

Competition Policy and Law in Tanzania

[Godfrey Mkocha, DG/FCC Tanzania, at the Third Annual Competition Commission, Competition Tribunal and Mandela institute Conference on Competition Law, Economics and Policy in South Africa at the South Africa Competition Commission, 2009/09/03]

1. The Competition regime for Tanzania comprises the following laws:

- (i) The Energy and Water Utilities Regulatory Authority Act, 2001 (EWURA);
- (ii) The Surface and Marine Transport Regulatory Act, 2001 (SUMATRA);
- (iii) Tanzania Civil Aviation Regulatory Authority Act, 2003 (TCAA);
- (iv) The Tanzania Communications Regulatory Authority Act, 2003 (TCRA).
- (v) The Fair Competition Act, 2003 (FCA);

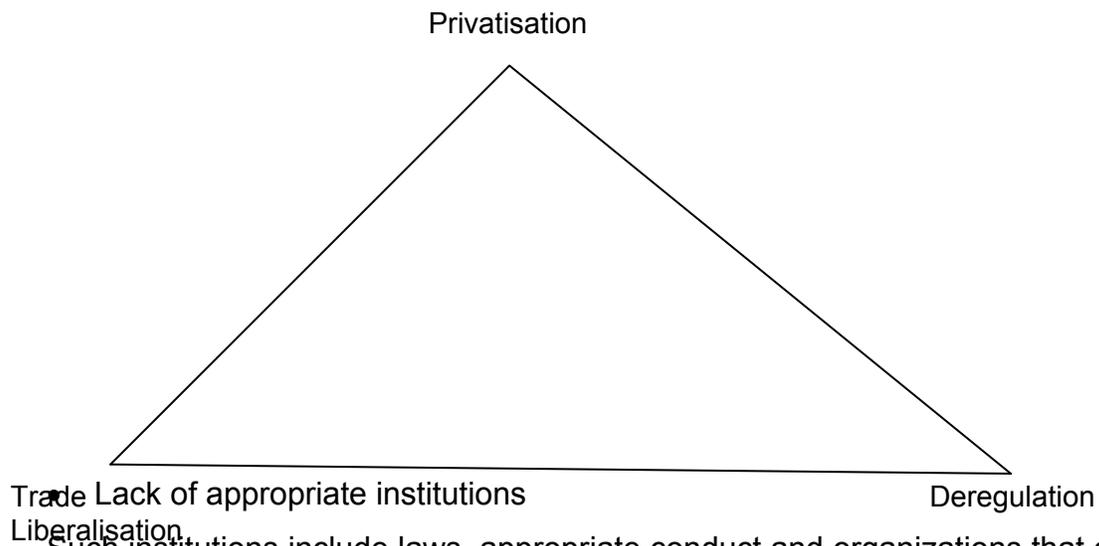
2. Competition policy and law as part of economic reform programme

In the last 20 years, global phenomenal changes have taken place similar to the 19th century industrial revolution. The revolution has thrust the role of the private sector to centre stage in the economic development sphere. This thrust has been caused by technological, economic, political and ideological changes that took place in unison in the 1990s.

These changes have found most developing countries ill suited to the challenges of the revolution in terms of two important aspects:

- Small size of the private sector

Many countries have adopted the oft sung song of, “The private sector is the engine for development” Yet the engine is too small! Most formerly centrally planned economies have increased the size of the private sector by pursuing the tripartite policies depicted by the diagram below:



Such institutions include laws, appropriate conduct and organizations that can marshal a market economy. That policy by itself as a prerequisite for development is not enough if there are no appropriate institutions in the particular society, is a recent realisation still not appreciated by many policy makers in developing countries. This point is underscored in the following statement, “The argument that developing economies are just like advanced economies, only poorer is not correct.” In recent decades, economists have acquired a deeper appreciation of the underlying institutions that make mature markets work. These institutions define property rights, enforce contracts, convey information and bridge information gaps between buyers and sellers. These institutions and capabilities are not fully formed in a developing economy. The immaturity of these institutions is synonymous with under development.” 1*

The development of competition and economic regulatory institutions should be seen within the context of other market support institutions namely; property rights, institutions for macro-economic stabilization, the institutions for social insurance and institutions of conflict management.

3. **Competition law in Tanzania**

The table below summarises Fair Competition Act compatibility with the UNCTAD model law.

Model Law Provision	Provision in Tanzanian Law
Title of the law	Section 1
Objectives or purpose of the law	Section 3
Definitions and scope of applications	Section 2
Abuse of dominant position	Section 10
Notification, investigation and control of mergers	Section 11
Anti competitive agreements	Section 8
Relationship between competition authorities and sector regulators	Section 96
Establishment, functions and powers of the administering authority	Section 62, 83
Powers of enforcement	Section 59, 60, 68, 70, 71, 88
Sanctions and remedies	Section 59, 60
Appeals	Section 61

Together with the above generics, the law evolves around the principles of **independence, accountability, transparency and due process.**

Distinguishing features of the law

- Need to elevate the Consumer
- Emphasis on advocacy as part of compliance strategy
- Involvement of the Judiciary

4. Implementation time line of the Fair Competition Act

- The Fair Competition Act was passed by Parliament in April 2003.
- The President assented to the Act in May 2003.
- The President assigned the Minister responsible for the Fair Competition Act implementation as required by the Act in March 2004.
- The Minister for Industry and Trade appointed the 12th of May, 2004 as the effective date for the Act. After this date recruitment of staff could start.
- The Director General was appointed in July 2005 the other four Commissioners, including the Chairman, in November 2005.
- The approval of the Project Implementation Plan (PIP) by the Government and World Bank took a long time. On 16th January, 2007 FCC got partial approval of the PIP and that is the date FCC started recruiting staff.
- On May 2, 2007 FCC achieved the critical mass of staff capable of carrying out FCC's full legal mandate in the economy.

5. Implementation experience

- Training
- Advocacy
- Consumer and Public awareness
- Competition law compliance
- Anti-counterfeits measures
- Monitoring and evaluation

6. Pitfalls for successful implementation of competition policy and law

Competition policy and law attempts to deal with issues terms as market failures in the economy but there are other problems as well:

- Political failure
The structure and quality of political institutions have an effect on whether Government facilitates or inhibits economic development
- Issues at stake
Competition enforcement involves high personal stakes of the existing dominant firms, entrepreneurial associations and

employees of state controlled enterprises who are likely to be adversely affected by the reduction in the intervention role of the government in the market.

7. Conclusion

Each country is a product of its own people mainly determined by their history, geography and politics. Therefore there is no experience that would fit all countries. This is the Tanzanian experience.

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Notes: 1* The Growth Report: Strategies for Sustained and Inclusive Development, 2008 at contactinfo@growthcommission.org

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