

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

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



FAIR COMPETITION COMMISSION



COMPETITION AND CONSUMER PROTECTION POLICY: A TANZANIAN PERSPECTIVE

**PAPER FOR PRESENTATION AT UNCTAD AD-HOC
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Introduction

- ◆ Competition and consumer policies aim at increasing consumer welfare
- ◆ They protect consumer's economic interests.
- ◆ When the two policies are applied properly they have a complementary effect. They reinforce one another but deploy different approaches in regulating conducts of markets.

Competition & Consumer Policies

- ◆ Competition policy is usually very effective in well functioning markets and is implemented through a set of policies and enforcement of competition laws that seek to ensure that competition is not restricted to the extent of reducing economic welfare.
- ◆ The consumer policy consists of strategies seeking to prevent sellers from engaging in unfair practices.

Competition Policy: What it Deters

- ◆ 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.
- ◆ Through such prohibitions competition policy ensures that consumers have a wider choice of goods and services at competitive prices.

Competition Policy: What it Does

- ◆ 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.
- ◆ Consumer policy is necessary in situations of information imperfection (as is the case in developing countries) in order to reduce the burden imposed on consumers as switching costs.

Why Consumer Protection

- ◆ Consumers have to be protected against conducts and situations that prevent them from making informed decisions about their intended purchases of goods and services. Such barriers include information asymmetry.

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 to access information about the goods and services offered in the market and assess those offers and finally act on accessed information in order to make informed decisions when purchasing goods or services in the market.

Consumer Protection in Tanzania

- ◆ Competition and consumer protection law/policy in Tanzania are administered under one roof, that is the Fair Competition Commission of Tanzania.
- ◆ The Fair Competition Commission is an 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 Act contains both competition and consumer protection provisions.



Consumer Protection in Tanzania

- ◆ 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.
 - ◆ Anti competitive agreements correspondences to sections 8 and 9 of the Fair Competition Act.
 - ◆ Abuse of dominant position is also forbidden under section 10 of the Fair Competition Act, 2003.



Consumer Protection in Tanzania

- ◆ The Fair Competition Act has incorporated universal consumer rights in its consumer protection sections. These include:
 - ◆ Right to choice, Section 9 (2) (b) and (c);
 - ◆ Right to be heard, Section 93 (10) (a) and (b);
 - ◆ Right to redress, Parts V to VII;
 - ◆ Right to be informed, Section 93; and
 - ◆ Right to safety, Parts VIII and IX.

Consumer Protection in Tanzania

◆ Consumer Protection sections in the Fair Competition Act (2003) are as shown in the following headline:

S/No.	Section	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;

Consumer Protection in Tanzania

S/No.	Section	Headlines
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.



Consumer Protection in Tanzania

- ◆ 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 :-
 - a) Increase economic efficiency
 - b) Lower prices for consumers (protection of consumers)
 - c) More innovation
 - d) Increase the rate of economic growth

Consumer Protection 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.



Consumer Protection in Tanzania

- ◆ 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 regulate anti-competitive behaviour and conducts and protect consumers from unfair market practices.

Consumer Protection in Tanzania

- ◆ The government of Tanzania established institutions responsible for competition oversight and modern regulatory regime (to regulate networks such as energy and utilities, communication and civil aviation).
- ◆ The institutions established by the Fair Competition Act, 2003 include:
 - ◆ Fair Competition Commission,
 - ◆ Fair Competition Tribunal, and
 - ◆ The National Consumer Advocacy Council.



Consumer Protection in Tanzania

- ◆ With regard to the consumer policy/law point of view, unsafe consumer products are prohibited in Tanzania market.
- ◆ Part VIII of the Fair Competition Act, 2003, contains provisions on product safety and product information whereby section 48 empowers the Commission to publish a notice in the *Government 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.

Consumer Protection in Tanzania

- ◆ Section 49 is also a prohibitory section- 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.

Consumer Protection in Tanzania

- ◆ 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.
- ◆ Part VII contains provisions on manufacturer's obligations of which there must be an undertaking in relation to quality and characteristics of the goods.

Fight Against Counterfeit Goods

- ◆ Trade in Counterfeit Goods and drugs affects Tanzanian economy in various socioeconomic perspectives.
- ◆ It drives away from the market the genuine brand owners; because they are unable to compete with the cheap selling counterfeit goods,
- ◆ Counterfeiters do not pay government tax as stipulated by law, and
- ◆ The 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 at great risk.

Fight Against Counterfeit Goods

- ◆ 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(Tshs) or both (fine and imprisonment). Furthermore the goods shall be seized and destroyed at the owners cost.

Fight Against Counterfeit Goods

- ◆ 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 lack of consumer education/awareness, poverty and independent consumer movements to spearhead the emancipation of consumer from the jungle of unfair business practices.
- ◆ 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.

Fight Against Counterfeit Goods

- ◆ 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.
- ◆ Addresses market failures –market transactions and outcome fail to serve the consumer interests ,economic efficiency and competitiveness.

Tension(s) and Challenge(s)

- ◆ Tanzania faces two key challenges in achieving effective consumer protection vide the FCA. These include:
 - ◆ 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.
 - ◆ Tanzanian consumers are characteristically and historically docile and are slow in establishing consumer protection associations.

Proposed Solution(s)

- ◆ Tanzania, having been in a centrally planned economy for more than several decades and now being in a market based economy, which ushered various globalisation challenges without prior preparations, needs a technical assistance to undertake comprehensive review and adjustments of consumer protection policy, in order to align with the best international practice in this area.

Thank You for Your Kind Attention

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