

# THE LEGAL EFFECTS OF CONSUMER PROTECTION LAW IN ZANZIBAR

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## ABSTRACT

Consumer is an important person or organization who is direct or indirect user of the product since that they are basic economic entities in business. Consumer protection started long time ago when it seems that some of the rights of the consumer is violated example right to safety through marketing of goods which are dangerous to health, right to be informed against fraudulent, misleading information, advertising and labelling, right to choose the quality of services and right to be heard in the side of formulation of government policies and regulations that protects consumer interests. The concept of consumer protection was first introduced by John Fitzgerald Kennedy, the 35<sup>th</sup> President of the United States on 15<sup>th</sup> March, 1962<sup>i</sup> with the aim of protecting basic rights that are violated intentionally or by mistake. In order the protection to be effective State should formulate different laws and regulations that can protect consumer in their daily business. The Government of Zanzibar after realizing that the right of consumer is at risk decided to establish the Act which is known as the Fair Trading and Consumer protection of 1995 and in 2018 The fair Competition and Consumer Protection Act was re-enacted. This Act succeeded to protect consumer against counterfeit goods and unsafe goods, misuse of market power, anti-competitive trade practices, merger and acquisition and bait advertising as well as the law of Zanzibar succeeded to guarantee price structure, product guarantee and product recall but it failed to protect consumer against online consumer protection on e-commerce especially in this current life of Information and Communication Technology, so that the government should consider this area for the purpose of protecting consumer because e-commerce is a current issue in the world.

## INTRODUCTION

Zanzibar is a part of United Republic of Tanzania after united in 1964 between Tanganyika and Zanzibar. Consumer in Mainland Tanzania and Zanzibar is governed by different laws and regulations. In Zanzibar consumer is regulated by the Fair Competition and Consumer Protection Act of 2018 and in Mainland Tanzania consumer is regulated by The Electronic and Postal Communication (Consumer Protection) Regulation of 2018. Before 2018 consumer in Zanzibar is protected by the Zanzibar Fair Trading and Consumer Protection of 1995.

## CONSUMER

Consumer is a person, who buys goods or services for their own use<sup>ii</sup> or is someone who buys goods or services for personal use<sup>iii</sup> or consumer means any direct or indirect user of a product or service supplied by an enterprise in the course of business and includes another enterprise that uses the product or service that supplied as an input to its own business, a wholesaler, a retailer and a final consumer and any person to whom service is rendered<sup>iv</sup>.

## CONSUMER PROTECTION

Consumer protection refers to the laws and other forms of government regulation designed to protect consumers<sup>v</sup>. One form of consumer protection is product liability<sup>vi</sup>. Consumer protection, therefore, refers to laws and other forms of government regulation designed to protect the rights of consumers<sup>vii</sup>. Consumer protection is based on consumer rights on treating consumers honestly and fairly and protected through misleading advertising and information.

When you sell a good or a service to a consumer online or via other means of distance communication (by telephone, mail order) or outside a shop (from a door-to-door salesperson), the consumer has the right to return the item or cancel the service within 14 days<sup>viii</sup>. This is sometimes referred to as the cooling-off period or the withdrawal period. No reason or justification has to be given by the consumer<sup>ix</sup>. European Union law also stipulates that you must give the consumer a minimum 2-year guarantee (legal guarantee) as a protection against faulty goods, or goods that don't look or work as advertised<sup>x</sup>. In some countries national law may require you to provide longer guarantees<sup>xi</sup>.

Consumer protection is often achieved through the legal doctrine of product liability<sup>xii</sup>. Generally speaking, this is the legal responsibility imposed on a business for the manufacturing or selling of defective goods<sup>xiii</sup>. Product liability laws are state laws, and therefore vary by state<sup>xiv</sup>. However, the laws share a common goal. The laws are built on the principle that manufacturers and vendors have more knowledge about the products than the consumers do. Therefore, these businesses bear the responsibility when things go wrong, even when consumers are somewhat at fault<sup>xv</sup>. Product liability cases can result in large civil lawsuits and lucrative monetary judgments for the plaintiffs<sup>xvi</sup>. This can be harmful to small businesses and manufacturers and has been an argument for tort reform. But keep in mind that, on the other hand, many of the product safeguards consumers now enjoy are the result of previous lawsuits<sup>xvii</sup>.

Worldwide consumer protection is protected by the World Trade Organization, the International Consumer Protection and Enforcement Network as a worldwide organization involving more than 40 countries, most of which are members of the Organization for Economic Cooperation and Development (OECD)<sup>xviii</sup>, the aim of the Network is to share information about cross-border commercial activities that may affect consumer interests and to encourage [international cooperation among law enforcement agencies](#)<sup>xix</sup>. The Organization for Economic Cooperation and Development addresses a wide range of issues relevant to consumers<sup>xx</sup>. The three main areas of work of the CCP are building consumers trust in the digital economy, impact of the new technologies and emerging business practices on consumers and examining consumer policy regimes, including the economic underpinning of consumer policy and its interaction with competition policy<sup>xxi</sup>.

