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Tanzania*

– Dr. Flora Musonda†

Tanzania is one of the poorest countries in the world. It was part of British East Africa, and got its independence in 1961. It was then known as Tanganyika. In 1964, the Zanzibar joined the Republic and the country was renamed as Tanzania. Zanzibar enjoys certain autonomy.

The union is a unique arrangement, as Zanzibar shares some common issues with the Union Government, whilst maintaining its own Government. Some issues, such as defence, immigration, among others, are union matters, whilst others are not. The mainland does not have a separate Government parallel to that of Zanzibar.

PROFILE	
Population:	35.9 million**
GDP (Current US$):	10.3 billion***
Per Capita Income: (Current US$)	300 (Atlas Method)*** 580 (PPP.)**
Surface Area:	945.1 thousand sq km
Life Expectancy:	43.5 years**
Literacy (%):	77.1 (of ages 15 and above)**
HDI Rank:	162***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Economy

The Tanzanian economy has long been characterised by public monopolies, but has recently witnessed significant privatisation. The economy depends heavily on agriculture, which accounts for almost half of GDP, generates 85 percent of exports, and employs 80 percent of the work force. Topography and climatic conditions, however, limit cultivated crops to only four percent of the land area. Industry traditionally featured the processing of agricultural products and light consumer goods.

The World Bank, the IMF, and bilateral donors have provided funds to rehabilitate Tanzania's out-of-date economic infrastructure and to alleviate poverty. Growth in 1991-2002 featured a pickup in industrial production and a substantial increase in the output of minerals, led by gold. Recent banking reforms have helped increase private sector growth and investment. Continued donor assistance and sound macroeconomic policies supported real GDP growth of nearly six percent in 2004.

Competition Evolution and Environment

Tanzania's economy has passed through a number of socio-economic stages, the most important milestone being the Arusha Declaration in 1967, which led to the nationalisation of all major means of production and exchange. With the Arusha Declaration, and Government control of the major means of production and consumption, the manipulation of prices was common. One of the most frequently quoted reasons for having price control was to keep a check on monopolies. A price-control system was introduced by the *Regulation of Prices Act*, 1973, which was administered by the National Price Commission.

In 1986, Tanzania adopted reforms and decided that market forces should guide the economy. Consequently, the Government started repealing existing laws, which were in place to enable state control of the economy.

In 1993, the Government decided to repeal the Regulation of Prices Act, 1973. The Parliamentarians requested the Government to find out the ways and means of managing a market economy in a way so as to stem the chaos. The market in Tanzania during the 1986-1993 period, when the economy had ceased to be State-controlled, had nothing in place to protect the consumer.

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A Government Task Force was appointed in the 1990's, to find out what legal frameworks and institutions, for market regulation, were operating in developed countries, and whether Tanzania could adopt such mechanisms. In 1994, the *Fair Trade Practices Act*, 1994, was enacted. This Act had hybrid concepts and borrowed provisions from the competition laws of Australia, Jamaica, Kenya and Canada.

Competition Law and Institutions

The enactment of the Fair Trade Practices Act, in 1994 provided the basic foundation for the establishment of competition policy and law. Under the Act, anticompetitive activities and behaviour must be justified if they significantly 'affect competition in a market'. Its application was limited to the national territory and, therefore, did not have extra-territorial application.

Exemptions were limited to the areas of sovereign acts of the State and the labour market, in particular, trade union rights for collective bargaining rights. The Act covered three main areas:

- RBPs – horizontal and vertical practices,
- Misuse of market power; and
- Control of monopolies and concentration of economic power through M&As.

It was during the implementation of the Act, that its many shortcomings were noticed, such as:

- The Act had stipulated that there would be a Trade Practices Commissioner, but it did not specify how (s)he was going to be appointed and by whom;
- The provisions against RBPs were so broad that they could inadvertently catch pro-competitive conduct and/or cover micro enterprises;
- There was no 'competition test' definition in the Act;
- The Minister was allowed to order a successful trader to divest part of his operations, without providing, in the Act, for protection of legitimate and successful competitors;
- The Minister was given powers to fix prices, which was the subject matter of the previous Regulation of Prices Act, 1973;
- The merger provisions were much too dependent on the discretion of the Minister (see box story); and
- The independence, accountability and transparency requirements for competition law were not clearly specified by the Act.

