



# INTERGOVERNMENTAL GROUP OF EXPERTS ON **COMPETITION LAW AND POLICY**





# REPORT ON TANZANIA PEER REVIEW RECOMMENDATIONS IMPLEMENTATION

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# REPORT CONTENT

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# INTRODUCTION

- In 2011 a voluntary peer review for Tanzania, Zambia and Zimbabwe (tripartite) took place.
- Purpose of the tripartite peer review was to analyze competition law enforcement commonalities and differences.
- Compare laws, investigative powers, resources, sanctions, judiciary, merger regime.



# TANZANIA ECONOMIC OUTLOOK

- Vision 2025 from 1999 to 2025
- To be implemented by five year plans
- Mkukuta is a five year plan from 2003 to 2008
- Latest five year plan from 2011 to 2016
- 
- Economy still needs to diversity, develop infrastructure



# STATUS OF IMPLEMENTATION

- **Recommendation 1:**
  - Funding of the FCC and FCT has improved
  - Funding is not 100%
- FCC generates funds through filing fees and fines but it is not reliable
- **Recommendation 2:**
  - NCAC merger with FCC did not take place as two institutions have different mandates
  - NCAC is an NGO and not a sector regulator



# STATUS OF IMPLEMENTATION



- **Recommendation 3** – Appeals by FCC should be to FCT and not Minister.
- Proposed amendments do not change because decisions of FCC can be appealed to the FCT; no need to amend.
- **Recommendation 4** – List of vertical agreements. FCA has not been amended, draft amendment proposes that Section 10(3) to include this.
- **Recommendation 5** – Enumerate conduct considered misuse of market power. No proposed amendment. Section 10(4)-remove the words intentionally and negligently – enforcement is difficult.

# STATUS OF IMPLEMENTATION

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**Recommendation 6** – Collective and joint dominance – This has been proposed to amend section 5

**Recommendation 7** – New provision to deal with buyer power. No amendment proposed

**Recommendation 8** – Exhaustive list of horizontal agreements – amendments proposed

**Recommendation 9** – Remove the words intentionally and negligently from section 9(4) – amendment proposed

**Recommendation 10** – Empower FCC to issue summons – no proposal made. Proposals made to S 71(5) and 71(6) on searches and false information.

FCC Staff to be accompanied by Police warrant to be signed by Tribunal DG or any FCC staff (too much power)





# STATUS OF IMPLEMENTATION

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**Recommendation 11** - Revise S 6 so that Act applies to State – If state plays a big role in economy then competition law must apply.

**Recommendation 12** – Include the word conduct and behaviour in section 8(1). Amendments not proposed. Some conduct may not be captured.

**Recommendation 13** – Remove the words intentionally and negligently from S 8(7). Amendment proposed.

**Recommendation 14** - Remove section 8(3)(b) which prevents vertical agreements from being captured. No amendment proposed.

**Recommendation 15**- State action should be reviewed by FCC. No amendment proposed.





## Other recommendations (17-28) for amendments included:

- The role of the Minister in cases
- Sanctions on cartels
- Director General's role
- Streamline fines
- Cover consumer violations and fines
- Application of Merchandise Act
- Streamline consumer associations' funding
- Provide for Tribunal vice-chair
- Status of Tribunal decisions and code of conduct for Tribunal members.



# EXPERIENCE GAINED SINCE PEER REVIEW

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Better relations between FCC and regulators: leading to better funding arrangements.

Some regulators have assumed oversight role over FCC: demands annual reports as a prerequisite for additional funds.

NCAC is defunct – Non functional due to lack of funding .

Sector regulatory legislation empowers agencies to set up Consumer Consultative Councils (rise in CCCs).

FCC with proposed amendments will have power to enforce consumer provisions.

FCC very active and visible in counterfeit actions and in merger control.

FCA is enforceable and FCC and FCT have with the current FCA enforced the law.

FCC has reviewed vertical agreements- S8(3)(B).



# OBSERVATIONS OF NEW ISSUES

- Delays in appointment of decision makers
- Allegations of political interference – Tobacco case and OMC case on fuel price
- Merger review thresholds too low
- Staff turnover – regulators offering better conditions of service
- Visibility of the FCC has improved



# ACTION POINTS

- Technical assistance to amend FCA
- Technical assistance on capacity building in FCC and FCT
- Technical assistance to set up NCAC
- Budget – Regulators should fund FCC and FCT fully as prescribed by law
- Competition enforcement – greater cooperation between FCC and sector regulators (ICPEN and ICN)



# WAY FORWARD

- Government to consider additional provisions for amendment
- FCC and UNCTAD to develop a 3-year capacity building project
- Identify sources of funding





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