## **HISTORY OF CONSUMER PROTECTION**

Consumer protection is a concept that was first introduced by John Fitzgerald Kennedy, the 35<sup>th</sup> President of the United States on 15<sup>th</sup> March, 1962<sup>xxii</sup>. Kennedy spoke about the four basic rights of the consumer namely right to safety, right to be informed, right to be heard and right to choose<sup>xxiii</sup>. This protection is granted before the law against fraud, unfair business practices and misrepresentations between the businesses and individual consumers with the aim of protecting people from any harm to human health through the use and purchase of goods or services.

[Consumer protection](#) is based on consumer rights or the idea that consumers have an inherent right to basic health and safety, prohibiting abuse of dominant market position and eliminating monopolies. The idea of protecting consumer is not new that are the source of having different laws from different countries that are used to protect consumer and safeguarding him or her. Example in India consumer is protected by The Consumer Protection Act of 2019, in Germany consumer is protected by the Consumer Protection Directives of the European Union, in Zanzibar as part of Tanzania consumer is protected by the Fair Competition and Consumer Protection Act of 2018, in Tanzania consumer is protected by The Fair Competition Act, 2003 and in Nigeria consumer is protected by the Federal Competition and Consumer Protection Commission Act of 2019.

An early form of movement of defence of consumers was born in the United States where the bases for the birth and development of monopoly and oligopolistic capitalism have been started<sup>xxiv</sup>. Until the 18<sup>th</sup> century, the consumers had to verify themselves the quality of the goods they purchased and only in presence of gross negligence the seller could have been hold liable<sup>xxv</sup>. In 1914 the President Woodrow Wilson signed the Federal Trade Commission Act into law<sup>xxvi</sup> for the purpose of protecting consumers and promoting competition.

Meanwhile, in Australia, the first female member of the West Australian Legislative Council, Ruby Hutchison, initiated the Australian Consumers' Association at a meeting in Sydney Town Hall in 1959. Established as a non-profit independent organization undertaking product testing, it saw itself as a response to the ever-growing consumer complaints about poor-quality goods and services<sup>xxvii</sup>. In 1960, the International Organization of Consumers Unions (IOCU) was formed by the consumer organizations of Australia, the United States, the United Kingdom, Belgium and the Netherlands that believed they could increase their strength by building networks across national borders<sup>xxviii</sup>.

In 1965, Ralph Nader published his definitive book on a corporation's (General Motors) lack of concern for its consumers (and its critics), *Unsafe at Any Speed*. His work in establishing specific-purpose consumer groups (popularly known as 'Nader's Raiders') in the United States was paralleled in Australia with a plethora of groups at the state and territory level over the next 20 years that covered fields from health care to credit counselling, and from product safety to food and nutrition<sup>xxix</sup>.

The IOCU grew rapidly over the next few decades and, in 1995, it was renamed Consumers International (CI). Currently, it has more than 240 member bodies from 120 countries. It also has regional offices in Africa, Asia and the Pacific and Latin America and the Caribbean; sub regional offices for West and Central Africa and for Central America; and a Program for Developed Economies and Economies in Transition; as well as its head office in London. The IOCU took the four consumer rights enunciated by President Kennedy in 1962—the rights to safety, to be informed, to choose and to be heard—and added four of its own that are the right to redress, the right to consumer education, the right to a healthy environment and the right to the satisfaction of basic needs<sup>xxx</sup>.

Internationally, consumer protection has been lobbying for the extension of consumer rights in the revision to the UNGCP that was adopted by a resolution of the General Assembly on 22 December 2015 (UN 2015)<sup>xxxii</sup>. CI worked towards a range of new recommendations in the guidelines to adapt them to the globally networked age, including recommendations on digital issues, financial services, privacy, irresponsible marketing and access to knowledge<sup>xxxiii</sup>.

## **THE FAIR COMPETITION AND CONSUMER PROTECTION ACT OF 2018**

The Zanzibar Fair Competition and Consumer Protection Act No. 5 of 2018 is an act that was established for the purpose of protecting consumers and applies to enterprises, government bodies and local governments related to fair competition and consumer protection<sup>xxxiii</sup>. This act repealed The Zanzibar Fair Trading and Consumer Protection Act no. 2 of 1995 that was used to services and goods rendered or sold and to agreements and practices entered or conducted by all enterprises and to any other matters the Minister may declare to fall under the Act. The Fair Competition and Consumer Protection Act establish the Fair Competition and Fair Competition Tribunal in order to exercise its role properly.

### ***(a) The Fair Competition Commission***

The Fair Competition Commission is established under section (4) of the Fair Competition and Consumer Protection Act No. 5 of 2018 with the aim of monitoring, investigating and conducting survey on business and protecting consumer against any unlawful conduct that will take place through business and among of its main functions are to monitor, control and prohibit any acts likely to adversely affect competition and trading in Zanzibar; to carry out



investigation, on its own initiative or at the request of any person, in relation to the conduct of business, in order to determine whether a person or enterprise is carrying on anti-competitive trade practices; to monitor pricing of controlled goods and set indicative selling price for such goods in accordance with the Act relating to trade; to conduct surveys and collect data on costing, supply and distribution of both controlled and non-controlled goods and make appropriate recommendations; to do all necessary acts and things, incidental or conducive to the better carrying out of its functions under the provisions of this Act<sup>xxxiv</sup>.

