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Voluntary Peer Review of Competition Law and Policy:  
A tripartite report on the United Republic of  
**Tanzania – Zambia – Zimbabwe**  
**Comparative Assessment**

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**Presentation**  
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# Introduction

- Tanzania, Zambia and Zimbabwe introduced competition law in the 1990s to accompany the process of economic reform.
- Their laws prohibit restrictive agreements and the abuse of a dominant position. All three laws have a system of merger control.
- With the exception of Zimbabwe, there is no need for a comprehensive reform of the legal framework in the peer reviewed countries. However, the following points require attention:
  - The reputation of antitrust authorities and their funding
  - The authorities' investigative powers and the parties rights of defense
  - Level of sanctions, as well as an effective collection system
  - The role of judiciary
  - Regional agreements to strengthen antitrust enforcement

# The reputation of the antitrust authorities and their funding

- In all three jurisdictions, the antitrust authorities are charged with multiple tasks:
  - Tanzania: Consumer protection, fair trading, counterfeit goods
  - Zambia: Consumer protection and relocation of plant and equipment
  - Zimbabwe: Tariff issues
- In all three jurisdictions, the authorities are small:
  - Tanzania: 24 staff dedicated to antitrust enforcement and competition advocacy (total 58)
  - Zambia: a total of eight staff dedicated to competition (total 29)
  - Zimbabwe: a total of seven staff dedicated to competition (total 29)

# The reputation of the antitrust authorities and their funding (cont'd)

- Funding is one of the most serious constraints facing the three authorities:
  - Funding should come through government funds, not through sanctions.
  - Mergers notification fees (are less distortionary) should not be based on the turnover of the notifying party and should not be too high: in Zambia they may go up to \$ 600.000.
- Authorities achieve reputation via enforcement (prohibitions of anticompetitive practices and sanctions).
- According to the experience of the European union and its member countries, the requirement to notify potentially anticompetitive agreements does not appear to be effective.

# Enforcement record

- The three authorities open quite a number of cases. Most are closed without any action. Very few prohibitions of substantive violations are pronounced.
- The three authorities (with the exception of Zimbabwe) are much more active on other tasks assigned to them.
- The obligation to respond to every complaint does not mean that a case be formally opened for every complaint.
- With respect to mergers:
  - simplified procedures allow to save time;
  - time limit in Zimbabwe could also be introduced by the Authority itself;
  - too wide exceptions in Zambia (should be interpreted very restrictively).
- It is helpful to use a market share threshold for the definition of dominance (Tanzania). However, abuse needs to be assessed in terms of effects.

# Enforcement record (cont'd)

- The case *Serengeti Breweries v. Tanzanian Breweries*, or that on *Zambian breweries* are good examples for what could be done.
- Importance of training for strengthening enforcement capacity:
  - When to open a case?
  - How to conduct a dawn raid?
  - What type of information to ask for in the course of investigations?
  - How to handle a request for access to file?
  - How to set sanctions?
  - How to prove cartels?
  - What type of behaviour to consider an abuse?
  - How to set up a strategic plan for action?

# Investigative powers

- Many antitrust violations are difficult to detect because the victim does not notice. Only in some abuse cases the victim is informed. BUT the victim IS NEVER FULLY INFORMED. Most of the information remains with the firm that has violated the law.
- DAWN RAIDS ARE VERY IMPORTANT. Only Zambia has some experience. However, these are surprise actions and firms should not suspect the arrival of the Authority.
- As for proving a violation, direct evidence is necessary and defenses are possible for efficiency reasons (not because firms did not know they were violating the law. Requirements to prove intent should be interpreted as implying that when the interpretation is new there are no sanctions).
- Authorities should be able to take interim decisions (not just judges).

# Sanctions

- Sanctions are necessary for deterrence.
- The Zimbabwe law needs amendments in this respect (anticompetitive agreements **HAVE TO BE SANCTIONED**).
- However, sanctions have to be credible: no imprisonments for petty crimes (like in Zambia and Zimbabwe)!
- The level of pecuniary sanctions is appropriate in Tanzania and Zambia (10% of turnover), but too low in Zimbabwe.
- However fines need to be paid in order to be deterrent. If the system of fines collection is not efficient it is better to devise different approaches (disqualifying managers for example).

# Judicial review

- Judicial review does not need specialized bodies, but it does need specialized judges. The best is to send cases always to the same court.
- Tanzania and Zambia have created a specialized body. But these are not effective. In Zimbabwe there is a double jurisdiction by the Administrative Court and the High Court. It would be better to clarify, but in principle it is an efficient system (since it does not create exclusivities for judges).
- In all jurisdictions an effort should be made so as to have final judgments in less than a year after the Authority's decision.

# Procedural rules

- Procedures are important:
  - to give right of defense to parties,
  - to fight corruption,
  - to strengthen the authorities vis-à-vis vested interests, and
  - to make sure authorities deal only with the most important cases.
- Notification system in Zambia and Tanzania for restrictive agreements: not very effective but in Zambia there is a fee associated with notifications.
- Importance of motivating decisions and publishing them.

## Procedural rules (cont'd)

- In all countries, there is a mandatory merger notification system for mergers (very good). However, in Tanzania if a person unintentionally does not notify, it is not subject to sanctions (puzzling).
- In Zimbabwe there is no set timeframe for a merger investigation (too discretionary). Exceptions in Zambia appear too wide.
- Simplified procedure for unproblematic mergers can be very useful
- Strict timing from when a case is opened until a final decision is made. Necessary to issue a statement of objections.

# Regional agreements

- All three jurisdictions are part of regional agreements (Tanzania: EAC, SADC; Zambia and Zimbabwe: COMESA and SADC).
- For Regional authorities to become effective enforcers they need adequate and permanent funding and have a working relationship with domestic authorities. It may take some time before this develops.
- SADC is a 15 countries organization with no enforcement power. SADC may become a best practice promoting organization, both on procedural and substantive issues.
- SADC can help also on competition advocacy

# Conclusions

- Authorities in the three jurisdictions are very small. They need to grow through effective enforcement.
- Dawn raids are very important.
- Exemptions should be interpreted very restrictively.
- Training on how to conduct a case can be very useful
- Sanctions have to be set at deterrent level (the Zimbabwe law needs to be amended). Lack of intent should be interpreted very restrictively.
- Judicial review has to be accomplished within a year time (specialized judges, training very important).
- Regional agreements can become a tool for achieving a more effective enforcement record.