

Ad Hoc Expert Meeting on Consumer Protection:
The interface between competition and consumer policies

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**Session 3: Emerging Issues in Consumer Protection:
Complementarities and areas of tension**

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

**COMPETITION AND CONSUMER PROTECTION POLICY: A
TANZANIAN PERSPECTIVE.**

**PAPER FOR PRESENTATION AT UNCTAD AD-HOC EXPERT GROUP
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Introduction:

Competition and consumer policies aim at increasing consumer welfare in the total welfare equation, by protecting consumer's economic interests. When the two policies are applied properly they have a complementary effect because they reinforce one another despite the fact that, they deploy different approaches in regulating conducts of markets.

Competition policy is usually very effective in well functioning markets (strong supply side of the market) and is implemented through a set of policies and enforcement of competition laws that seek to ensure that competition in the market place is not restricted to the extent of reducing economic welfare. The consumer policy consists of policies seeking to prevent sellers from engaging in unfair practices (strong demand side of the market). Further, consumer policy aims to improve transparency in a general sense in order to increase the number of informed consumers.¹

Competition Policy:

Competition policy prevents conducts that interfere or lessen competition in the market, such conducts include but not limited to restrictive agreements, in particular cartels, anti-competitive mergers or abuse of dominance. It is through such prohibitions competition policy ensures that consumers have a wider choice of goods and services and mostly, at competitive prices.

Competition creates conducive environment by keeping markets effectively competitive thus, forcing firms to maintain their reputation as good quality suppliers. High quality products help firms to meet customer satisfaction. By so doing competition reinforces consumer policy.

Consumer Policy:

Consumer policy approaches, among other things, the market from choices provided by the competition by bridging the gap of information asymmetry between consumers and sellers. As earlier mentioned, the consumer policy is necessary in situations of information imperfection (imperfect markets as is the case in developing countries) in order to reduce the burden imposed on consumers as switching costs.

“ Now it is widely understood to have a single purpose: the enhancement of Consumer welfare. Thus, competition policy and consumer policy now speak the same language; they have a common, overarching goal”²

¹ Armstrong Mark: Competition Policy International: Interactions between competition and consumer policy Volume 4 Number 1 Spring 2008 pg112

² <http://www.oecd.org/dataoecd/22/34/40898016.pdf> accessed on 19th /6/2012

Some policies, such as those which act to reduce consumer search costs or switching costs, or which reduce industry advertising costs may fall under both headings ie competition and consumer policies. Such policies are those which regulate competition in complex new markets such as public utilities, professions, social sciences and financial markets. Financial markets such as insurance need to be regulated because they are characterized as “*Experience good*” or “*Credence good*”. Experience good or Credence good is a kind of good whereby the *insured can evaluate their quality only after concluding the contract, if at all. In the same time, insurers suffer from lack of information regarding the risk posed by a given insured individual. That aspect of the asymmetry leads to two highly discussed phenomenon: Adverse Selection and Moral Hazard*”³

Adverse selection is apparent when parties to a transaction (consumer or buyer and seller) have different understanding or knowledge about the quality of the good or service transacted. This is common in insurance and saving products where it has been observed that, clients may have more information than sellers subsequently, the seller may overvalue the insurance in order to reduce the risk, an act which may hamper the insurance deal and eventually dropdown of insurance market.

*“Adverse selection is a particular example of how asymmetric information (ie buyers and sellers having different levels of knowledge about the quality of the good) leads to a market failure. It typically occurs for experience goods.”*⁴

Information Asymmetry:

Asymmetries in information between consumers, sellers and firms in these markets may have negative impact on competition, thus, affect consumers’ ability to effectively drive competition. Consumers need not only, to access information about the goods and services offered in the market, but also assess those offers and finally act on accessed information in order to make informed decisions when purchasing goods or services in the market place (accessibility, assessment and acting on information about the market-are the three elements of consumer decision making process). Lack of any of the above mentioned elements of consumer decision making process, may harm consumer’s ability to effectively driving competition in the market. Switching costs or search costs is a vivid example of a blockade in consumer’s capability to access, assess and act on information available in the market, because switching costs creates a barrier for consumers to act on such information thus, potentially lessening competition in the market by limiting consumer choice through lock-in.