**(i) *The main powers of the Fair Competition Commission are the following*<sup>xxxv</sup>:**

- (a) To issue orders and directives in accordance with the provision of this Act;
- (b) To impose financial penalties or remedies on any enterprise which conducts its business in breach of the provisions of this Act;
- (c) To require any enterprise to provide information to the commission as it may require in the performance of its functions;
- (d) To hold enquires and investigation in the performance of the provisions of this Act;
- (e) To enter premises and conducting inspection when dully authorized by the Commission;
- (f) To look into documents, copies or abstract of copies and if appropriate retain them;
- (g) To appoint specialist or technical expert to assist and carry out enquires and investigation in any area or matter that falls under the jurisdiction of this Act;
- (h) To take samples of products for conducting investigation;
- (i) To impose such charges or fees as may be required under this Act or Regulations made under it;
- (j) To seize the counterfeits or defective goods which are not related to standards and dispose in collaboration with relevant authorities.

***(ii)Initiating a complaint***

Section (15) of the Fair Competition and Consumer Protection Act no. 5 of 2018 explains that The Commission may initiate complain on its own and undertake a legal action against an alleged prohibited practice. A person may submit information concerning an alleged prohibited

practice to the Commission, in any manner or form or submit a complaint against an alleged prohibited business practice to the commission. The Commission shall determine consumer complaints and provide decision to such complains, where a person or complainant is not satisfied with the decision made under subsection (1) of this section, he may appeal to the Tribunal, also section (71) grant a privilege to a person who were aggrieved by the decision of the Commission to appeal before Tribunal by saying that a person aggrieved by the decision made by Commission under this Act and decision by other Regulatory Authorities may appeal to the Tribunal.

**(iii) Duties of the Fair Competition Commission are:**

The Fair Competition and Consumer Protection Act explain different duties that can be done by the Fair Competition Commission as follows:

**(a) Seizure of unsafe and counterfeit products**

It will be the duty of the Commission to seize any goods found to be unsafe or counterfeit<sup>xxxvi</sup>.

**(b) Disposal of unsafe and counterfeit goods**

The disposal of unsafe and counterfeit goods is the following<sup>xxxvii</sup>:

- (1) Any goods found to be unsafe or counterfeit shall be disposed by the Commission through the procedures as stipulated in the Regulations.
- (2) The commission shall determine the cost of seizing or disposing of such goods at the expense of manufacturer, seller or supplier.
- (3) The Commission shall issue the certificate of disposal after disposing unsafe or counterfeit products.

**(b) The Fair Competition Tribunal**

The Fair Competition Tribunal is a tribunal which is established under section (26) of the Zanzibar Fair Competition and Consumer Protection of 2018 for the purpose of exercising the functions conferred upon it by the Act and its main functions are to hear and determine appeals emanating from orders and decision from Fair Competition and other regulatory authority, issue warrants, provide decisions of the hearings, keep the records of all appeals and decisions of the Tribunal to the Registrar and exercise such other functions and powers as conferred upon it by this Act<sup>xxxviii</sup>.

**(i) Powers of the Fair Competition Tribunal**

The Tribunal shall, in the discharge of its functions, have the following powers<sup>xxxix</sup>:

- (a) Enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
- (b) Compelling the production of documents; and
- (c) Call a person to attend before the Commission for questioning or requesting to examine witnesses even who are abroad.

## **THE LEGAL EFFECT OF THE FAIR COMPETITION AND CONSUMER PROTECTION ACT OF 2018**

The Fair Competition and Consumer Protection Act No. 5 of 2018 of Zanzibar is legally effective for consumer protection because it protect the consumer from beginning whereby a person is allowed to supply or sell only the goods which are certified according to the required standard and declared to be fit for human consumption under any written laws, a seller and trader or retailer shall be required to display the price of goods or services to be sold to the consumers<sup>xl</sup>. The Act provides punishment to any person who contravene section (58) and (59) by saying that, a person who contravenes this section, commits an offence and upon conviction is liable to a fine of not less than five hundred thousand shillings and not exceeding three million shillings or to imprisonment for a term of not less than three months and not exceeding six months or both such fine and imprisonment<sup>xli</sup>.

Also, the legal effect of the Fair Competition and Consumer Protection is shown in different areas whereby the law protect consumer against misconduct, example the law protects consumer against merger, dominant position, anti-competitive trade practices, anti-competitive trade agreement and unfair trading and others unlawful conduct to consumer. The areas that protect consumer in the Zanzibar Fair Competition and Consumer Protection Act are the following:

### ***(a) Product guarantee***

Guarantees are usually free and offered by the manufacturer<sup>xlii</sup>. They are an assurance regarding quality or lifespan with a promise to repair or replace if the product doesn't live up to billing<sup>xliii</sup>. Often, companies require you to fill out a registration card to validate the guarantee<sup>xliv</sup>. The Zanzibar Fair Competition and Consumer protection under section (60) legally effected by providing product guarantee as follows<sup>xlv</sup>:



- (1) A seller of electronic, electrical or hardware is required to issue a guarantee certificate to consumer at the time of sale.
- (2) The seller specified under subsection (1) of this section is required to replace, repair or refund the price of the goods sold in case of any defect detected within the specified time of the guarantee.
- (3) A seller of cosmetics, drugs, soap and detergent, electronic and electrical equipment shall provide the directions of usage of such products.
- (4) A service provider is required to assure the consumer that he shall provide extended service in case of any damage or loss arising out of his services and he shall refund the price said or compensate within a specified time.
- (5) The terms of guarantee or services extended by a seller or service provider to a consumer shall be clearly set out at the time of sale.

