand is universal in scope: it applies to all businesses, regardless of size, ownership or sector, ensuring fairness throughout the economy. In Zambia, for example, foreign investors may be eligible for tariff exemptions that local small and medium-sized firms (SMEs) are not, resulting in disparities in operating costs. This selectivity undermines the fair playing field that competition law aims to protect.

## **2. Incentives vs Neutrality Principle**

The notion of competitive neutrality that all enterprises compete on equal terms is fundamental to competition law.<sup>32</sup> However, investment incentives may undercut this idea by giving certain enterprises artificial advantages. For example, a foreign investor that receives a five-year tax break may price items lower than domestic competitors, not due to efficiency or innovation, but due to state sponsored cost cuts. Such conditions cause distortions that competition law would normally attempt to prevent.<sup>33</sup>

## **3. Institutional Fragmentation**

Institutional differences are yet another source of disagreement. In Zambia, the Zambia Development Agency (ZDA) oversees investment promotion, while the Competition and Consumer Protection Commission (CCPC) is in charge of competition enforcement. These institutions frequently operate in separately, with minimal cooperation among them. This fragmentation can lead to policy contradictions. The ZDA may approve incentive schemes to attract investment, even if such schemes later cause competition harm, which the CCPC must remedy. Without

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<sup>31</sup> Jacques Morisset and Neda Pirnia, 'How Tax Policy and Incentives Affect Foreign Direct Investment' (World Bank Policy Research Working Paper, 2001).

<sup>32</sup> OECD, *Competitive Neutrality: Maintaining a Level Playing Field between Public and Private Business* (OECD Publishing 2012).

<sup>33</sup> Competition and Consumer Protection Commission (CCPC), *Annual Report* (Lusaka, 2022).

a clear structure for inter agency collaboration, the two institutions risk working at odds.

## **2.4 CONCLUSION**

As this chapter has shown, Zambia's economic and legal structure is supported by both competition law and investment law, despite their different areas of emphasis. By prohibiting anti competitive activity, controlling mergers and preserving consumer welfare through the principle of competitive neutrality, competition law, as outlined in the Competition and Consumer Protection Act No. 24 of 2010, protects markets. On the other hand, investment law, which is codified in the Investment, Trade and Business Development Act No. 18 of 2022 aims to promote industrialisation and economic growth by luring and keeping capital with incentives like tax holidays, customs exemptions, and preferential access to land.

The chapter identified significant areas where the two regimes overlapped. Done by encouraging market entry and boosting productive capacity. It can be seen that both Investment law and competition law seek to boost growth and efficiency while also indirectly advancing consumer welfare by ensuring that such entry leads to real consumer benefits like reduced costs, better quality, and more options.

But there were other key points of variance noted. Both the universality and neutrality demanded by competition law may be compromised by investment legislation's selectivity, which favours specific industries or foreign investors. Furthermore, local SMEs are frequently left out of the considerable incentives offered to foreign investors, distorting fair competition by creating an unfair playing field. This issue is made worse by the Zambia Development Agency's (ZDA) and the Competition and Consumer Protection Commission's (CCPC) ineffective coordination, since investment attracting incentives may unintentionally have anti-competitive effects.

In conclusion, even if both frameworks are essential to Zambia's economic transition, there is an underlying conflict between market regulation and investment promotion that is shown by their interplay. Zambia must adopt a more unified institutional and legislative framework where investment plans are in line with competition laws to prevent incentives from undermining competitive neutrality. Only then will the nation be able to fulfil its twin

goals of luring in foreign investment and preserving free, open marketplaces that benefit both consumers and investors.

## CHAPTER THREE

### INVESTMENT AND COMPETITION LAWS ON INCENTIVES IN ZAMBIA

#### 3.0 INTRODUCTION

Zambia's regulatory structure aims to strike a balance between luring investment through incentives and ensuring market competitiveness. The Investment, Trade and Business Development Act<sup>34</sup> offers advantages to investors, particularly those in Special Economic Zones, priority industries or rural areas. While, the Competition and Consumer Protection<sup>35</sup> ensures that businesses compete fairly, free of restrictive agreements, abuse of dominance or unfair trading practices. However, problems emerge as to whether investment incentives, by their design or application, encourage anti competitive behaviour or are administered in a discriminatory manner, undermining the neutrality concept key to competition law. This chapter examines the provisions of the two Acts to evaluate if Zambia's framework promotes fair, non discriminatory incentives or unintentionally favours anti competitive practices.

#### 3.1 INVESTMENT, TRADE AND BUSINESS DEVELOPMENT ACT NO. 18 OF 2022

The Investment, Trade and Business Development Act<sup>36</sup> defines Zambia's legislative and institutional framework for promoting trade, company growth and investment. Its major goal is to foster economic growth and diversification by lowering investment obstacles and promoting capital inflows into key sectors of the economy.

To achieve these objectives, the Act establishes the Zambia Development Agency (ZDA) as the central entity in charge of enforcing investment promotion policies. The ZDA is tasked with:

- **Facilitating entry of investors** by providing clear guidelines on registration, licensing, and compliance.

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<sup>34</sup> Act No. 18 of 2022

<sup>35</sup> Act No. 24 of 2010

<sup>36</sup> ACT NO. 18 OF 2022

- **Granting and administering incentives** such as tax holidays, exemptions from customs duties and preferential access to land and facilities, particularly in Special Economic Zones (SEZs) and industrial parks (Investment Act, Part V).
- **Monitoring compliance** with the conditions attached to incentives, including withdrawal of incentives where investors breach regulatory requirements.

This approach represents Zambia's broader economic policy of employing investment incentives to promote industrialisation, technology transfer and job creation. The law aims to divert resources into areas where economic development can be accelerated by providing preferential incentives to investors in specific sectors.

### **Eligibility and Incentives**

The Investment, Trade and Business Development Act establishes specified requirements for eligibility to receive incentives. Section 30<sup>37</sup> states that only investors operating in a Special Economic Zone (SEZ), a priority sector or a rural area are eligible for incentives. This is consistent with Zambia's developmental policy of encouraging investment in underdeveloped regions and industries that are deemed critical to national prosperity, such as agriculture, energy, manufacturing and tourism.