The Government was advised to make changes in the Fair Trade Practices Act, 1994, in order to up-date various aspects and bring them in line with the new *Energy and Water Regulatory Authority (EWURA) Act* of 2001 and the *Surface and Maritime Transport Regulatory Authority (SUMATRA) Act* of 2001. The main changes that were brought in the Act were:

- The Fair Trade Practices Act, 1994 (FTPA) was renamed as the Fair Competition Act of 1994;
- The top decision-maker for the FTPA was the Trade Practices Commissioner. In the new Act, it was the Fair Competition Commission (FCC), which consists of five members, being headed by the Executive Chairperson; and.
- The Commission was to become a Corporate Body, i.e. it stands on its own and not as a department of the Ministry responsible for competition policy and law; as was the case for the Trade Practices Commissioner's Office.

Further changes to the FTPA were tabled during the October/November 2001 Parliamentary Session. The objective of the changes was to update the Act with international best practices. The new Act '*Fair Competition Act, 2003'* was passed by Parliament on April 2, 2003, and the President assented to it on May 23, 2003. The Act is now in operation.

The object of the new Act is 'to enhance the welfare of the people of Tanzania as a whole by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout Tanzania in order to:

- increase efficiency in the production, distribution and supply of goods and services;
- promote innovation;
- maximise the efficient allocation of resources; and
- protect consumers.

Institutions, Competencies and Anticompetitive Business Practices

Under the Act, the Fair Trade Commission and a tribunal are supposed to hear complaints concerning anticompetitive and UTPs by companies or group of companies. At the time of this report, the President's Office

Box 56.1: Telecom Case

Recently, there have been some cases of consumer and competition interest. The most important concerns interconnecting rates for telephony service providers in Tanzania. A study was commissioned by the Government, which favoured current rates to apply. This created an atmosphere where the public and consumers perceived the rates as regulatory capture. Given the situation, the Regulators (TCRA) determined and published new rates that were to decline over the course of four years.

One service provider filed a suit in court challenging the legality of such a determination by the TCRA (Civil Case No. 81 of 2004), and rallied for administrative orders to be issued to quash that determination. That case did not proceed as the TCRA decided to recall the determination due to public objections (albeit at short notice). The operator concerned has challenged the decision.

Source: Tanzania Consumers Protection Association

is in the process of assigning Ministerial responsibility for the FCC and Fair Competition Tribunal, after which that decision will have to be published in the official Government gazette.

Sectoral Regulation

As part of its privatisation policy in 1996, the Government took the decision to establish two multi-sector regulatory agencies. One agency would regulate electricity; telecom; electronic broadcasting; natural gas transmission and distribution; and postal services. The other would regulate the transport sector, covering airports, air transport, ports and maritime transport, rail, public passenger and road freight transport. Later on, however, the decision was changed and instead of two, four regulators were created. Presently, the regulatory framework consists of:

- The Energy and Water Utilities Regulated Authority Act, 2001;
- The Surface and Maritime Transport Regulatory Authority Act, 2001;
- The Civil Aviation Regulatory Authority of 2003; and
- The Communication Regulatory Authority of 2003.

Box 56.2: Unfair Competition in the Petroleum Sector

There is prevalence of unfair competition in the petroleum sector, pitting a few big importers against small dealers who have now been thrown out of the market. Statistics show that, in the short period between December 2003 to April 2004, fuel prices have increased considerably, on average, by 14.67 percent on diesel; 25.54 percent on petrol; and 18.44 percent on kerosene.

According to a study conducted by the FCC, the country's seven large importers of petroleum products, who have formed a cartel, have unfairly excluded the smaller traders. The big importers have been charging high warehouse 'hospitality rates', to ensure that new oil dealers do not have a chance to enter and compete in the business.