***(b) Price Structure***

Price structure is an approach in products and services pricing while defines various prices, discounts, offers consistent with the organization goals and strategy<sup>xlvi</sup>. Price structure can affect how company grows and is perceived by the customers<sup>xlvi</sup> defines product or services price setup including core price points plus discounts, offers and strategy. The Fair Competition and Consumer Protection Act of 2018 protect consumer against price structure as follows<sup>xlvi</sup>:

- (1) The Minister shall prepare and publish in the Zanzibar Government Gazette the price structure of controlled goods specified under the Zanzibar Trading Act and its regulations.
- (2) The price structure shall be prepared after taking into consideration:
  - (a) *The fluctuation of domestic price;*
  - (b) *International market price;*
  - (c) *Variation in exchange rate; and*
  - (d) *Any other factor association with price fluctuation in the market.*
- (3) A seller or supplier may, at any time when market price of such controlled goods changes, apply to the Minister for the review of the price structure.
- (4) The seller or supplier shall sell such goods at price not exceeding the price as prescribed in the price structure.

- (5) Without prejudice to the policy of free market economy and trade liberalization, the Minister may regulate the price of any product whenever there is high fluctuation of price in market and such high price affects consumer.
- (6) The procedures for the preparation of price structure of controlled goods and regulations of high price of other goods, shall be determined in the Regulation.

**(c) *Product recall***

Product recall means to return a product to the seller or manufacturer after the discovery of safety issues or product defect that might endanger the consumers or put the maker or seller at risk of legal action<sup>xlix</sup>. The legal effect of the Fair Consumer and Consumer Protection is shown under Section (63) when consumer is protected against product recall as follows<sup>l</sup>:

- (1) Where the product or goods are found to be defective, cause injury, endanger the consumer, do not comply with standards or have dangerous characteristics shall be declared to be unfit for human consumption.
- (2) The Minister shall order the supplier or manufacturer to recall the product from the market at the expense of supplier or manufacturer.
- (3) Any goods or products recalled from the market shall be disposed according to procedures specified under the regulations.

**(d) *Prohibition of Unsafe Goods***

Goods means things of every kind and descriptions whether tangible or intangible including commodities, agricultural crops, raw-material, products and equipment, matter in solid, liquid or gasses forms and service incidental to the supply of such things<sup>li</sup>. When goods are sold to consumers, the goods must be safe<sup>lii</sup>. If the goods are not safe, and they cause death, injury or damage to property, then the manufacturer, the retailer and/or anyone else in the supply chain may have to meet a claim for compensation<sup>liii</sup>. The Fair Competition and Consumer Protection is legally affected through the prohibition of unsafe goods by saying that a person shall not be allowed to supply or sell any goods to a consumer if<sup>liv</sup>:

- (a) The goods do not comply with the required standards;
- (b) The goods are unfit for human consumption;
- (c) The importation or supply of such goods are banned in Zanzibar; or

(d) The date of such goods has expired.

***(e) Prohibition of counterfeit goods***

Counterfeit goods mean goods that are the result of counterfeiting and include any means used for the purposes of counterfeiting<sup>lv</sup>. Section (65) of the Zanzibar Fair Competition and Consumer Protection Act of 2018 prohibits counterfeits as follows:

- (1) It is prohibited for any person to engage in the importation, supplying or selling counterfeit goods in the market place<sup>lvi</sup>.
- (2) A person shall be purported to engage in counterfeit action if he<sup>lvii</sup>:
  - (a) *Forges any trademark;*
  - (b) *Falsely applies to goods to any trademark or any mark so nearly resembling a trademark for the purpose deceiving;*
  - (c) *Makes any die, block, machines or other instrument for the purpose of forging, or for being used for forging a trademark;*
  - (d) *Applies any false trade description to goods; or*
  - (e) *Dispose of or has in his possession, any die, block, machine or other instrument for the purpose of forging a trademark.*

***Examples of the case of counterfeit goods***

**Airbags**

In September 2010, a counterfeit airbag shipment was discovered by CBP during Operation Safe Summer at a DHL facility<sup>lviii</sup>. The shipment from China contained 68 counterfeit airbags destined for Chattanooga, TN. This investigation exposed the new threat of counterfeit airbags to law enforcement. HIS Chattanooga special agents executed search warrants and conducted controlled deliveries at several locations in the Chattanooga area which resulted in the seizure of 264 additional counterfeit airbags<sup>lix</sup>. Dai Zhensong, a Chinese national, was arrested and convicted for trafficking in counterfeit goods and was sentenced to 37 months in prison. As a result of the Chattanooga investigation, numerous spin-off investigations were initiated which resulted in numerous other convictions<sup>lx</sup>.

## 16- Seizure of counterfeit goods in Laos<sup>lxi</sup>

A manufacturer of engines for agricultural activities had its trademark duly registered in Laos. Lately, then found out that counterfeit products bearing its registered trade mark were being commercialized in several local retail stores. The issue was only discovered when the company received complains about the product quality from buyers who mistakenly brought the counterfeit products which they thought were originals. This affected the company's business and brand reputation<sup>lxii</sup>.

