GOVERNMENT OF MALAWI

MINISTRY OF COMMERCE AND INDUSTRY

COMPETITION POLICY FOR MALAWI

SEPTEMBER, 1997

PREFACE

One of Government's important functions is to create an enabling environment in which enterprises will operate with minimal interference. Within this framework, Government has to put in place clear policies and legislation that foster a competitive environment for business enterprises.

As the economy continues to move progressively towards increased liberalization, certain undesirable business practices will emerge which will act as a hindrance to this process. The absence of a competition policy legislation in Malawi has created an opportunity for some sectors of the business community in the country to engage in business practices including price fixing, speculative hoarding and collusive tendering.

It should be pointed out that the aim of competition policy is not to condemn or penalize those industries in Malawi that have large shares of the market. The reality of the situation is that large and strong companies can enjoy economies of scale which can enable the to minimize costs and withstand both domestic and foreign competition. The concern on the other hand is also to ensure that consumers are adequately protected from firms, whether large or small engage in exploitative pricing collusion or collusion that is designed to prevent competition.

It is Government's hope that the consultative approach used in the development of competition policy in Malawi, with private sector involvement from the beginning, has resulted in a competition policy that will stand the test of time and one that suits and is appropriate to the economic conditions prevailing in Malawi.

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Development Consultants in developing the Competition Policy document are also acknowledged. The Competition Policy Task Force under the coordination of Mr. Saulos Nyirenda (Assistant Chief Economist, Ministry of Commerce and Industry) worked tiressly to supervise, provide guidance and finalize the process of formulating the policy statement. To them and all those who contributed towards this important task, I would like to express my gratitude.

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INTRODUCTION

Background

Since the early 1980's the Government of Malawi has pursued a programme of economic liberalization aimed at enhancing the efficiency and competitiveness of domestic markets.

Although little explicit to control restrictive business practices or abuse of dominant positions of market power, the Government was, in the past, able to limit abuses through some of its policies. Primary among these was an extensive regime of price controls. In addition, the Government, through Reserve Bank of Malawi, was able to exert leverage over the private sector by directing the banking sector to prioritise certain sectors of the economy and by using the foreign exchange allocation system to influence private sector operators.

Elements of Anti-Competitive Behaviour

There are many manifestations of anti-competitive behaviour that are not fundamentally a result of governmental intervention. Essentially they reflect a basic instinct of human nature to outflank a situation of potential competition- whether through guile or otherwise-rather than to have to face it head on. It is important to recognize that this is in fact so basic a trait that it will manifest itself in a very large range of business (as well as other) situations.

Ways in which economic players carry out anti-competitive behaviour include:

(i) deciding to change similar (profitable) prices for similar goods and services produced by more than one (price extends beyond nominal price to any component of the terms of trade between buyer and seller and includes product quality, service, warranties and other conditions of sale);

(ii) deciding to share a market of a finite size on some agreed basis, be it a geographical split, a percentage split, or deciding whose turn it is to win a particular tender (collusive tendering);

(iii) making things difficult for new competition, whether by temporary underpricing themselves, by raising objections based on small market size, registering trademarks they do not intend to use; etc

(iv) seeking import protection to safeguard jobs;

(v) buying up competitor organizations;

(vi) insisting that customers buy goods that are in short supply and/or price controlled only if they also buy other goods services on which there are good margins simultaneously;

(vii) insisting that a customer stocks only their particular product and not those of rivals;

(viii) agreeing on maximum wage rates for workers in an industry (and on identical conditions of service generally);

(ix) secretly pooling the profits of apparently independent competitor operations;

(x) unfairly discrediting the products of a new entrant to the market, or of another producer.

The need for Competition Policy

The economic liberalization policies of the Government of Malawi can promote greater competition and increase efficiency in the economy to the ultimate benefit of the consumer. It might then be argued that in a market oriented economy the introduction of explicit competition policy is superfluous and runs counter to the trend of deregulation.

However, there are a number of reasons why competition policy and regulation are necessary irrespective of the degree of liberalization achieved through structural adjustment. The reasons include the following:

(i) The Malawian economy is characterized by imperfect market structures. In addition to "natural" monopolies such as utilities, most goods in Malawi are produced and distributed under monopolistic or oligopolistic conditions. Even after all regulatory barriers to entry into these markets are removed, economies of scale may inhibit other players from entering certain markets.

(ii) In certain instances businessmen may seek to counter any potential competition through colluding to avoid it. In the absence of legislation, some restrictive business practices such as price fixing, market allocation, or collusive tendering are likely to exist. It should be noted that restrictive business practices are not confined to highly concentrated industries.

(iii) The ongoing privatization programme may result in some public sector monopolies being divested into private ownership with an attendant greater risk of the abuse of a position of dominant market power.

(iv) The organ charged with implementing competition policy can play an important role in lobbying for change to legislation impending competition, thus contributing to the effectiveness of the liberalization programme in achieving its desired objective of an efficient and competitive economy.

GENERAL POLICY GUIDELINES

The broad policy objective in the development of competition policy is to protect consumer interest and to promote economic efficiency.

The strategies to be followed by Government in pursuit of these policies will involve action to:

(a) **lower barriers to entry;**
(b) **reduce Restrictive Business Practices;**
(c) **protect the consumer.**

Competition Policy will primarily focus on the areas of :

1. business behaviour calculated to eliminate or reduce competition including price fixing, collusive tendering or customer allocation and tied sales;
2. market structures which permit abuse by an entity in a position of market power. It is important to note that, where economies of scale exist, there may be economic benefits arising from a monopoly or oligopoly situation. The focus is therefore on abuse of dominant positions rather that the existence of monopolies or oligopolies per se;
3. Government legislation, both existing and proposed, which may impact on the operation of the free market in Malawi; and

4. Unfair business practices which have an impact on consumers.

POLICY STATEMENT AND STRATEGIES ON RESTRICTIVE BUSINESS PRACTICES

In reducing Restrictive Business Practices, Government shall by statute:

(a) make practices such as price fixing, collusive tendering and undisclosed price cartels per se offences;

(b) discourage the abuse of a dominant market position by a monopoly or merger involving the acquirement of a substantial market share which might be to the detriment of the consumer.

POLICY STATEMENT AND STRATEGIES ON CONSUMER PROTECTION

In an effort to counter unfair business practices and afford the consumer protection, Government shall by statue:

(a) prohibit the hoarding of producer and consumer goods for the purpose of bringing about a price increase;

(b) make a manufacturer or importer liable for defective products or services rendered that do not meet the suppliers description of such goods and services;

(c) make it an offence to engage in conduct that is liable to mislead the public as to the nature, price availability, characteristics, suitability for a given purpose, or quantity or quality of any product or services;

(d) make it an offence to supply any product which is liable to cause injury to health or physical harm to consumers when properly used, or which does not comply with a consumer safety standards which has been prescribed by law;

(e) provide a system for civil and criminal suits for the purpose of recovery of damages suffered as a result of a restrictive business practice.

POLICY STATEMENT ON INSTITUTIONAL STRUCTURE

Government recognizes that there is a clear need for the establishment of an organ to lobby for change to legislation impending competition and make appropriate recommendations to the Ministry of Justice, Parliament and a Tribunal on matters relating to Restrictive Business Practices. In this regard, Government shall:

(a) create an autonomous Competition Commission whose role will be to administer Restrictive Business Practices legislation and consumer protection legislation;

(b) establish a specialized tribunal to resolve contentious issues in certain specific fields subject to judicial review on matters of law.