However, eligibility is controlled not just by sector or location, but also by minimum capital requirements. The Act establishes the following investment thresholds:

- USD 50,000 for local investors.<sup>38</sup>
- USD 100,000 for citizen-owned companies.<sup>39</sup>
- USD 150,000 for citizen empowerment companies.<sup>40</sup>
- USD 500,000 for citizen-influenced companies.<sup>41</sup>

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<sup>37</sup> An investor shall be eligible for incentives under this Act if that investor invests in a— (a) special economic zone; or (b) business operating in a priority sector or rural area.

<sup>38</sup> Section 30 (2) a

<sup>39</sup> Section 30 (2) b

<sup>40</sup> Section 30 (2) c

<sup>41</sup> Section 30 (2) d

- USD 1,000,000 for foreign investors.<sup>42</sup>

These margins are designed to differentiate between categories of investors while encouraging larger scale capital inflows.

### **The extent to which the Investment Act fosters anti competitive incentives**

The Investment Trade and Business Development Act aims to encourage investment through a variety of incentives such as tax breaks, customs duty exemptions and preferential access to land and facilities. While the act is meant to boost Zambia's economic growth, there is a risk that the Investment Act's selective incentives would weaken the idea of competitive neutrality, which is central to competition law.

The requirements needed for one to be eligible for Investment Act incentives are a major source of concern. This is because Section 30 is not aimed at supporting the growth of small and medium-sized enterprises (SMEs) but rather more focused at attracting companies that are already well established and capable of mobilising substantial capital. The high investment requirement effectively exclude the majority of SMEs, which typically struggle to raise such amounts. This indicates that the incentive framework prioritises large scale industrial and foreign investments as drivers of economic diversification, while neglecting the role of SMEs in fostering inclusive development. As a result, incentives intended to promote national growth disproportionately benefit well established enterprises, leaving local SMEs at a competitive disadvantage. Thus, raising concerns about discriminatory access to state support.

This difference introduces the possibility of anti-competitive results. The Investment Act may unintentionally give certain enterprises with structural benefits unrelated to efficiency or innovation by offering tax breaks, tariff reductions, and preferential treatment to specific investors. For example, a foreign corporation that receives a five-year tax break may be able to sell items at considerably lower prices than domestic competitors, not due to higher production, but due to state-granted cost advantages. This can eventually drive local enterprises out of the market, resulting in less local investors and a higher

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<sup>42</sup> Section 30 (2) e

concentration of foreign investors market power. The risk is that once dominant, which may led to foreign investors engaging in exclusionary acts that are prohibited by the Competition Act, such as predatory pricing or abuse of power, as provided for under Section 16.

### **3.2 COMPETITION AND CONSUMER PROTECTION ACT NO. 24 OF 2010**

The Competition and Consumer Protection<sup>43</sup> (CCPA) establishes the primary framework for competition regulation in Zambia. Its ultimate goal is to encourage and preserve fair competition in the economy, eliminate restrictive business practices, and protect consumers. The Act establishes the Competition and Consumer Protection Commission (CCPC) as a regulatory body with investigative and enforcement powers.

The Act prohibits a variety of anti competitive practices. Section 8 expressly prohibits anti competitive agreements that have the effect of prohibiting, restricting, or distorting competition.<sup>44</sup> This involves corporations coming together in an agreements to manipulate pricing, limit output, or allocate markets. Section 9 addresses horizontal agreements, which prohibit cartels and collusion among rivals in the same line of business, such as price fixing or bid-rigging. Similarly, Section 10<sup>45</sup> focuses on vertical restrictions, such as resale price maintenance, in which suppliers attempt to control the resale pricing of distributors or retailers.

Section 16<sup>46</sup> is very significant since it governs the abuse of dominance. While having a dominating market position is not illegal in and of itself, abusing that position through predatory pricing, discriminatory conditions, or exclusionary behaviour is. Furthermore, the Act regulates mergers and acquisitions to ensure that corporate consolidation does not harm the market by significantly reduce competition or result in market monopoly. These sections demonstrate the Act's broad approach to eliminating restrictive business practices and maintaining market integrity.

#### **Addressing Anti-Competitive Incentives**

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<sup>43</sup> Ibid

<sup>44</sup> 8. Any category of agreement, decision or concerted practice which has as its object or effect, the prevention, restriction or distortion of competition to an appreciable extent in Zambia is anti-competitive and prohibited.

<sup>45</sup> Competition and Consumer Protection Act No. 24 of 2010

<sup>46</sup> Ibid

Although the Competition Act does not directly control state granted investment incentives under the Investment, Trade, and Business Development Act No. 18 of 2022. It does have methods for dealing with any possible anti competitive impacts. The law does acknowledge that incentives can cause structural market distortions when recipients exploit them by engaging in behaviour that distorts the market, such as, significantly reducing product prices to a point that competitors who did not receive this advantage, fail to keep up. This constitutes to predatory pricing which is prohibited by Sections 8 and 9. Similarly, if a corporation which receives an incentive exploits its newfound market position to discriminate against or exclude competitors, the CCPC may act under Section 16 on abuse of dominance.

Importantly, the Act gives the Competition and Consumer Protection Commission with wider investigative capabilities. Sections 38 to 41 allows the Commission to conduct market investigations into sectors where competition may be affected, this also includes by state policies or investment incentives. It is through these inquiries, that the CCPC can determine whether or not incentives are preventing entry, promoting collusion or entrenching dominance. Although the Commission lacks express ability to revoke incentives provided under investment law, its conclusions can feed policy reform and assist government organisations such as the Zambia Development Agency (ZDA) in establishing incentive systems that adhere to competitive principles.

This indirect but significant role establishes the Competition Act as a corrective mechanism in situations where incentives threaten fair competition. However, the Act is restricted due to a lack of institutional cooperation between the CCPC and the ZDA. For instance, in practice, the ZDA provides incentives primarily to attract investment, with little prior examination of their competition impact, whereas the CCPC can only intervene after anti-competitive behaviour has happened. This institutional gap highlights the need for stronger policy integration to guarantee that incentives encourage investment while maintaining the neutrality and fairness of Zambian markets.

