12th Session of the
Intergovernmental Group of Experts on Competition Law and Policy
Geneva, 9 to 11 July 2012

Voluntary Peer Review of Competition Policy:
United Republic of Tanzania
(UNCTAD/DITC/CLP/2012/1)

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

- Prohibition of anti-competitive agreements
- Merger control
- Elements of Tanzania’s Competition Law
- Abuse of Market Power
- Consumer Protection
Scope of Application

- Extent of State Immunity and State Agents (e.g., 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

FC Tribunal

NCAC – Consumer Advocacy

Fair Competition Commission
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 can't 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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