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Voluntary Peer Review of Competition Policy: United Republic of Tanzania

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The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

OUTLINE

- 1. Introduction**
- 2. Political & Historical Context**
- 3. Economic Context**
- 4. Foundations of Competition Policy**
- 5. The Fair Competition Act**
- 6. Institutional Framework & Capabilities**
- 7. Recommendations**

1. INTRODUCTION

- Tanzania had its first Fair Trade Practices Act in 1994 and it was reviewed and replaced by the current Fair Competition Act (FCA) of 2003. The FTPA created a Fair Trade Practices dept within the Ministry of Trade and Industry.
- Fair Competition Act (FCA) created a more autonomous and independent Fair Competition Commission (FCC).
- The FCC was officially launched in 2007 following funding support from the World Bank.

2. POLITICAL HISTORY

- **1962 Independence from UK under founding leader Mwalimu Julius Nyerere as its PM (later President) under the Tanganyika African National Union (TANU) party.**
- **TANU changed its name from 1977 to Chama Cha Mapinduzi (CCM) i.e “Revolutionary Party”**
- **One-party Socialist State established as a conduit for more efficient & effective resource utilisation & allocation**

2. POLITICAL HISTORY *cont'd*

- **Great influence from Soviet style central planning and resource allocation**
- **With the resignation of President Nyerere in 1985, there appeared to be a policy shift in the party when CCM began to review the One-party State structure**
- **The collapse of the Soviet-Union put pressure on several One-Party States in the region & multiparty competition was re-introduced**

3. ECONOMIC CONTEXT

- **Market economy at independence up to 1967 when the Arusha Declaration (AD) was proclaimed.**
- **AD promoted self-reliance & collective efforts ('Ujamma') through collective farming in the rural areas as a source of wealth.**
- **AD called on Govt to exercise effective control over all key means of production and pursue policies which facilitated collective ownership of the resources.**

3. ECONOMIC CONTEXT *cont'd*

- **The Arusha Declaration questioned the use of industries that were foreign or privately owned as agents of economic development capable of benefiting the people, especially the rural peasants.**
- **Government nationalized key industries through State-Owned Enterprises (SOEs) and created cooperatives in the agriculture sector, the Regulation of Prices Act, 1973, which set up the National Price Commission**

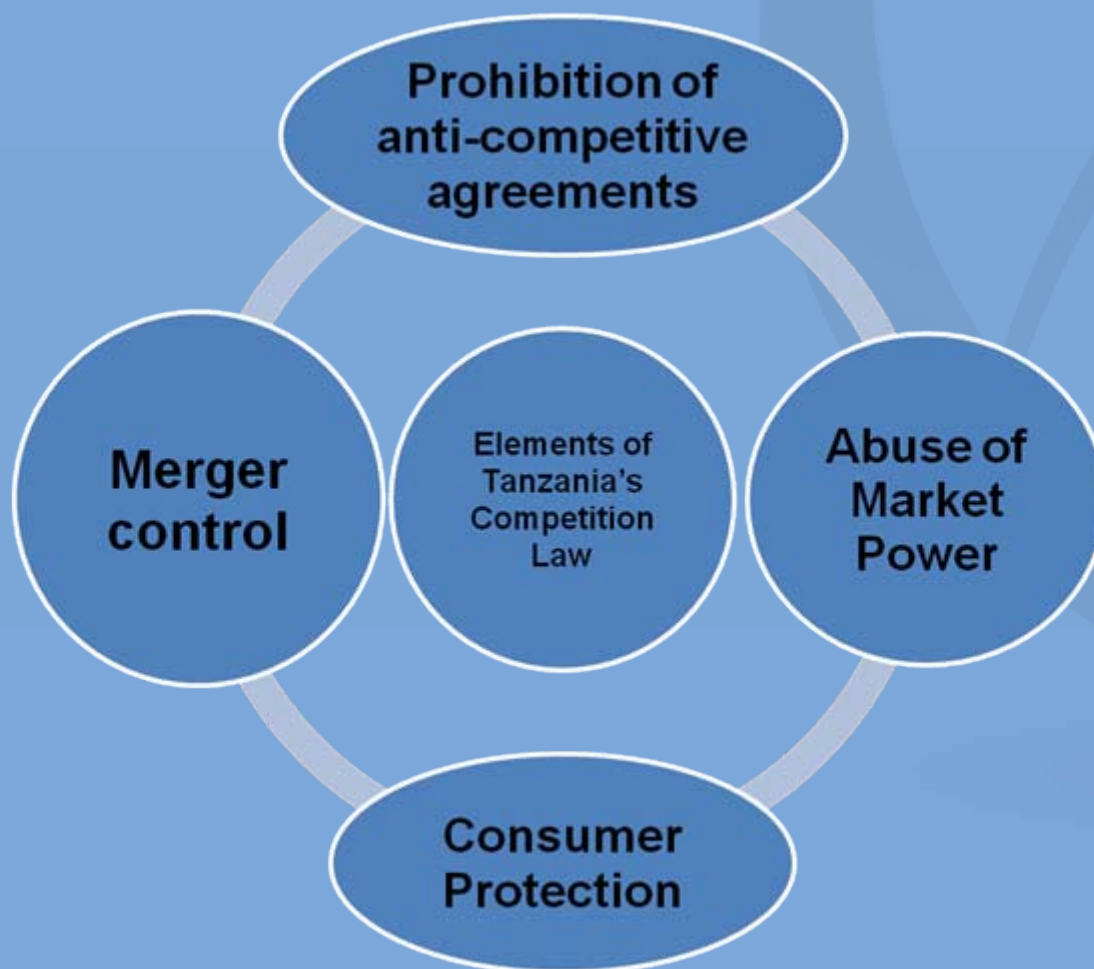
4. FOUNDATIONS & HISTORY OF COMPETITION POLICY