## **Safeguarding Non-Discrimination**

The Competition and Consumer Protection Act strengthens the principle of fairness and non discrimination by stating that all its rules of fairness apply equally to all firms operating in Zambia, regardless if owned by foreign investors, state owned, or private entities owned by locals. This is consistent with the notion of competitive neutrality, which states that enterprises should compete based on efficiency, innovation and consumer responsiveness rather than artificial state granted advantages. Sections 45 to 47 of the Act<sup>47</sup> specifically bans unfair trading practices, which includes the following activities such as false claims, deceptive advertising, unconscionable conduct and consumer exploitation. The aim of these laws is to create a fair system and market in which all businesses must adhere to the same standards of commercial honesty and consumer protection.

However, one significant weakness is that the Act's enforcement structure is that, it is essentially reactive rather than proactive. When corporations engage in anti competitive or unfair practices, the CCPC comes in to investigate, impose remedies. In contrast, the Act does not provide for any prior assessment of state policies or incentives that may unintentionally result in discriminatory effects. For example, if investment incentives are given to benefit foreign enterprises because of high capital thresholds under the Investment Act, local firms may be structurally disadvantaged even before the foreign firms engage in any specific unfair behaviour. This gap illustrates that, while the Act enshrines the concept of non discrimination in theory, its power to address discriminatory incentive design at the the policy level is restricted. Thus, while the Competition Act is critical in ensuring nondiscrimination in market conduct, its reactive nature emphasises the need for greater coordination with investment laws.

Including preventive approaches such as, competition impact assessments into the incentive design, would ensure that nondiscrimination is maintained not just in practice but also at the structural policy level. The integration of these assessments, will allow policymakers be equipped with tools to identify potential disputes and inequities before they occur, as significant barriers to competition. This proactive strategy could involve

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<sup>47</sup> Competition and Consumer Protection Act No. 24 of 2010

comprehensive stakeholder engagement, where the voices of local businesses are actively sought and considered in the design of investment incentives.

While the current system of economic governance is strong in its foundational principles, it requires a significant evolution in its operational mechanics to adequately address the complexities of the modern global market. A critical step in this evolution involves the enlistment of a comprehensive regulatory framework that mandates the periodic and systematic review of all existing policies. Such a process is not just an administrative exercise but a vital mechanism to ensure that regulations remain relevant, effective and responsive to the relentless pace of change in the market conditions and dynamics. Markets are not static entities, they are an ever changing ecosystems shaped by technological disruption, shifting global supply chains and the emergence of new business models defy traditional categorisations. Thus, a policy created decades ago cannot be used to regulate in present day markets, as it will inadvertently create unintended barriers to entry or unfairly advantage certain market incumbents. By instituting a periodic review every three to five years, informed by stakeholder consultation and empirical data, policymakers can move beyond a set and forget mentality. This not only allows for refinement policies, but also the closing of loopholes that have been exploited, thereby preventing the ossification of the regulatory system and ensuring it serves its intended purpose of fostering a healthy competitive field.

Furthermore, beyond the structural imperative of periodic review, there must be a concerted effort to foster a culture of continuous improvement and innovation within the regulatory bodies themselves. The traditional tools of oversight, while still valuable, cannot keep up with the speed and complexities of modern corporate strategies. To stay effective and keep up with new changes, regulators must be empowered and encouraged to embrace new approaches and technologies. This shift from a reacting to problems after they have happened to predicting issues before they become a problem. By using big datasets on market concentration, pricing trends and corporate mergers, regulators can move from investigating past harms to predicting potential future anti competitive outcomes. These models help show how new policy or a major market event might affect competition, giving regulators evidence to make proactive decisions. This shift is not

about replacing human judgment but enhancing it with powerful analytical tools, allowing regulators to identify developing threats to competition before they become entrenched market realities. Such forward looking measures would not only enhance the perceived and actual fairness of the investment landscape but would also significantly bolster the overall competitiveness and resilience of the domestic market, ensuring that local firms, often with less initial capital and market power, have fair and fighting shot at thriving along side their deep pocketed international counterparts.

The implications of clinging to a purely reactive enforcement model, as opposed to adopting this more dynamic and anticipatory approach, goes far beyond the immediate concerns of market fairness for businesses. They greatly influence the very fabric of consumer experience and long term market dynamics. When local and emerging firms are unable to compete effectively due to unfavourable structural policies and conditions that have not been updated to reflect current realities, market's diversity inevitably suffers. The erosion of competition directly impacts consumer choice, as the range of available products, services and innovative solutions narrows. Consumers may face higher prices, lower quality and a stagnation of innovation the absence of competitive pressure. This leads to less vibrant, less responsive and less efficient marketplace, one that fails to meet the evolving needs and expectations of public. Therefore, reforming the enforcement architecture to incorporate a proactive, data driven stance is not merely a technical adjustment for the benefit of the industry. It is a change that could yield substantial and wide ranging benefits for consumers, who are the ultimate drivers of economic demand, and for the economy as a whole. Which relies on dynamism and innovation for sustained growth.

The Competition and Consumer Act, while serving as an important and effective tool in combating anti competitive practices, must see its framework evolve to encompass proactive measures that address the root causes of discrimination in policy design itself. The Act's current strengths lie in its ability to respond to clear violations, but the modern economy demands for a regulatory system that prevents such violations from occurring in the first place. This necessitates a fundamental prioritization of preventive strategies, shifting resources towards market studies, sectorial inquires and the design of ex ante

regulations for digital and other highly concentrated markets where competition is particularly fragile. Moreover, achieving this requires that there is an institutionalised collaboration between competition authorities and investment regulation bodies. For the most part, these institutions work separately, where an investment policy designed to attract foreign capital might inadvertently create anti competitive market structures. By ensuring that these two institutions work together from the policy formulation stage, these agencies can ensure that the goals of attracting investment and preserving fair competition are not at odds but are mutually reinforcing. This integrated approach would ensure that the market structure itself promotes fairness, allowing the principles enshrined in the Competition and Consumer Act to be realized more effectively, creating an ecosystem where innovation is rewarded, consumers are protected and sustainable economic growth is the enduring outcome.