### ***Actions taken:***

The trade mark owner requested the local authorities in Laos take administrative action against the sellers of the counterfeit goods. Initially, warning letters were sent to each infringing retail store. The first raid action took place and counterfeit goods were seized and disposed of for destruction. The series were conducted in both Vientiane and Savannakhet<sup>lxiii</sup>.

The relevant authorities warned the sellers not to infringe again or else they would be fined. No other punishment, such as fines, was imposed on the infringers as first-time offenders are usually not penalized in Laos and this was the first known counterfeiting offense for each infringer. If an infringer is a repeated offender (i.e they have infringed more than two times), the local authorities may consider taking the case before the criminal court which could lead to imprisonment or to a fine<sup>lxiv</sup>.

Also, The Zanzibar Fair Competition and Consumer Protection Act No. 5 of 2018 is legally effective because it protects consumer against misuse of market power and notification, it prohibit trade agreement that violates the law of the land, it prohibit merger and acquisition that distorts competition and it prohibit unfair business practices. Also it prohibit anti-competitive trade practices, anti-competitive trade agreements, prohibition of certain agreements irrespective of their effects on competition, hoarding and restriction of supply of goods, trade agreements, prohibition of merger and market dominant.

### ***a) Misuse of Market Power***

The Zanzibar Fair Competition and Consumer Protection Act explain the misuse of market power that:

(1) A person with a dominant position in a market shall not use his position of dominance to prevent, restrict or distort competition in market<sup>lxv</sup>.

(2) A person holding a dominant position in the relevant market shall not<sup>lxvi</sup>:

- (a) *Directly or indirectly impose unfairly high or low selling or purchasing prices or other unfair trading conditions,*
- (b) *Limit production or technical development and innovation to the prejudice of consumers,*
- (c) *Discriminate between consumers or suppliers, or*
- (d) *Conduct any such other related actions that misuse market power.*

(3) A person holding a dominant position in the market shall not engage in any conduct that excludes, or is intended to exclude its competitors from the market by means of<sup>lxvii</sup>:

- (a) *Predatory pricing;*
- (b) *Price squeezing;*
- (c) *Cross subsidization;*
- (d) *Market sharing; or*
- (e) *Any such other related conducts.*

(4) A person holding a dominant position in the relevant market shall not engage in any conduct that harms the competitive position of competitors by<sup>lxviii</sup>:

- (a) *A refusal to a deal;*
- (b) *A refusal of access to an essential facility;*
- (c) *Tying arrangements;*
- (d) *Discriminating among customers or suppliers, or*
- (e) *Any such other related conducts.*

(5) A person holding a dominant position in the market shall not engage in any conduct whereby<sup>lxix</sup>:

- (a) *The resale prices or conditions are directly or indirectly fixed;*
- (b) *Customers or competitors are foreclosed from access to sources of supply or from access to outlets;*
- (c) *Movement of goods or services between different geographical areas are restricted;*
- (d) *An intellectual property right is used in any way that goes beyond the limits of its legal protection, or*



(e) Any other such related conducts.

(6) A person, who contravenes this section, commits an offence<sup>lxx</sup>.

### ***Example of case of misuse of market power***

#### Australian Competition and Consumer Commission v. Cement Australia Pty Ltd [2013] FCA 909

Further debate is likely about perceived inadequacies in the misuse of market power provisions in section 46 of the Competition and Consumer Act 2010 (Cth) (“CCA”) following the ACCC’s failure to establish that Cement Australia and its related companies misused their market power when buying up large volumes of fly ash for use in the construction sector<sup>lxxi</sup>.

In September 2013, the [Federal Court](#) found that Cement Australia Pty Ltd and other respondents to the proceedings had not misused their market power when they entered into contract for the purchase of fly ash<sup>lxxii</sup>. The judgment only became publicly available in mid-November after a preliminary review by the parties for any confidentiality concerns<sup>lxxiii</sup>.

Fly ash is a waste product generated from power station, which is costly to dispose of and can be used in certain proportions as an economical alternative to cement in ready-mix concrete

The Fair Competition and Consumer Protection Act of 2018 explain about the concept of trade and how it succeeded to protect consumer against anti-competitive trade agreement, merger and anti-competitive trade agreements. Trade means the sale or acquisition of a business, part of a business or an asset of a business carried on by the Enterprises, a Government body or a local government engaging in trade but this trade should not constitute the imposition or collection of taxes, the grant or revocation of licenses, permits and authorization, the collection of fees for licenses, permits and authorization and internal transactions within the Government, a Government body or a Local Government<sup>lxxiv</sup>. The Fair Competition and Consumer Protection Act No. 5 of 2018 explains in details how trade should be formed in order to protect consumer, the Act prohibit the following:

#### **(a) Anti-competitive Trade Practices**

Anti-competitive trade practices include activities like price fixing, marketing monopolization, collusion, formation of cartels, group boycott, hoarding, product bundling and tying and the likes<sup>lxxv</sup>. Any agreement, decisions or practices which have an object of prevention, restriction

or distortion of competition are declared as anti-competitive trade practices and hereby prohibited<sup>lxxvi</sup> and a person who contravenes the anti-competitive trade practices commits an offence. Subject the provisions of subsection (1) of this section, enterprises shall refrain from the following acts or behavior which abuse or create dominant position of market power<sup>lxxvii</sup>:

- (a) The use of cost pricing to eliminate competitors;
- (b) Price discrimination in the supply or purchase of goods or services;
- (c) Imposing restrictions and conditions on the manufacturing distribution or purchase of goods or services;
- (d) Mergers, takeovers, joint ventures or other acquisitions of control of market; or
- (e) Colluding of two or more manufacturers, wholesalers, retailers, contractors or suppliers of services, in selling a uniform price in order to eliminate competition.