³ Doron Ziv-Av University of Hamburg; Master Thesis on Competition Versus Regulation in the Insurance Market: A law and Economic Analysis of Policy and Institutes-European Master in Law and Economics.

⁴ <http://www.side-isle.it/ocs/viewpaper.php?id=212&print+1&cf=>

Switching costs as they include exit fees, search costs, learning costs, cognitive effort, emotional costs, equipment costs, installation and start-up costs, financial risk, psychological risk, and social risk harm competition through lock-in.

“Switching costs affect competition. When a consumer faces switching costs, the rational consumer will not switch to the supplier offering the lowest price if the switching costs in monetary cost, effort, time uncertainty, and other reasons, outweigh the price differential between the two suppliers. If it happen, the consumer is said to be locked-in to the supplier. If a supplier manages to lock-in consumers, the supplier can raise prices to a certain point without fear of losing customers because the additional effects of lock-in(time, effort, etc.) prevent the consumer from switching.”⁵

Rationale for Competition and Consumer Policy Option:

The explanation to the pertinent question of what comprises consumer’s economic interests may differ from one jurisdiction to another depending on the level of the economy. For example, in some jurisdictions “protecting consumer’s economic interests is as important as regulation to ensure that the goods and services are available at a reasonable price and are safe...in a third world country for instance, the problems of consumers are more related to the provision of essential services such as drinking water, sanitation, education and health care, than the market – related ones... the consumer protection policy or law must clearly spell out the rights of consumers and the responsibilities of suppliers of goods or services and regulate all aspects of the purchasing cycle for goods and services, from the advertising or marketing of products, the sale of goods, full disclosure of products or service information to consumers, the terms and conditions of contracts and after-sales services including the respect of guarantees and warranties, refund and return policies.”¹

Competition and Consumer Protection Policy/Law in Tanzania:

The competition regime can be traced way back in 1980s when Tanzania opened the doors to free market economy through economic reforms and trade liberalization. This is the era which marked the evolution of consumer protection in Tanzania, through the enactment of the Fair Competition Act, 2003 which is the main consumer protection law in Tanzania amongst others. The change from centrally planned mode of production to market economy mode of production necessitated the need for laws to regulate trade liberalization, privatization and de-regulation process. The laws and policies were vital in order to control anti-competitive behaviour and conducts and protect consumers from unfair market practices.

The competition and consumer protection law/policy are administered under one roof, that is the Fair Competition Commission of Tanzania. The Fair Competition Commission is an

⁵ http://en.wikipedia.org/wiki/Switching_barriers accessed on 6/18/2012

independent government body established under the Fair Competition Act, 2003(No. 8 of 2003) to promote and protect effective competition in trade and commerce and to protect consumers from unfair and misleading market conduct. The Fair Competition Act, which came into force through Government Notice No 150 of May, 2004 contains both competition and consumer protection provisions. This connotes a dual mandate to the Fair Competition Commission (integrated model of institutional set up).

The drafting of the competition and consumer protection law in Tanzania took into consideration best international practices. The Act derives its principles from UNCTAD Model law. To mention a few section(s) of the Act which are in conformity with the Model Law are:-

-Title of the model law correspondences to section 1 of the Fair Competition Act, 2003.

-Objectives or purpose of the model law correspondences to section 3 of the Fair Competition Act, 2003.

-definitions and scope of applications of the model law correspondences to section 2 of the Fair Competition Act, 2003.

-Anti competitive agreements correspondences to sections 8 and 9 of the Fair Competition Act.⁶

Abuse of dominant position is also forbidden under section 10 of the Fair Competition Act, 2003.⁷

As far as consumer protection is concerned, the Act has incorporated universal consumer rights in its consumer protection sections. Some of these universal consumer rights in the Fair Competition Act, 2003 are highlighted as follows:

- (i) Right to choice, Section 9 (2) (b) and (c);
- (ii) Right to be heard, Section 93 (10) (a) and (b);
- (iii) Right to redress, Parts V to VII;
- (iv) Right to be informed, Section 93; and
- (v) Right to safety, Parts VIII and IX.

⁶ Section 8 of the Fair Competition Act,2003.