### **3.3 CONCLUSION**

This chapter analysed whether the Investment, Trade, and Business Development Act No. 18 of 2022 and the Competition and Consumer Protection Act No. 24 of 2010 encourages non discriminatory and anticompetitive practices. It is seen that, while both Acts achieve policy goals in attracting investment and ensuring fair competition, they frequently contradict each other, rather than work in harmony. The Investment Act is essentially a promotional tool, that is intended to encourage economic diversification through selective advantages such as tax breaks, customs duty exemptions, and preferential access to land and facilities. However, the qualifications outlined in Section 30 not only automatically favour foreign investors with sufficient cash, but also eliminates small and medium-sized firms (SMEs). Even if the law appears to be neutral, its framework is discriminatory in practice. Furthermore, by providing large cost benefits to enterprises that have received incentives, the Act risks creating perpetuating fundamental market inefficiencies that contradict competitive neutrality. On the other hand, the Competition Act serves as a regulatory tool. It prohibits restrictive agreements, abuse of dominance, and unfair economic practices, and it encourages nondiscrimination by applying equally to all businesses, regardless of ownership. However, its methods of enforcement are primarily reactive, responding only after distortions have occurred. Although Sections 38 to 41 authorise the CCPC to conduct market enquiries, the absence

of a specific mandate to assess state granted incentives creates a regulatory void. This limits the Commission's capacity to address anti competitive problems caused by public policy decisions made under the Investment Act, rather than private activity. The analysis finds a persistent institutional fragmentation: the Zambia Development Agency (ZDA) provides incentives under the Investment Act without undertaking ex ante competition assessments, leaving the CCPC to deal with the repercussions later. This lack of coordination not impairs regulatory consistencies but risks creating an atmosphere in which investment promotion unintentionally reinforces anti-competitive behaviour.

## CHAPTER FOUR

### LEGAL AND POLICY REFORMS FOR HARMONISING INVESTMENT PROMOTION AND COMPETITION LAW IN ZAMBIA

#### 4.0 INTRODUCTION

The Investment, Trade and Business Development Act<sup>48</sup> aims to encourage and attract investment through incentives, but as the previous chapters have shown, its implementation may unintentionally lead to anti-competitive outcomes by giving preference to foreign and large investors over domestic small and medium-sized businesses (SMEs). The Competition and Consumer Protection Act<sup>49</sup>, on the other hand, aims to protect consumer welfare, avoid abuse of dominance, and preserve market fairness. However, it is mostly reactive and does not specifically require a study of the competitive impacts of state-granted incentives.

The fact that Zambia's legal frameworks for competition and investment promotion function independently rather than working together harmoniously as tools of economic policy, highlights a regulatory vacuum. Effective economic governance requires that both systems work in harmony to attract foreign direct investment (FDI) while maintaining competitive neutrality and ensuring equitable participation of domestic enterprises.

This chapter, therefore, proposes legislative and policy reforms aimed at aligning Zambia's investment promotion strategies with competition law principles to achieve sustainable, inclusive, and fair market development.

#### 4.1 THE NEED FOR HARMONISATION

Particularly in emerging nations like Zambia, investment incentives are essential for drawing in both international and domestic capital. Such incentives, however, have the potential to skew market structures, restrict consumer welfare, and erode fair competition

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<sup>48</sup> Act No. 18 of 2022

<sup>49</sup> Act No. 24 of 2010

if they are not properly aligned with the principles of competition law. The OECD (2012) emphasises that in order to avoid policy conflicts between market regulation and market promotion, there must be a clear relationship between investment and competition policies.

In Zambia, the Competition and Consumer Protection Commission (CCPC) makes sure that businesses compete fairly, while the Zambia Development Agency (ZDA) works to draw in investors using both fiscal and non-fiscal incentives. Nevertheless, there is no formalised process for collaboration or collaborative evaluation of the impact of investment incentives on market competitiveness, and these two organisations function primarily independently. This gap creates policy contradictions and regulatory inefficiency.

To address this, lessons can be drawn from South Africa, the United States, and the United Kingdom, all of which have implemented mechanisms to ensure that investment promotion complements, rather than conflicts with, competition policy.

## **4.2 COMPARATIVE LESSONS FROM OTHER JURISDICTIONS**

### **4.2.1 United States: Antitrust and State Subsidy Oversight**

An established and very informative paradigm for combining investment and industrial policy with competition (antitrust) principles is provided by the United States. The Sherman Antitrust Act of 1890, the Clayton Antitrust Act of 1914, and the Federal Trade Commission Act of 1914 are the three main federal legislation that serve as the foundation for the strong tradition of antitrust enforcement in the United States. These rules together prohibits contracts that limit commerce, stop monopolisation, and control mergers and acquisitions that could significantly reduce competition.<sup>50</sup>In the United States, state and municipal governments individually provide investment or business incentives including tax breaks, grants, and infrastructure support to entice enterprises,

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<sup>50</sup> Areeda, P. E., & Hovenkamp, H. (2018). *Antitrust Law: An Analysis of Antitrust Principles and Their Application*. New York: Wolters Kluwer.

unlike many other nations that centralise investment promotion under a single body.<sup>51</sup> However, these incentives do not exist in a legal isolation, as they are subject to federal antitrust scrutiny to ensure they do not lead to monopolistic structures or anti-competitive outcomes (OECD, 2018).

The Federal Trade Commission (FTC) and the Department of Justice's (DOJ) Antitrust Division are both essential to maintaining market equity. They have the authority to challenge actions where state sponsored corporate agreements or mergers hurt consumer welfare, limit entry, or distort competition. For instance, on the basis that they would result in regional monopolies, the DOJ has previously challenged mergers that were made possible by governmental economic development incentives. In a similar vein, the Federal Trade Commission Act's Section 5 gives the FTC the authority to deal with "unfair methods of competition," such as when public subsidies allow businesses to unfairly exclude competitors or skew pricing processes.<sup>52</sup>

The Boeing–McDonnell Douglas merger case (1997), in which the United States and the European Commission examined state assistance given to Boeing by the state of Washington, is a particularly pertinent example. The worry was that Boeing's market dominance in the aerospace industry may be strengthened by state-sponsored subsidies, thereby reducing competition. Despite the merger's eventual approval, it demonstrated how closely monopoly regulations and investment incentives are related.<sup>53</sup> This example shows how the United States system makes sure that the necessity to preserve competitive neutrality is not superseded by industrial policy goals like job creation or regional development.

The U.S. model provides important lessons on institutional integration and preventive regulation. Firstly, Zambia could consider expanding the Competition and Consumer Protection Commission (CCPC)'s jurisdiction by including state aid review, both ex-ante (before incentives are granted) and ex-post (after implementation). This would enable the CCPC to investigate whether investment incentives under the Investment, Trade and

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<sup>51</sup> Posner, R. A. (2001). *Antitrust Law* (2nd ed.). Chicago: University of Chicago Press.