### **(b) Trade Agreements**

Agreement means any form of agreement whether or not legally enforceable between enterprises which is implemented or intended to be implemented in Zanzibar or in part of Zanzibar, and includes an oral agreement, a decision by an association or enterprises and any concerted practice<sup>lxxviii</sup>. Subject to the provision of this Act, the following trade agreements are prohibited<sup>lxxix</sup>:

- (a) Fixing prices between persons engaged in the business of selling goods or services,
- (b) Limiting or restricting the terms and conditions of sale or supply or purchase or purchased goods or services,
- (c) Collusive tendering for the restrictive competition,
- (d) Collective action to enforce agreement that affect competition,
- (e) Refusing to supply goods and services to potential purchasers or customers, or
- (f) Collective denials of access to an arrangement or association which is crucial to competition

(1) A person who contravenes this section commits an offence<sup>lxxx</sup>

### **(c) Anti-competitive Trade agreement**

A person shall not make or give effect to an agreement if the object is to prevent, restrict or distort competition. A person who is doing anti-competitive trade agreement commits an

offence and upon conviction is liable to a fine of not less than one million shillings and not exceeding five million shillings or to imprisonment for a term of not less than three months and not exceeding six months or both such fine and imprisonment<sup>lxxxii</sup>. But if a person suffered loss as a result of any anti-competitive agreement or trade practice may apply to the Commission for compensation and the Director General may, on behalf of the Commission if satisfied that the circumstances of the case so warrant, order the parties whose agreement or trade practice is anti-competitive to pay to the person such compensation as the Commission shall determine<sup>lxxxiii</sup>.

#### **(d) Mergers and acquisition**

Merger means an acquisition of shares, a business or other assets, whether inside or outside Zanzibar, resulting in the change of control of a business, part of a business or an asset of a business in Zanzibar and acquisition in relation to shares or assets means acquisition, either alone or jointly with another person, of any legal or equitable interest in such shares or assets but does not include acquisition by way of charge only<sup>lxxxiii</sup>, section (49) explains merger and acquisition that<sup>lxxxiv</sup>:

- (1) Any merger or acquisition that creates or strengthens a position of dominance in a market which distorts competition is prohibited<sup>lxxxv</sup>.
- (2) Where a merger creates or strengthens a position of dominance under subsection (1) of this , the Commission shall assess the strength of competition in the relevant market by taking into account the following factors<sup>lxxxvi</sup>:
  - (a) The actual potential level of import competition in the market;
  - (b) The ease of entry and exit into the market, including tariff and regulatory barriers;
  - (c) The level of concentration in the market;
  - (d) The degree of countervailing power in the market;
  - (e) The merger which results in the increase prices or profit margins;
  - (f) The extent to which substitutes are available in the market;
  - (g) Efficiencies in the market, including growth, innovation and product differentiation;
  - (h) Where the merger will result in the removal of effective competitor;
  - (i) The nature and extent of vertical integration in the market; and
  - (j) The merger results or is likely to result in benefits to the public in one or more of the following ways<sup>lxxxvii</sup>:
    - (i) By contributing to greater efficiency in production or distribution;

- (ii) By promoting technical or economic progress;
  - (iii) By contributing to greater efficiency in the allocation of resources;
  - (iv) By protecting the environment and the merger;
  - (v) Prevents, restrains or distorts competition no more than is reasonably necessary to attain those benefits; and
  - (vi) The benefits to the public resulting from the merger outweigh the detriments caused by preventing, restraining or distorting competition.
- (3) After having examined the merger, the Commission shall allow the merger to proceed its implementation or prohibit implementation, if it affects competition in the market<sup>lxxxviii</sup>.
- (4) The Minister may review the decision of the Commission on merger, if he is satisfied that<sup>lxxxix</sup>:
- (a) The decision was based on incorrect information;
  - (b) The approval was obtained by deceit; or
  - (c) The firm concerned has breached an obligation or condition attached to the decision;
- (5) A person who contravenes this section, commits an offence<sup>xc</sup>.

#### **(e) Prohibition of Certain Agreements Irrespective of their Effects on Competition**

Competition means competition in a market in Zanzibar and refers to the process whereby two or more persons supply or intend to supply the same or substitutable goods or service to the persons in the same relevant geographical markets or acquire or intend to acquire the same or substitutable goods or services to the persons in the same relevant geographical markets<sup>xc</sup>. Section (45) prohibits certain agreements irrespective of their effects on competition by elaborating that the agreements irrespective of their effects on competition are prohibited and a person who commits and contravenes these agreements has committed an offence. A person shall not make or give effect to an agreement, if the agreement is<sup>xcii</sup>:

- (a) *Price fixing between competitors;*
- (b) *A collective boycott by competitors;*
- (c) *Output restrictions between competitors;*
- (d) *Collusive bidding or tendering; or*
- (e) *Allocation, parceling or sharing of markets or customers for any non-competitive purpose.*

(2) An agreement in contravention of this section is unenforceable under this Act<sup>xciii</sup>.