⁷ Fair Competition Commission: Competition Policy and Law, Consumer Protection and The Fight Against Counterfeit Goods ppg 31-33

As above mentioned, the Fair Competition Act (2003) is divided into two main sections as competition and consumer protection; consumer protection sections in the act are as shown in the following headline:

S/N	Sections	Headlines
1.	15-21	Misleading and deceptive conduct;
2.	22-24	Unfair Business Practices;
3.	25	Unconscionable Conduct;
4.	26-36	Implied Conditions in Consumer Contracts;
5.	37-47	Manufacturer's Obligations;
6.	48-52	Product Safety and Product Information;
7.	53-56	Product recall;
8.	57-60	Offences, Penalties ad Remedies
9.	61	Appeals to the Fair Competition Tribunal
10	92-95	National Consumer Advocacy Council.

The object of the Act, as provided for under section 3, is to enhance the welfare of the people of Tanzania as a whole by promoting and protecting effective competition in markets. The effect of this object is to bring about -

- (i) Increase economic efficiency
- (ii) Lower prices for consumers(Protection of consumers)
- (iii) More innovation
- (iv) Increase the rate of economic growth⁸

Thus, the government of Tanzania established institutions responsible for administration of the law besides enactment of the Fair Competition Act, 2003 and Acts for regulation of networks such as energy and utilities, communication, civil aviation etc. The institutions established by

⁸ Section 3 of Fair Competition Act, 2003

the Fair Competition Act, 2003 include Fair Competition Commission, Fair Competition Tribunal and the National Consumer Advocacy Council.

Similarly, competition principles which aim at consumer welfare as above numerated, are also provided for in laws and regulations administered by regulatory authorities and other laws that protect consumers in Tanzania, whereby there has been established Consumer Advisory Councils in every regulatory authority. To mention a few for example are Energy and Water Utilities Regulatory Authority –Consumer Consultative Council (EWURA-CCC), Surface and Marine Transport Authority- Consumer Consultative Council (SUMATRA-CCC), Tanzania Civil Aviation Authority- Consumer Consultative Council(TCAA-CCC) and Tanzania Communications Regulatory Authority- Consumer Consultative Council (TCRA-CCC) to regulate networks and essential facilities , as it was observed in the case of :-

*VODACOM(T) vs TTCL: COMMERCIAL Case No. 20 of 2004[unreported], whereby the plaintiff claimed interconnection charges and that the action of defendant discriminating the plaintiff to such rate in the favour of the other competitors was violation of unfair trade practices in Tanzania. TTCL was in monopoly of international roaming where all companies were to route their services to TTCL.*⁹

As essential services focuses on consumer economic interests in supply of utilities, as herein above noted, the government of Tanzania has put in place institutions such as Energy and Water Utilities Regulatory Authority- Consumer Consultative Council to ensure public safety in respect of water, electricity, petroleum and Natural Gas.¹⁰ These markets are also regarded as emerging issues in consumer protection. Other emerging issues include insurance and savings products, unsafe products and counterfeit goods and drugs.

Moreover, section 77 of the Employment and Labour Relations Act, 2004 defines service to include any part of a service. To quote the section in verbatim it reads:-

“Section 77-(1) For the purposes of this section, “service” includes any part of a service.

(1) The following service are essential services:

(a) water and sanitation ;

⁹ Fair Competition Commission : Competition Policy and Law, Consumer Protection and the Fight Against Counterfeit Goods pg 35

¹⁰ <http://www.ewura.go.tz/pdf/Tariff> Application/Songas/TR-G-o25/Interventions/CCC% accessed on 21/6/2012. ;Energy and Water Utilities Regulatory Authority-Consumer Consultative Council(EWURA) is a council established under section 30 of the Energy and Water Utilities Regulatory Authority Act,2001 Cap 414. The objectives of the Council are to safeguard and protect the interests of consumers of EWURA regulated services which are namely; water, Electricity, Petroleum and Natural Gas.

- (b) electricity ;
- (c) health services and associated laboratory service;
- (d) fire fighting service;
- (e) air traffic control and civil aviation telecommunications;
- (f) any transport service required for provision of these services.