- **SOEs in most of the key industrial sectors brought about firstly the lack of recapitalization, lack of accountability and less innovation affecting economic progress.**
- **Economic stagnation, oil price shocks of the 1970s and falling prices of the country's main commodity exports contributed to economic decline in the 1980s.**
- **Economic Reform Program (ERP) from 1986**

4. FOUNDATIONS & HISTORY *cont.*

- **Govt. promulgated the National Development Vision 2025**
- **Strategic Industrial Development Policy (SIDP)**
- **National Trade Policy**
- **Documents emphasized on poverty reduction through industrialization, and an export-led competitive domestic economy**
- **Competition policy was set to control and remove barriers to industrial development & attract innovation into economic activity**

5. THE COMPETITION ACT



Scope of Application

- **Extent of State Immunity and State Agents (eg Crop Marketing Boards)**
- **Arguable limitations to regulated sectors**
 - ✓ **EWURA Act, 2001 (Energy & Water)**
 - ✓ **SUMATRA Act, 2001 (Surface/marine transport)**
 - ✓ **TCAA Act, 2003 (Civil Aviation)**
 - ✓ **TCRA Act, 2003 (Telecomm)**
 - ✓ **Any other such regulated sector**

Procedural Issues

- **The substantive rules of procedure are contained in the FCC Procedural Rules (FCCPR)**
- **The FCC may initiate an investigation *ex officio***
- **Final determination to investigate a case or not lies with the FCC CEO, who also sits as a voting member of the FCC (Section 69 of the FCA)**
- **Natural justice concerns - legal & business community have requested for legal review**
- **Otherwise, written procedural rules are available and comprehensive**