(3) A person who contravenes this section commits an offence<sup>xciv</sup>.

#### **(f) Restriction of Supply of Goods**

It shall be unlawful for any person whether personally, through agents or other enterprise or in conjunction with others or through any arrangement or agreement<sup>xcv</sup>:

- (a) To make hoarding of goods as to create scarce availability of the goods whether for the purpose of bringing about price increase or not,
- (b) To make such hoarding of goods for the purpose of bringing about price increase, or
- (c) To destroy the goods or render them unserviceable or destroy the means of production and distribution whether directly or indirectly for the purpose of bringing shortage of the goods or price increase for the same.

#### **(g) Misleading and Deceptive conducts**

Any trader or seller or retailer shall not be allowed to engage in a conduct that is misleading or deceptive or is likely to mislead or deceive consumers<sup>xcvi</sup>.

#### **(h) False or Misleading Representation**

False, misleading or deceptive advertisement means the use of false, misleading or deceptive statements in advertising and in respect of goods imported into Zanzibar market, includes the use of any language other than English or Kiswahili on advertisements and labels on such goods<sup>xcvii</sup>. A person shall not be allowed to act the following misconducts in the supply of goods or services<sup>xcviii</sup>,

- (a) Falsely represents that the goods are of a particular standard, quality, grade, composition, style or model, origin or have had a particular history or particular previous use;
- (b) Falsely represents that the services are of a particular standard quality or grade;
- (c) Falsely represents that the goods are new or of a specified age;



- (d) Falsely represents that a particular person has agreed to acquire goods or services;
- (e) Falsely represents that the goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have;
- (f) Falsely represents that he has a sponsorship, approval or affiliation he does not have;
- (g) Makes a false or misleading representation with respect to the price of goods or services;
- (h) Makes a false or misleading representation with respect to the price of good services;
- (i) Makes a false or misleading representation concerning the place of origin of goods;
- (j) Makes a false or misleading representation concerning the need for any goods; or
- (k) Makes a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

(2) A person who contravenes this section commits an offence<sup>xcix</sup>

The Zanzibar Fair Competition and Consumer Protection Act of 2018 also legally effective because it protects consumer against unfair business practices like bait advertising, unfair trading and harassment in connection with supply.

**(a) Bait Advertising**

- (1) A person shall not advertise the supply or sell of goods or services at a specified price that he knowingly will not be able to offer to a customer or consumers<sup>c</sup>.
- (2) A person who advertised the price for the supply of goods or services shall offer such price for period that is reasonable having regard to the nature of the market in which he carries on business and the nature of the advertisement<sup>ci</sup>.
- (3) If a person stipulated under subsection (2) of this section, fails to offer goods or services at the price advertised, he may<sup>cii</sup>:

- (a) Procure another person to supply goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or
- (b) Offer to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price of goods or services that were advertised.

**(b) Accepting payment without intending or being not able to supply goods or services**

Supply in relation to goods means the supply or re-supply, by way of sale, exchange, lease, hire or hire-purchase and supply in relation to services means the provision by way of sale, grant or conferment of services<sup>ciii</sup>. A person shall not be required to accept payment or other consideration of goods or services where, at the time of the acceptance he is aware that<sup>civ</sup>:

- (a) He is not able to supply the goods or services;
- (b) He will supply materially different from the goods or services in respect to which the payment or other consideration is accepted; or
- (c) There are reasonable grounds of which he is aware might not be able to supply the goods or services within the period specified by him, if no period is specified, within a reasonable time.

**(c) Unfair trading**

- (1) A person shall not conduct unfair trade practices consisting of using various deceptive, fraudulent or unethical methods to obtain or engage in business<sup>cv</sup>.
- (2) Subject to subsection (1) of this section, unfair trading includes misrepresentation, false advertising, tied selling and other acts that are declared unlawful by this Act<sup>cvi</sup>.

**(d) Safety standards**

A person shall not supply any product which:

- (a) Is likely to cause injury to health or physical harm to consumers, when properly used<sup>cvii</sup>; or
- (b) Does not comply with the consumer safety standards which have been prescribed under any law<sup>cviii</sup>.

In other side the Fair Competition and Consumer Protection is not legally affected because it does not consider areas like online e-commerce, online counterfeit goods and other online protection, the Fair Consumer Protection Act protects consumer it does not reflect on digital age although this act passed on 7<sup>th</sup> February 2018 and repealed The Zanzibar Fair Trading and Consumer Protection Act No. 2 of 1995, still this act is silence and it does not even touch the area of digital and consumer protection, We do not know how consumer will be protected if for example wants to enter into a contract of doing electronic commerce (e-commerce or e-procurement) or how government can protect this consumer against anti-competitive trade agreement or merger and acquisition in this digital era, so that the Government should use its commission to correct the challenges that faces consumer for the purpose of giving consumer its rights of protection in this digital age.