The food and Nutrition Policy of Tanzania goes a step further as it identifies essential services for human beings to be those services which:-

“fulfill requirements that are vital for an immaculate and secure living. Such services contribute enormously to the improvement of food and nutrition. These services include education, health, water and sanitation, shelter, clothing and clean and safe environment.”¹¹

It should be noted at this juncture of discussion that, in Tanzania like in many other developing and least developed countries, policy option for the competition and protection of consumer economic interests has recognized essential services and basic needs for human beings who are in really citizens as well as consumers of such a particular country. This is also in conformity to the Constitution of the United Republic of Tanzania and the universal consumer rights namely the right to basic needs, the right to safety, the right to healthy environment etc.

The Constitution of the United Republic of Tanzania, 1977 (Articles 11, 14 and 18), as well as various laws enacted in accordance with the Constitution, do acknowledge existence of consumer rights and obligations, by providing for the rights and obligations of Tanzanian citizen pertaining to access to basic necessities of life. The citizen is also a consumer and therefore constitutional rights and obligations connote universal consumer rights and obligations. Other laws are, to mention a few for example, The Merchandise Marks Act (1963), as amended; The Standards Act, 1975 (now the Standards Act, 2009) and The Tanzania Food, Drugs and Cosmetics Act, 2003.

Emerging Issues (New Markets):

Protection of consumer economic interests in new markets such as insurance and savings products, remittances such as M-PESA, counterfeit drugs and unsafe consumer products in Tanzania could not be an exclusion to this discussion. It is in recognition of information asymmetry in these markets which, are complex for consumers to cope with, due to their rapid

¹¹ <http://www.tzonline.org/pdf/the> food and nutrition policy pdf accessed on 6/6/2012

change arising out of development in information technology. Thus, this paper is now throwing a glance on those areas.

Remittances, Insurance and Saving Products:

The proliferation of remote delivery channels for banking services (mobile phones –M-PESA inclusive) as a means of reducing transaction costs, poverty alleviation and development stimulus has brought about a number of risks, to mention a few for example are, low level of security, unreliable timing and low cost for remitting low values, since no insurance cover is required, has negatively impacted on banks as a channel for remittances. Moreover, in most developing countries (Tanzania inclusive) these remittances fall outside of the regulatory monitoring scope (for instance Money Laundering and Exchange Control Monitoring).¹² These risks require appropriate and adequate safeguards not only for individuals or consumers of financial services but also the businesses, such as banking and financial institutions. Subsequently, most developing countries are now coming up with strategies in order to deal with such risks. Those strategies include but not limited to review of legal framework with a view of having a prudential supervisor and formalization of such informal channels in order to protect consumers of financial services. Financial literacy is also of great importance in that effect.

From the competition point of view (competition provisions), sections 8 and 9 of the Fair Competition Act, 2003 as they provide for Anti competitive agreements puts in place principles for consumer protection by protecting consumers from the adverse effects of monopolies and pre-fixing cartels in particular reduction of consumer welfare through restriction of consumer sovereignty, choice and surplus.¹³

Rate setting and uniformity in policies issued by insurers may amount into cartels and collusive agreements thus, conflicting with competition policy and law. This is a fact which, among others, calls for competition regulation in insurance market. Not only that but also, the use of standard form contracts in insurance policies create complexities by means of unfair terms therefore, consumer protection policy regulation on unfair terms in consumer contracts is also of great necessity. The characteristics (experience or credence good) of insurance service is another factor which attracts for regulation and consumer protection in insurance markets.

The Act also defines service to include insurance¹⁴ Suffice to say, insurance as a service is subject to regulation under competition and consumer protection policy and law of Tanzania.

¹² <http://www.fiu.go.tz/TanzaniaNationalAMLCFT Strategy.pdf> ;

<http://lawrenceakiba.blogspot.com/2011/08/Tanzania-mobile-remittance-hurdles.html> accessed on 6/29/2012

¹³ http://economicsonline.co.uk/Business_economics/Monopoly accessed on 21/06/2012

¹⁴ Section 2 of the Fair Competition Act, 2003

As aforementioned, consumers need to access, assess and act on information available in order to make informed choices in the market place. Information imperfections, which might exist in insurance contracts, and the fact that insurance is branded by experience good or credence good, can negatively impact on consumer decision making process hence reduction of consumer welfare. The detriment to consumers can be seen in various ways for instance the information available may be too little or too excessive to the extent of confusing the consumers. It is thus argued that, consumers need to be empowered in order to be able to obtain and evaluate the information available in the market.