<sup>52</sup> Federal Trade Commission (FTC). (2020). *Guide to Antitrust Laws*. Washington, D.C.: Federal Trade Commission.

<sup>53</sup> OECD. (2018). *OECD Policy Roundtables: Competition and Consumer Protection*. Paris: OECD Publishing.

Business Development Act No. 18 of 2022 confer undue advantages or risk market dominance. Secondly, cooperation mechanisms between the CCPC and the Zambia Development Agency (ZDA) could mirror the DOJ–FTC coordination model, this would involve sharing information and joint investigations

Finally, introducing clear policy guidelines on state aid control, similar to those issued by the FTC and DOJ, would help Zambia achieve a balance between promoting foreign direct investment and preserving competitive market structures. By making sure that incentives are granted transparently and subject to competitive review, Zambia would enhance investor confidence, reduce regulatory conflicts, and align with international standards of competition governance.

#### **4.1.2 United Kingdom**

With its structure for controlling subsidies and state aid, the UK offers a strong example of striking a balance between promoting investment and regulating competition. Articles 107 to 109 of the Treaty on the Functioning of the European Union (TFEU), which forbade public financial assistance that distorted or threatened to distort competition within the internal market, bound the UK to the EU State Aid Rules during its time as a member of the EU. In order to ensure that government interventions served justifiable public interests, like regional development or innovation, without granting elective economic advantages, these provisions mandated that all investment incentives, tax exemptions and subsidies undergo ex-ante assessment and approval by the European Commission.<sup>54</sup>

Following Brexit, the UK kept this commitment to fair competition by the enactment of the Subsidy Control Act 2022, which replaced the EU State Aid structure with a domestic legal framework. Before providing subsidies, the new Act mandates that all public authorities, including the federal government, local governments and public agencies, assess the

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<sup>54</sup> European Commission. (2020). EU State Aid Control and Modernisation. Brussels: Directorate-General for Competition.

anticipated impacts on investment and competition. According to Section 12 of the Act<sup>55</sup>, subsidies must adhere to seven fundamental principles, which include:

1. **Facilitate a specific policy objective** (such as economic development or environmental sustainability).
2. **Are proportionate and necessary** to achieve that objective.
3. **Avoid unnecessary negative effects on competition and investment** within the UK internal market.
4. **Ensure transparency** through public reporting requirements (UK Subsidy Control Act, 2022).

This system is among the most open and methodical ways to manage the intersection of market regulation and state intervention in the world. A crucial supervision function is performed by the Competition and Markets Authority (CMA), which provides guidance on expensive or potentially deceptive subsidies. The UK successfully guarantees that public resources are distributed in ways that improve, rather than compromise, market efficiency and consumer welfare by incorporating competition principles into the framework of investment decision-making.<sup>56</sup>

Zambia can learn numerous important lessons from the how the UK handles investment incentives. First, it emphasises on the importance of examining the potential consequences of proposed incentives prior to approval, as opposed to reactive enforcement, which is used after anti competitive effects have already taken place.

Second, it underscores the need for transparency and accountability in the design and implementation of investment incentives. In the UK, all subsidies exceeding a prescribed value must be disclosed on a public database within six months, allowing public scrutiny and oversight. Thirdly, the UK approach illustrates how competition authorities and investment promoting institutions can work together, smoothly if they have got clear roles and ways to coordinate policies.

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<sup>55</sup> *Subsidy Control Act 2022*

<sup>56</sup> OECD. (2018). OECD Policy Roundtables: Competition and Consumer Protection. Paris: OECD Publishing.

For Zambia, adopting a similar Competition Impact Assessment (CIA) mechanism under the Investment, Trade and Business Development Act No. 18 of 2022 could play a significant role in strengthening policy coherence. The Zambia Development Agency (ZDA), in collaboration with the Competition and Consumer Protection Commission (CCPC), could be mandated to conduct assessments for all major incentives exceeding a certain fiscal threshold. These incentives include tax holidays, customs exemptions or subsidised land allocations. Doing this proactive evaluation would help prevent market distortions, and ensure efficient use of public funds, it also safeguard competitive neutrality between domestic and foreign investors. Moreover, publishing the outcomes of these assessments would bring transparency to the process and investor confidence, aligning Zambia's framework with international best practices.

#### **4.2.3 South Africa**

One of Africa's forward thinking and useful examples of how competition and investment laws might be harmonised into one framework for economic governance is South Africa. The Department of Trade, Industry, and Competition (DTIC), does not only develop industrial and investment policies, but it is also the parent organisation of the Competition Commission of South Africa (CCSA). By integrating these elements under one ministry, South Africa aims at limiting market concentration, encouraging inclusive economic growth and improving consumer welfare. This system ensures that investment promotion and competition enforcement work towards consistent goals, ultimately driving economic governance effectively.<sup>57</sup>

The Industrial Policy Action Plan (IPAP), which was introduced by the DTIC to direct South Africa's industrial transformation and investment plan, is an important policy tool in this coordination. Before being implemented, any proposed state assistance, subsidy, or investment incentive must pass both an economic effect analysis and a competition review under this framework. These aim are to determine if the incentive would restrict consumer choice, give unfair benefits or change market conditions. According to the OECD, South Africa's approach with IPAP reflects a strategy of "competitive neutrality in

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<sup>57</sup> Dunne, N. (2015). *Competition Law and Economic Regulation: Making and Managing Markets*. Cambridge University Press.

industrial policy," wherein market efficiency and justice are weighed against government involvement.<sup>58</sup>

Furthermore, public policy interventions, such as mergers, acquisitions, and state assistance, must be evaluated for their wider public interest implications, including their impact on small businesses and historically underprivileged groups, in addition to their economic efficiency, as required by South Africa's Competition Act<sup>59</sup>. Such factors must be assessed against any competitive distortions in accordance with Sections 12A and 18 of the competitive Commission of South Africa, 2019. This holistic approach allows South Africa to attract investment while maintaining market integrity and fostering fair participation.