A small importer pays hospitality charges to a big importer. But the big seven have been raising the charges to make sure that others do not survive in the market. The small importers have been advised to use storage facilities of landlocked countries, who use facilities for transit trade to avoid the service cartel.

The FCC is in the process of building its legal and institutional capacity to curb trade practices that culminate in unfair competition. Furthermore, the Tanganyika Law Society, the local bar, has commissioned a study on the practices of the oil majors and their effect on prices and consumers in Tanzania. This study has been completed but not yet made public.

Source: http://www.ippmedia.com

Anticompetitive Business Practices

The various anticompetitive practices carried out in Tanzania are mainly in the form of cartels (e.g. in cement, shipping/road haulage cartel, and pharmaceuticals); bid-rigging; abuse of dominance in food and beverages, pharmaceuticals, tobacco, etc; and unfair trade practices in banking and other sectors. The following restrictive practices are prohibited:

Restrictive Trade Practices

The act of a person in selling or supplying, or offering to sell or supply, goods or services to another person, whether for use in production, for resale or final consumption; under conditions less favourable to that person than those on which he sells or supplies, or offers to sell or supply, substantially similar goods or services to third persons.

Predatory Trade Practices that Repress Competition

An action intended to drive a competitor out of business, or deter a person from establishing a competitive business in the country, or in any specific area of location within the country; or to induce a competitor to sell assets to or merge with another party, whether that party is the offender himself or a third person; or to induce a competitor to shut down, whether temporarily or permanently, an existing manufacturing facility or wholesale or retail outlet for the sale of services.

Predatory trade practices also cover those which deter a person from establishing any such facility in any one or more locations in the country; or induce the competitor to desist from producing or trading in any goods or services; or to deter a person from producing or trading in any goods or services.

Merger Control

Mergers are dealt with as agreements that are *prima facie* anticompetitive, thus, imposing a requirement for evaluation to determine the existence of merit. This is similar to the public interest criterion of the UK law.

Consumer Protection

The Fair Competition Act, 2003 contains provisions for regulating fair business practices and consumer protection in the economy. It contains provisions related to:

- Misleading and deceptive conduct;
- Unfair business practices;
- Unconscionable conduct;
- Implied conditions in consumer contracts;
- Manufacturers' obligations; and
- Product safety and product information, and product recall.

Neither the Commission, nor the Tribunal, deals with the adjudication of direct consumer protection related issues. These are dealt with by the Civil Courts.

Box 56.3: Merger of Tanzania Breweries and Kenya Breweries

The merger of Tanzania Breweries Limited (TBL) and Kenya Breweries Limited (KBL) forms a vivid example of action, which not only affects one of the provisions of the Fair Trade Practices Act, but also was a case that attracted the attention of many people, including the media and the politicians. The merger posed a challenge to the newly created Competition Authority in Tanzania to define the competition issues concerning a merger.

In the merger, the holding companies of TBL and KBL, which are respectively South African Breweries International (SABI) and East African Breweries Ltd (EABL), reached an arrangement on beer business in Kenya and Tanzania. Under the arrangement, TBL would acquire KBL based in Moshi. In exchange, KBL, a subsidiary of EABL, would acquire SABI Castle Breweries Kenya in Thika. Following the merger agreement, TBL was able to command 98 percent share of the beer market in the country, i.e. a near monopoly.

According to FTPA, prior approval of the proposed merger transaction by the relevant Minister is required before consummation. The Minister carries the overall decision-making responsibility for the regulation of this area, irrespective of provisions in the Companies Ordinance and the Securities Acts.

The Fair Trade Practices Act provides for an application to the Commissioner in the first instance. He has extensive powers of investigation. He is required to carry out a thorough investigation of the situation, under review, and following this process; he makes his recommendation to the relevant Minister.

The FCC objected to TBL's unilateral announcement of the acquisition. Both the firms decided to submit a request to the Ministry, to bless the deal, through advocates' firms, since the Minister had commanded much power in the former Fair Trade Practices Act of 1994.