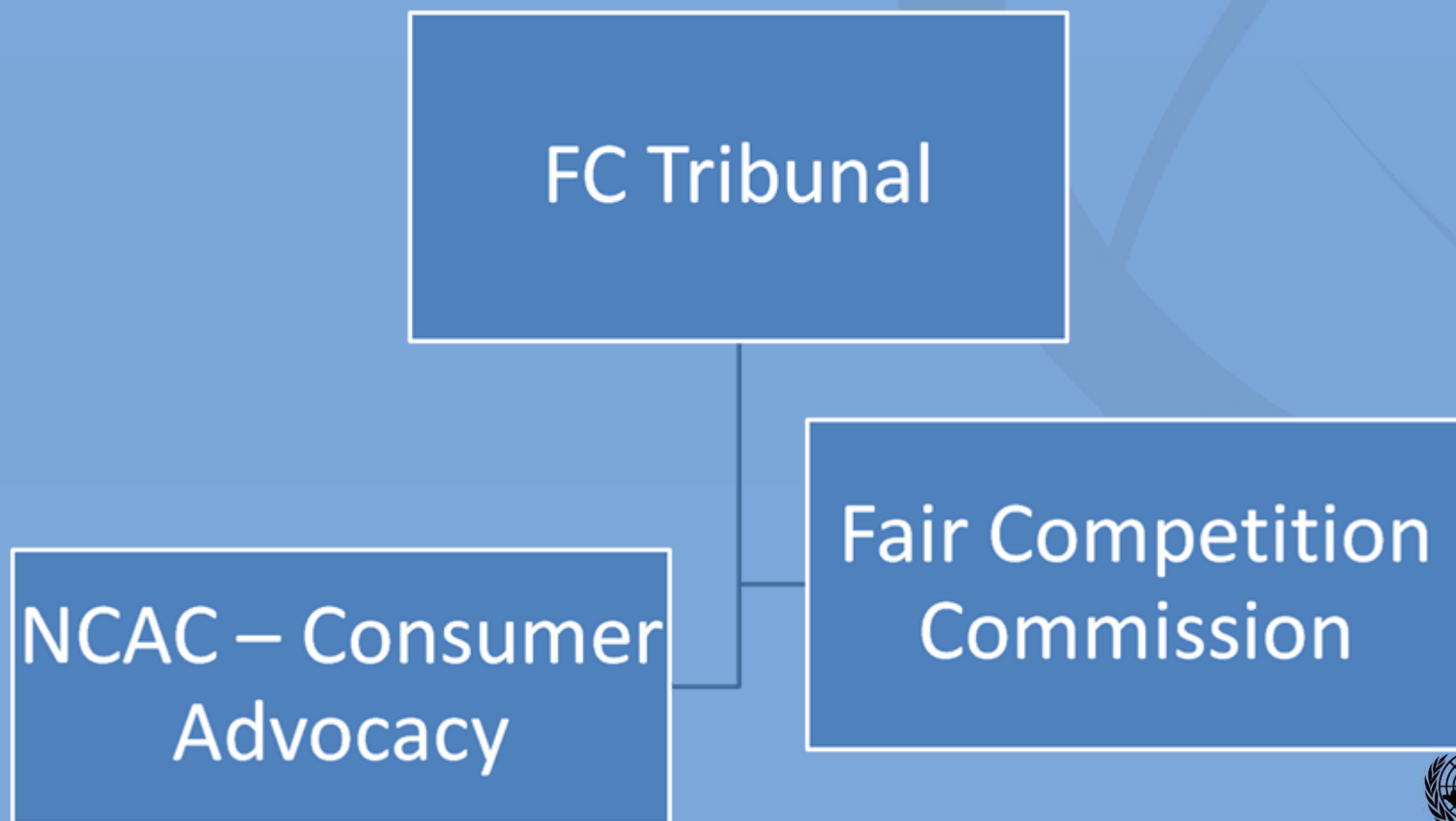
Sanctions

- **The FCC has powers to issue compliance and compensatory orders. Compliance orders are akin to “cease and desist” orders**
- **Orders of equal force as High Court orders**
- **FCC has administrative powers to mete out a 5-10% turnover based fine. A minimum of 5% was expressed to be too high and the wording of the law proposed for review**
- **No penalties specified for Shareholders, directors and officers of an enterprise**

Anti-Counterfeiting role

- **The CEO of the FCC appointed as enforcer of the self-standing Merchandise Marks Act of 1963**
- **Concerns that MMA & FCC focus on imported goods and not goods manufactured locally and sold locally. Focus is also on local music products**
- **Local producers using MMA to frustrate foreign competition**
- **Anonymous complaints not processed**

6. INSTITUTIONAL SET-UP & CAPABILITIES



FCC and NCAC

- **FCC staff complement of 58 against a requirement of 72 for it to carry out the various functions (80% capacity).**
- **Revenue of 10% from regulators not remitted**
- **FCC has no legal powers to demand payment**
- **A review process of funding underway**
- **NCAC replicates advocacy functions of FCC under section 65 of the Fair Comp.Act ????**
- **NCAC not functional and ill-prepared**

The Tribunal

- No Vice Chair thus cant meet in absence of Chair
- Vice-Chair could also facilitate a situation where the FCT was flexible to operate with two panels of its members sitting to look at different cases.
- Legal & business concerned FCT takes too long to make its final decision
- FCT salaries are lower than the FCC ones.
- Chair is full-time Judge & has no staff at FCT
- FCT funding dependent on Regulator goodwill
- FCT decision is final – no further appeal

7. RECOMMENDATIONS

FCC

- Introduce vertical restraints, joint dominance
- Review the minimum fine of 5%
- Criminal sanctions against individuals
- Break investigator/prosecutor/adjudicator role

FCT

- Appeal of FCT decision to Court of Appeal
- Introduce Vice-Chair
- Regulator competition breaches to FCT
- Consumer matters at FCT and not courts

OTHER

- Ideal funding system to FCC, FCT & NCAC
- Review application of Act to State agents
- Sustain competition advocacy viz. counterfeit office tag

THANK YOU

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