“ ...consumers may need to be empowered through awareness of alternative suppliers and services. Access to comparative information on the features, prices and quality of the available services. Ability to switch provider at an acceptable cost, including the cost of access to information and on the processes involved in switching.”

Having in mind the fact that, insurance being a tool for managing and coping with risk, enhances social welfare and economic growth, needs to be regulated in order to protect consumers through assurance of solvency and the stability of insurance companies and the insurance market as a whole. The liberalization of the insurance industry in Tanzania, among others intends to transform the insurance industry into a sound and competitive agent for national savings mobilization and development investment channeling; develop efficient, cost effective, comprehensive and customer driven insurance services. The Tanzania Insurance Regulatory Authority has been established to supervise the industry whereby it is responsible for complaint handling and consumer education¹⁵ among others. Complaint handling in services forms part of consumer protection on one hand. On another hand consumer education informs the consumer about their rights and obligations pertaining to the service. Consumer education therefore promotes customer care (customer satisfaction) by means of transparency in providing services.

Protection of consumers against unsafe products:

Unsafe consumer products are prohibited in Tanzania market. This is clearly spelt out under the above indicated provisions of the Fair Competition Act, 2003(consumer protection sections) whereby, Part VII contains provisions on manufacturer's obligations of which the phrase "Express Warranty" has been defined to mean an undertaking, assertion or representation in relation to (a) the quality, performance or characteristics of the goods; (b)the provision of services that are or may at any time be required in respect of the goods;(c) the supply of parts that are or may at any time be required for the goods; or(d) the future availability of identical goods, or goods constituting or forming part of a set of which the goods in relation to which the

¹⁵ Tanzania Insurance Regulatory Authority : Annual Insurance Market Performance Report ; For the year ended

undertaking , assertion or representation is given or made form part... Furthermore, Part VII contains provisions on actions in respect of unsuitable goods; actions in respect of false descriptions; actions in respect of goods of unmerchantable quality; actions in respect non-correspondence with samples etc.

Part VIII contains provisions on product safety and product information whereby section 48 empowers the Commission to publish a notice in the Gazette, the notice shall prescribe that goods of a kind specified in the notice are under public investigation to check if the goods are likely to cause injury to any person or possible risks involved in the use of the goods of a kind specified in the notice. Section 49 is also a prohibitory section which prohibits any person from supplying goods intended for human consumption (consumer) to which the prescribed consumer product safety standard has not been complied with. The requirements for consumer product standard may be prescribed by regulations. Section (49(2) prohibits any person to export or supply the prohibited goods unless the minister's approval has been obtained. The section provides further that, particulars of the minister's statement shall be tabled before the National Assembly for approval. Moreover, the minister is empowered to declare that, the goods are unsafe and impose a temporary ban thereon. The ban shall remain in force for three months after the notice. If the supplier has not rectified or make good the defect then permanent ban may be imposed by the minister.

Section 50 prohibits supply of goods which do not comply with the Standards Act, 1975 (now replaced by Standards Act, 2009). Powers of the minister to declare product safety information standards are provided for under section 51. Whereas section 52 requires the Commission to give copies of certain notices to suppliers or be published in certain newspapers. Part IX of the Act provides for compulsory and voluntary product recall.

Therefore it is argued that, unsafe products are those products which cause injury or harm or loss when consumed. Counterfeit goods is one example of those products, other examples include substandard and hazardous goods and services.

Fight Against Counterfeit Goods:

Counterfeit goods are usually harmful and dangerous goods which have the effect of hurting the economy and the citizen. Counterfeit is serious problem in Tanzania with a number of effects in the socioeconomic perspectives which includes eliminating off from the market the dealer of the genuine products; since such genuine dealer cannot sell his products as they are unable to compete with the cheap selling counterfeit goods, Counterfeiters do not pay government tax as stipulated by law and final consumer who buys counterfeited goods ends up spending more money for the same product due to its short life span and put their lives and health in high risk.