In actuality, the Competition Tribunal and CCSA have examined cases in which government incentives ran the risk of compromising competition.<sup>60</sup> For instance, the Tribunal mandated supplier development funds in Walmart/Massmart<sup>61</sup> in order to assist regional SMEs and avoid exclusionary consequences from Walmart's market entry. Through interagency cooperation and regulatory forethought, this precedent shows that investment liberalisation and competition enforcement can coexist.<sup>62</sup> Because it unifies industrial strategy, investment facilitation, and competition oversight under a single institutional and legal framework, South Africa's model is especially relevant to Zambia. Zambia's Zambia Development Agency (ZDA), on the other hand, functions independently of the Competition and Consumer Protection Commission (CCPC) and is not required by law to consult on incentive programs. This separation could lead to unintended clashes between the ZDA's objective to increase foreign direct investment and the CCPC's duty to uphold fair competition as a result of this division, creating policy contradiction.

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<sup>58</sup> OECD. (2018). ObECD Policy Roundtables: Competition and Consumer Protection. Paris: OECD Publishing.

<sup>59</sup> Act, No. 89 of 1998

<sup>60</sup> Competition Commission of South Africa. (2019). *Annual Report 2018/2019*. Pretoria: CCSA.

<sup>61</sup> [2011] ZACT 73

<sup>62</sup> Roberts, S. (2013). "Competition, Industrial Policy and Economic Development in South Africa." *Development Southern Africa*, Vol. 30(3),

Therefore, Zambia may learn a lot from South Africa by requiring the ZDA and CCPC to consult with one another. An amendment to Part V of the Investment, Trade and Business Development Act No. 18 of 2022 could formalise this by making it a mandate that the ZDA obtain a competition clearance certificate from the CCPC before offering substantial investment incentives, especially those that involve subsidies, exclusive rights, or tax exemptions. This step is not merely procedural. It represents a fundamental shift towards a more integrated approach to economic development. An economic development that recognises the importance of competitive markets in fostering innovation and growth. In addition to ensuring that investment promotion adheres to concepts of market fairness and competitive neutrality, such coordination would stop the development of monopolistic advantages, which can stifle smaller enterprises and discourage new entrants into the market. By creating a robust framework for collaboration between ZDA and CCPC, Zambia could enhance its regulatory landscape, making it more attractive to foreign investors who prioritise transparency and fair competition.

This approach could lead to more informed understanding of market dynamics at play, allowing both agencies to share valuable insights and data that could inform policy decisions. For instance, periodic joint assessments of the competitive landscape could help identify sectors where investment incentives might inadvertently lead to market distortions. Thus, enabling timely interventions to mitigate and negatives impacts. Ultimately, fostering a collaborative environment between these two key agencies would not only ensure compliance with competition laws but also contribute to a more balanced economic ecosystem that supports sustainable development and equitable growth in Zambia.

## **CONCLUSION**

This chapter has shown that while Zambia's Investment, Trade and Business Development Act No. 18 of 2022 effectively promotes capital inflows through incentives, it lacks mechanisms to assess the competitive impact of those incentives, which may unintentionally distort markets. Conversely, the Competition and Consumer Protection Act No. 24 of 2010 promotes fair competition and consumer protection but operates reactively and in isolation from investment policy making. The absence of coordination between the

Zambia Development Agency (ZDA) and the Competition and Consumer Protection Commission (CCPC) has therefore resulted in policy inconsistencies, where efforts to attract investment sometimes undermine market fairness and the principle of competitive neutrality.

Drawing lessons from South Africa, the United Kingdom, and the United States, the chapter emphasises that harmonisation between investment promotion and competition enforcement is both possible and beneficial. South Africa's integrated governance, the UK's ex ante competition assessment system and the U.S. antitrust oversight of state subsidies all demonstrate that investment incentives can coexist with competitive markets when managed under a coherent legal framework. For Zambia, implementing a mandatory consultation mechanism between the ZDA and CCPC and incorporating competition impact assessments into incentive approvals would prevent anti-competitive outcomes and promote inclusive, transparent, and sustainable economic growth.

## **CHAPTER FIVE**

### **FINDINGS, RECOMMENDATIONS AND CONCLUSION**

#### **5.0 INTRODUCTION**

This study investigated the tension between Zambia's competition law and investment incentives, which frequently compromise competitive neutrality and hurt SMEs. Determining whether the Investment Act and Competition Act promote anti-competitive or non-discriminatory outcomes was the primary goal. According to the study's findings, inadequate coordination, high capital thresholds, and a lack of ex-ante competition evaluation result in unintentional market distortions that call for specific legal reform.

#### **5.1 GENERAL CONCLUSION**

This study has shown that although Zambia's investment framework, which is primarily regulated by the Investment, Trade and Business Development Act No. 18 of 2022, was created to draw in both domestic and foreign investment, its current structure unintentionally promotes discriminatory and anti-competitive outcomes. Small and Medium Enterprises (SMEs) in the country are disadvantaged by the fiscal advantages it offers, such as tax holidays and customs exemptions, which mostly benefit large and

foreign-owned businesses. The foundation of fair market regulation, the idea of competitive neutrality, is compromised by this imbalance.

In contrast, the Competition and Consumer Protection Act No. 24 of 2010 operates in a reactive manner while attempting to uphold consumer welfare and market fairness. Ex-ante evaluation of the competitive effects of state-granted incentives is currently not possible. The lack of cooperation between the Competition and Consumer Protection Commission (CCPC) and the Zambia Development Agency (ZDA) has led to fragmented governance, where one law encourages actions that the other must subsequently try to rectify. Harmonised policy frameworks anchored on proactive competition review, interagency cooperation and transparent subsidy control, can balance investment promotion with market fairness, according to comparative studies with nations including the United States, South Africa and the United Kingdom. These ideas demonstrate that maintaining competition and luring investment can coexist within logical legal frameworks.

Therefore, the study concludes that legislative harmonisation would better serve Zambia's economic goals, especially by requiring formal cooperation between the ZDA and CCPC, integrating a Competition Impact Assessment (CIA) into investment decision-making, and harmonising domestic laws with regional instruments under COMESA and SADC. In addition to preventing market distortions, such reforms will encourage competitive, sustainable, and equitable economic growth that benefits both domestic and international businesses.