As the law has not gone through all the required changes, the old provisions, which required the Commission to advise the respective Minister who would decide to approve or disapprove the deal, were used. The Minister decided to approve the deal. The weakness regarding merger provisions, in the Act, is that the Commissioner 'advises' the respective Minister (who can be influenced by political factors), which reduces the legal powers of the Commission. It was also reported that the Permanent Secretary of the Ministry sat on the board of the TBL, which would have influenced the Minister's decision.

Source: Advocacy and Cross Border Competition Concerns: A Country Report on Tanzania, ESRF, Tanzania/CUTS, 2002

Box 56.4: Hike in the 'Daladala (City Bus)' Fares

In 2003 the Tanzania Consumers Protection Association (TCPA) lodged a complaint with the FCC against petroleum companies that decided to raise petrol prices in pursuit of profits, without regard to its consumers. This consequently resulted in the price rises of bus fares and food.

The complaint stated that the existing stocks of petroleum in Tanzania were purchased prior to, and not affected by, the rise in global prices. This congruence of action and hike in prices depicted a concerted arrangement between suppliers of petroleum, against the provisions laid under Section 9 of the Fair Competition Act 2003. Taking advantage of the hike, bus fares were increased, leading to the presumption that it was the result of some concerted arrangement between the bus operators.

The complainant further indicated the possible prevalence of practices defrauding consumers such as:

- adulteration of petroleum sold in retail outlets, and
- tampering with measurement metres at the retail level.

The TCPA, therefore, requested the Commission to invoke the powers it has been given to protect consumers as stated in the objects clause of the FCA, and to address the issue.

The complainant's threat to litigate and publicise the issues provoked the opposition. The publicity forced the Government to act in a firm manner by threatening to cancel the licences of any service provider who hiked prices. Consequently, bus operators reverted to old fares.

Source: Tanzania Consumers Protection Association

Concluding Observations and Future Scenario

Having a good law and effective implementation are two different issues. Tanzania is in its early stages of attempting to establish an appropriate and possibly effective competition policy and law.

The following areas, which need assistance for effective implementation of the competition law:

- decision-making level or political level, on understanding how markets are supposed to work, and the market support institutions necessary to achieve market efficiency;
- legal formulation stages and institution building stages, so that appropriate laws are enacted and competitive selection and competence are the determining factors in personnel selection for the institutions to implement the enacted laws. It is pertinent that the Commission is properly staffed with offices in all the regions to ensure that there is a level playing field for all major actors in the market economy;
- educating governments and politicians of the need of market institutions, especially allowing such institutions to play the advocacy and educational roles, so that subsequent legislation and conduct do not reverse the competitive environment that was originally envisaged when competition and regulation laws were enacted; and
- establishment of a *modus vivendi* for international cooperation; and international practices exchanges, and their adoption where applicable.

Suggested Readings

1. Competition Law & Policy – A Tool for Development in Tanzania, CUTS, 2002
2. Capacity Building and Technical Assistance Needs of Developing Countries and Economies in Transition, A paper for the Inter-Governmental Group of Experts Meeting on Competition, Geneva, July 2002, by Godfrey Mkocha, Commissioner, FCC, Tanzania
3. Challenges/Obstacles Faced by Competition Authorities in Achieving Greater Economic Development through the Promotion of Competition, Global Forum on Competition, January 2004, A Paper by Godfrey Mkocha, Commissioner, FCC, Tanzania Advocacy and Cross Border Competition Concerns: A Country Report on Tanzania, September 2002, by Wilfred Mbowe, CUTS/ESRF

† ***Dr. Flora Musonda****, a Research Fellow, has a Ph D in Economics from the University of Lund (1992); MA and BA degree in Economics from University of Dar es Salaam. She is presently working with the East African Community (EAC) Secretariat at Arusha, Tanzania. Earlier, she was working as a Senior Research Fellow in Economic and Social Research Foundation (ESRF). Dr. Musonda has several papers to her credit and is involved in such research as regional integration and international trade, in which she has wide experience.*