Informal survey has shown electronic, electrical and medicines are the most counterfeited products in the Tanzania market.¹⁶

The fight against counterfeit in Tanzania is inline with the functions of the Fair Competition Commission which is mandated to administer the Merchandise Marks Act, 1963 (as amended from time to time). The Act makes dealing in counterfeits a criminal offence in Tanzania.

A number of activities and measures (legal and non-legal) have been undertaken to fight counterfeit goods and medicine in Tanzania to mention a few in example are:-

According to the 2007 amendments to the Merchandise Marks Act, 1963 ; any person convicted for dealing in counterfeit goods (medicine inclusive) shall be liable for imprisonment term of 4-15 years and for a fine of 10-50 million or both (fine and imprisonment). Furthermore, the goods shall be seized and destroyed at the owners cost.

Consumer education and public awareness campaigns on consumer issues such as fight against counterfeit is also in line with the functions of the Fair Competition Commission and the role of educating the public on counterfeit goods is one of the core components of consumer education in Tanzania. The consumer education tools include utilization of avenues such as trade exhibitions for creating awareness and dissemination of public education on counterfeit goods including counterfeit medicine and other issues of significance to consumers.

The US Embassy in collaboration with the Confederation of Tanzania Industries organized a Regional Intellectual Property Rights Meeting at Movenpick Royal Palm Hotel in October, 2007. The American Embassy has also extended several capacities building training to Fair Competition Commission Officials in the area of intellectual property rights since Fair Competition Commission's inception.

Likewise, the US Embassy organized a three days Meeting on fighting counterfeit medicines for East African Member States' Government Departments from 10th to 12th March, 2010. Not only that but also, the Embassy facilitated a public education campaign on counterfeited medicine and consumer goods which bore the motto "Healthy Goods for Healthy Consumers" at (34th Dar es Salaam International Trade Fair, from June 28, 2010 to July 8, 2010), with the ultimate goal of raising public awareness on dangers posed by counterfeit medicines and counterfeit medical devices. The same forum was also used to raise public awareness on competition aspects and consumer protection dynamics to the Tanzanian consumer. The Tanzania Food and Drugs Authority also took active part in the said awareness campaign.

The lessons drawn from anti-counterfeit campaigns, competition and consumer policy and law enforcement have shown that, the major obstacles to consumers in the developing world include

¹⁶ Ibid

lack of consumer education/awareness, poverty and independent consumer movements to spearhead the emancipation of consumer from the jungle of unfair business practices. In that, it has been established that an empowered consumer is a significant stakeholder in combating counterfeit goods and counterfeit medicines and medical devices in the Tanzania market.

It is suggested that, in fulfilling its purpose of protecting legitimate interests and IPR of brand owners, the Merchandise Marks Act, indirectly protects consumers by ensuring that, the Tanzania market is free from counterfeit goods and drugs, the fact which compliments with the aim of competition and consumer protection policy and law, that is enhancement of consumer welfare.

Similarly, in the case of insurance regulation and competition policy, it is argued that, competition is a means for achieving economic efficiency. On the other hand, insurance regulation facilitate effective risk management. Thus, the two complement each other by harnessing and enhancing social welfare, which stimulate economic growth.¹⁷ In that, the competition policy protects consumer's economic interests by preventing conducts (price fixing cartel, anti-competitive and abuse of dominance) which lessen competition in the market. In so doing it ensures consumer choice of goods and services at competitive price hence enhancement of consumer welfare. The consumer policy operates from choices provided by competition by preventing unfair practices including information asymmetry or barriers (switching costs) that diminish consumer choice in the market.

Conclusively, it should be noted that, competition and consumer policies fulfill same goal that is enhancement of consumer welfare. The two policies when properly applied supplement each other. New markets namely Insurance and saving products, counterfeit drugs and unsafe products are regulated by both policies and law (competition and consumer policy). That is to say both laws are designed to enhance consumer sovereignty and effective consumer choice. In addition to that they both address market failures.