## **5.2 Findings of the research**

### **Chapter Two**

This chapter examined the relationship between the Competition and Consumer Protection Act No. 24 of 2010 and Zambia's Investment, Trade and Business Development Act No. 18 of 2022. The latter protects consumer welfare and market justice, whereas the former encourages investment through financial incentives. However, policy incoherence results from their autonomous operation. SMEs are disadvantaged by incentives that frequently favour big or foreign investors, weakening competitive neutrality. The chapter concludes that for Zambia's economy to expand sustainably and fairly, both regimes must be in harmony.

### **Chapter Three**

This chapter examined the extent to which Zambia's investment and competition frameworks foster or inhibit fair competition. It found that Section 30 of the Investment Act imposes high capital thresholds that exclude SMEs from incentives, while tax holidays and exemptions advantage foreign investors. The Competition Act remains reactive, lacking ex-ante mechanisms to prevent market dominance. Institutional fragmentation between the ZDA and CCPC exacerbates these issues. The chapter concluded that Zambia's investment regime unintentionally promotes discriminatory and anti-competitive conditions.

### **Chapter Four**

Using examples from South Africa, the UK, and the US, this chapter examined global best practices for harmonising competition and investment regulations. Every jurisdiction uses interagency cooperation and ex ante evaluations to incorporate competitive review into investment strategy. However, Zambia lacks these systems, which permits incentives to skew competition. In order to guarantee that investment promotion supports market fairness, transparency and equitable economic growth, the chapter suggested implementing competition effect evaluations, official ZDA and CCPC collaboration and alignment with COMESA and SADC frameworks.

## **5.3 RECOMMENDATIONS**

Even while Zambia's investment and competition regimes are strong on their own, it is clear from the conclusions of the previous chapters that they are not sufficiently harmonised, which leads to policy conflicts, market distortions and unequal access to incentives. Four important institutional and legal changes are suggested to solve these flaws. These reforms are modelled after global best practices in the United States, South Africa, and the United Kingdom, all of which combine competition regulation and investment promotion to protect economic efficiency and justice. The suggestions are as follows.

### **5.3.1. Amendment to the Investment, Trade and Business Development Act No. 18 of 2022 to Introduce a Mandatory Competition Impact Assessment (CIA)**

A legal requirement that the Zambia Development Agency (ZDA) perform a Competition Impact Assessment (CIA) before offering any significant investment incentive, such as tax holidays, exemptions from customs duties, subsidies, or exclusive rights, should be added to Part V of the Investment, Trade and Business Development Act No. 18 of 2022. This procedure would act as a check to make sure that investment promotion policies don't impede fair competition, distort market structures or give certain businesses unfair benefits.

Before authorising incentives that might have an impact on market concentration, entry barriers, or consumer welfare, the ZDA would have to engage with and receive formal authorisation from the Competition and Consumer Protection Commission (CCPC) under this proposed modification. Such a legal obligation would encourage a structured and transparent process, allowing competition considerations to be integrated at the earliest stages of investment approval.

Introducing the CIA system would align Zambia with international best practices. For instance, South Africa's Industrial Policy Action Plan (IPAP) which mandates the review of state aid and investment incentives through an economic and competition view before implementation, ensuring that industrial policy remains consistent with the objectives of its Competition Act No. 89 of 1998.<sup>63</sup> Similarly, the United Kingdom's Subsidy Control Act 2022 requires public authorities to evaluate the competitive effects of proposed subsidies in advance, thereby promoting transparency and preventing market distortions.<sup>64</sup>

For Zambia, introducing such a CIA provision would mark a shift from a reactive enforcement model, where the CCPC acts only after anti competitive effects have occurred to a preventive regulatory framework, capable of identifying risks before they happen. This amendment would not only strengthen legal predictability but also protect

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<sup>63</sup> Dunne, N. (2015). *Competition Law and Economic Regulation: Making and Managing Markets*. Cambridge: Cambridge University Press.

<sup>64</sup> European Commission. (2020). *EU State Aid Control and Modernisation*. Brussels: Directorate-General for Competition.

small and medium-sized enterprises (SMEs) from structural exclusion, and reinforce the principle of competitive neutrality, as advocated by the OECD.<sup>65</sup>

### **5.3.2. Statutory Provision for Inter-Agency Coordination between the ZDA and the CCPC**

The Competition and Consumer Protection Act No. 24 of 2010 and the Investment, Trade and Business Development Act No. 18 of 2022 should both be altered to contain clear cross referencing clauses that create a legal basis for collaboration between the ZDA and CCPC. By institutionalising cooperation, this reform would guarantee that competition enforcement and investment incentives are coordinated to produce logical economic policy outcomes.

A Joint Investment and Competition Oversight Committee (JICOC) made up of top ZDA and CCPC officials could be established by a new section.

The Committee would be mandated to:

- Review proposed investment incentive schemes to assess their potential competitive effects.
- Develop joint policy guidelines to ensure that investment promotion aligns with competition principles.
- Facilitate data sharing and joint market inquiries between the two institutions and
- Submit annual reports to Parliament evaluating the competitive implications of granted incentives.

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<sup>65</sup> OECD. (2012). *Competitive Neutrality: Maintaining a Level Playing Field between Public and Private Business*. Paris: OECD Publishing

By ensuring that both agencies function within a same policy framework, this system would not only minimise regulatory overlap but also avoid circumstances in which one agency's activities unintentionally conflict with the activities of the other.

The OECD underlines that interagency coordination is essential to efficient economic governance, especially in economies where market regulation and investment promotion coexist.<sup>66</sup> Zambia would get closer to the integrated governance models seen in nations like the United States, where the Department of Justice (DOJ) and the Federal Trade Commission (FTC) coordinate oversight of incentives and mergers to maintain competitive markets, and South Africa, where the Department of Trade, Industry and Competition (DTIC) oversees both industrial and competition policy.

Incorporating a statutory mechanism for collaboration between the two would therefore not only enhance policy coherence but also promote accountability, transparency and efficiency in Zambia's economic governance. It would ensure that investment policies are consistent with the country's commitment to fair competition, sustainable development and inclusive growth.

### **5.3.3. Revision of Section 30 of the Investment, Trade and Business Development Act No. 18 of 2022 to Promote Inclusive and Non-Discriminatory Access to Incentives**

A minimum investment threshold of USD 50,000 for local investors, USD 100,000 for citizen-owned businesses, USD 150,000 for citizen empowerment businesses, USD 500,000 for citizen-influenced businesses, and USD 1 million for foreign investors is established by Section 30 of the Investment, Trade and Business Development Act No. 18 of 2022. Small and medium-sized businesses (SMEs), who are the foundation of Zambia's domestic economy, are discriminated against by this provision's strict structure, despite the fact that it was intended to draw significant international investment.