Tension(s) and Challenge(s):

There are several key tension(s) and challenge(s) in achieving effective competition, consumer protection vide the FCA and other policies and laws. These include but not limited to:

- ◆ Scattered pieces of consumer protection legislation, thereby making enforcement a challenging duty. Emerging issues such as e-commerce, insurance and savings products are regulated by different institutions, hence differences in priority areas.
- ◆ Tensions between consumer protection and competition may arise where there is poorly conceived consumer policies, such policies include excessively strict

¹⁷ ibid

licensing of professions and unduly strict interpretations of misleading marketing regulations which protect incumbents rather than consumers.

- ◆ Tanzanian consumers are characteristically and historically docile and are slow in establishing consumer protection associations.

Proposed Solution:

Tanzania, having been in a centrally planned economy for more than several decades and now being in a market based economy, needs a technical assistance to undertake comprehensive review of consumer protection policy, in order to align with the best international practice in this area.

References:

Doron Ziv-Av University of Hamburg; Master Thesis on Competition Versus Regulation in the Insurance Market: A law and Economic Analysis of Policy and Institutes-European Master in Law and Economics.

Fair Competition Act, 2003; Section 2 of the Fair Competition Act. defines “service “ to include any rights(including interests in, and rights in relation to, real or personal property),benefits, privileges or facilities and, without limiting the generality of the foregoing, includes the rights, benefits, privileges or facilities provided, granted or conferred under any contract for or in relation to:..(c) Insurance... and any right, benefit or privilege for which remuneration is payable in the form of a royalty, tribute, levy or similar charge, but does not include the performance of work or the supply of goods under a contract of employment.

Fair Competition Act, 2003; Section 8 of the FCA is a prohibitory section which restricts Anti-competitive agreements. It reads:-8(1) A person shall not make or give effect to an agreement if the object, effect or likely effect of the agreement is to appreciably prevent, restrict or distort competition.

(2) An agreement in contravention of this section is unenforceable except to the extent the provisions of the agreement causing it to be in contravention of the section are severable from the other provisions of the agreement.

(3) Unless provide otherwise, it shall be presumed that an agreement does not have the object, effect or likely effect of appreciably preventing, restricting or distorting competition of none of the parties to the agreement has a dominant position in a market affected by the agreement and either (a) or(b) applies:(a) the combined shares of the parties to the agreement of each market affected by the agreement in 35 percent or less; or (b) none of the parties to the agreement are competitors.(4) For the purposes of this section, in determining whether the effect or likely effect of an agreement is to appreciably prevent ,restrict or distort competition, the fact that similar agreements are widespread in a market affected by the agreement shall be taken into account.

(5)This section does not apply to an agreement to the extent it provides for a merger.

(6)For the purposes of sub-section(1), an object is the object of an agreement if it is a significant object of the agreement even if it is only one of a number of objects of the agreement.

(7)Any person who intentionally or negligently acts in contravention of the provisions of this section, commits an offence under this Act.

Section provides for prohibition of certain agreements irrespective of their effect on competition. The section reads:-

9(1) A person shall not make or give effect to an agreement if the object, effect or likely effect of the agreement is :

- (a) Price fixing between competitors;
- (b) A collective boycott by competitors; or
- (c) Output restrictions between competitors;
- (d) Collusive bidding or tendering.

(2) In this section:

(a) “price fixing between competitors” means to fix, restrict or control the prices, tariffs, surcharges or other charges for ., or the terms or conditions upon which, a party to an agreement supplies or acquires, or offers to supply or acquire, goods or services, in competition with any other party to the agreement;

(b) “collective boycott by competitors” means:

(i) to prevent a party to an agreement from supplying goods or services to particular persons, or acquiring goods or services from particular persons, in competition with any other party to the agreement; or

(ii) to restrict or control the terms and conditions on which, or the circumstances in which, a party to an agreement supplies goods or services to particular persons, or acquires goods or services from particular persons, in competition with any other party to the agreement;

(3) An agreement in contravention of this section is unenforceable except to the extent the provisions of the agreement causing it to be in contravention of the section are severable from the other provisions of the agreement.

(4) Any person who intentionally or negligently acts in contravention of the provisions of this section, commits an offence, under this Act.

Fair Competition Commission: Competition Policy and Law, Consumer Protection and the Fight Against Counterfeit Goods.

http://en.wikipedia.org/wiki/Switching_barriers accessed on 6/18/2012

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