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<sup>66</sup> *ibid*

By eliminating smaller Zambian investors who make substantial contributions to employment, local innovation, and value addition, this capital-based approach to eligibility unintentionally advantages large, frequently foreign-owned firms with higher financial capability. Competitive neutrality, the idea that all businesses should compete on equal terms regardless of ownership or scale, is threatened by incentive regimes that are primarily focused on capital size, according to the OECD.<sup>67</sup>

In order to address this, Section 30 should be modified to include scaled or flexible levels that take into account socioeconomic contributions of SMEs such as employment creation, skill transfer, rural development, and the utilisation of local suppliers in addition to capital investment. For example, a company investing USD 50,000 but employing 50 local workers could qualify for targeted tax relief. Similarly, enterprises operating in rural areas or zones with a high rate of unemployment could be granted proportionate incentives regardless of capital outlay.

Countries like South Africa and Malaysia have adopted similar inclusive systems. South Africa's *Industrial Development Corporation* provides tiered incentive schemes that reward employment generation and local procurement rather than purely financial input.<sup>68</sup> Malaysia's *SME Masterplan (2012–2020)* also adjusted eligibility criteria to ensure equitable participation by domestic businesses. By adopting such flexibility, Zambia would encourage domestic participation in economic growth and prevent anti-competitive market concentration that privileges a few dominant players.

Ultimately, this reform would transform Zambia's investment framework from one that favours capital accumulation to one that promotes inclusive and sustainable industrialisation, in line with the country's Vision 2030 and the African Union's *Agenda 2063*.

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<sup>67</sup> OECD. (2012). *Competitive Neutrality: Maintaining a Level Playing Field between Public and Private Business*. Paris: OECD Publishing

<sup>68</sup> Roberts, S. (2013). "Competition, Industrial Policy and Economic Development in South Africa." *Development Southern Africa*, Vol.

### **5.3.4. Amendment to the Competition and Consumer Protection Act No. 24 of 2010 to Empower the CCPC to Review and Regulate State Aid**

There are currently no specific provisions in the Competition and Consumer Protection Act No. 24 of 2010 that give the Competition and Consumer Protection Commission (CCPC) the authority to examine or control state aid, such as grants, tax breaks, and subsidies, given to investors under other legal frameworks. This omission restricts the CCPC's capacity to stop anti-competitive distortions caused by state-granted benefits that alter market dynamics rather than private wrongdoing.

As part of their market oversight, competition authorities are required by law in many developed nations to keep an eye on state aid. Articles 107–109 of the Treaty on the Functioning of the European Union (TFEU), for instance, forbid governmental assistance that stifles competition unless it serves the public interest. Following Brexit, the UK's Subsidy Control Act 2022 gives public entities the authority to evaluate how subsidies affect competition and gives the Competition and Markets Authority (CMA) the authority to offer advice or step in when needed.

The Competition Act should be changed to specifically include state assistance control in the CCPC's jurisdiction in order to bring Zambia into compliance with such norms. This could be achieved by inserting a new Part or Section—possibly after Part IV—to provide that:

- The CCPC shall review any form of government subsidy, tax exemption, or financial incentive that may distort competition or confer undue advantage;
- The CCPC may issue recommendations or orders for the modification or withdrawal of such incentives; and
- The CCPC shall publish annual reports analysing the competitive impact of state interventions in key sectors.

This In order to prevent government policies encouraging investment from unintentionally creating monopolistic or discriminatory conditions, this reform would allow for both ex ante and ex post scrutiny of investment incentives. Additionally, it would improve Zambia's adherence to regional frameworks that highlight the regulation of anti-competitive state

aid, such as the SADC Protocol on Finance and Investment<sup>69</sup> and the COMESA Competition Regulations.<sup>70</sup>

Additionally, by subjecting all incentive schemes to competitive assessment, this legislation revision will promote accountability and transparency in public spending, bringing Zambia's policy into compliance with OECD recommendations on fair market governance.<sup>71</sup> Zambia will create a thorough regulatory framework where public and private market participants are equally responsible to competition principles by giving the CCPC the authority to examine state aid.

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<sup>69</sup> Southern African Development Community (SADC) Protocol on Finance and Investment (2006). Gaborone: SADC Secretariat.

<sup>70</sup> Common Market for Eastern and Southern Africa (COMESA) Competition Regulations (2004). Lusaka: COMESA Secretariat

<sup>71</sup> OECD. (2018). *OECD Policy Roundtables: Competition and Consumer Protection*. Paris: OECD Publishing.

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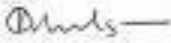

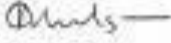

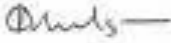

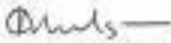





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L400B / Dissertation II – DIRECTED RESEARCH (OBLIGATORY ESSAY)

RESEARCH CLEARANCE FORM

NAME: MELINDA MARYJAY HABEENE. STUDENT NUMBER: LLB20119629

SUPERVISOR: PROF CHIPASHA MULENGA TOPIC: AN ANALYSIS OF THE  
APPLICABILITY OF COMPETITION LAW PRINCIPLES TO SPECIAL INCENTIVES  
GRANTED TO FOREIGN INVESTORS IN ZAMBIA.

Stage	Supervisor's Comments	Supervisor's Signature & Date	Student's Signature & Date
Research Proposal	Make corrections	 —	30/07/2025 
Chapter 1 – Introduction	Make corrections and proceed	 —	10/11/2025 
Chapter 2 –	Attend to the comments and proceed	 —	27/08/2025 
Chapter 3 –	Attend to the comments and proceed	 —	17/09/2025 
Chapter 4 –	Attend to the comments and proceed	 —	01/10/2025 
Chapter 5 – Conclusions & Recommendations	Attend to the comments and proceed	 —	09/11/2025 

Abstract, Table of Contents, Bibliography and Appendices	Attend to the comments and proceed to submit a draft	Amulya —	13/11/2025 Atakera
First Draft	Attend to the comments and resubmit	Amulya —	13/11/2025 Atakera
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