- **Online Consumer Protection through e-commerce**

In today's digital world, consumers can manage all sorts of personal financial activities online, this includes everyday transactions like shopping and banking and more specialized online financial activities like gambling, charitable giving and online auctions<sup>cix</sup>. To protect the growing number of consumers who are active online, federal lawmakers have developed laws and policies designed to help ensure the safety of consumer transactions in e-commerce. Without these legal protections, consumers would be subject to scams, fraud and other illicit activities that put their personal finances and privacy at risk<sup>cx</sup>.

### ***Example of online counterfeit goods Case***

#### **Cyber Monday 3**

In November 2012, Homeland Security Investigations targeted websites selling counterfeit trademark merchandise as part of the holiday shopping season. This was the third year that the IPR Center has targeted websites selling counterfeit products online in conjunction with Cyber Monday<sup>cxii</sup>. Cyber Monday 3 resulted in the seizure of 218 websites, approximately \$179,000 USD in illicit proceeds and yielded two arrests. During this operation, federal law enforcement officers

made undercover purchases of a host of products, including professional sports jerseys, DVD sets, and a variety of clothing, jewelry and luxury goods from online retailers who were suspected of selling counterfeit products<sup>cxii</sup>.

Despite the importance of consumer confidence for business-to-consumer e-commerce, many developing and transition economies still lack laws to protect consumers online. Hence the Government of Zanzibar should add provisions in its legislation that protect consumer online when they are doing e-business.

### *Offenses*

The Fair Competition and Consumer Protection Act is legally affected in the moment when it set up different punishments for the offences that will be committed against consumer example section (62) of the Act obliged manufacturer or agents while supplying goods to another person to consider the following<sup>cxiii</sup>.

- (a) The description of the product related to the order;
- (b) The product corresponds to the sample;
- (c) The characteristics of the goods are proper;
- (d) The goods are of merchantable quality

If a manufacturer or agent who fails to comply with this section, commits an offence and upon conviction shall be liable to compensate the supplier or consumer for the loss or damage that occurred during the time of supplying<sup>cxiv</sup>.

- (1) A person who contravenes the provisions of this Act or fails to comply with order to the Commission, or the Minister, or the Tribunal commits an offence under this Act, and where no specific penalty is provided, shall be liable to a fine of not less than one million Tanzania shillings and not more than five million Tanzania shillings or one year imprisonment or both fine and imprisonment<sup>cxv</sup>.
- (2) Where the Commission is satisfied that a monetary value can reasonably be placed on the damage including loss of income suffered by a person as a result of an offence against this Act, the convicted person shall, in addition to any

other penalty which may be imposed, be liable to a fine of two times such monetary value, which the Director General shall order to be paid to the person suffering the damage<sup>cxvi</sup>.

- (3) A person who contravenes section 43, 45 and 61 are not liable to fines under this section but may be subject to compliance orders and compensatory orders to person who suffers loss or damage<sup>cxvii</sup>.

#### **(a) Compounding of an Offence**

The Commission may compound an offence committed by a person under this Act or its regulation by requiring him to pay the fine prescribes for such an offence, provided that the persons<sup>cxviii</sup>.

- (a) Admits in writing that he has committed an offence and shall take due care not to repeat the same; and
- (b) Pay other sums payable under this Act or its regulations.

#### **(b) Compliance Orders and Agreements**

Section 69 of the Act explains the compliance orders and agreements by explaining that where the Commission is satisfied that a person has committed or is likely to commit an offence against this Act other than Part Four or Five, it may make a compliance orders under this section against that person and any person involved in the offence<sup>cxix</sup>. A person, who fails to comply with the orders made against him, commits an offence, a compliance order may require a person to refrain from conduct in contravention of this Act or to take actions to comply with this Act, and shall specify the time for compliance with the order and the duration of the order<sup>cxx</sup>. The Commission may make an interim compliance order pending proper considerations of a matter if the Commission is of the opinion that there is an imminent danger of substantial damage to a person if a threatened or likely offence is committed or there are other good reasons for making such order<sup>cxxi</sup>. A compliance order shall be made in writing specifying the grounds for making the order<sup>cxxii</sup>. The Commission may enter into an agreement in writing, referred to in this section as a “compliance of agreement”, ...<sup>cxxiii</sup>, a compliance order shall be enforceable as an order of the High Court, The Commission shall not have jurisdiction to make compliance



orders or enter into compliance agreements in relation to breaches of conditions or warranties implied under Part Four and Five or manufacturer's obligations under Part Seven<sup>cxxiv</sup>.

## ENDNOTES

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<sup>ii</sup> Available at <https://dictionary.cambridge.org/dictionary/english/consumer>, accessed on 18<sup>th</sup> June, 2020

<sup>iii</sup> Ibid 2

<sup>iv</sup> Section 2 of the Fair Competition and Consumer Protection Act of 2018

<sup>v</sup> Available at <https://study.com/academy/lesson/what-is-consumer-protection-product-liability-laws-rights.html>, accessed on 21<sup>st</sup> September, 2020

<sup>vi</sup> Ibid 5

<sup>vii</sup> Ibid 5

<sup>viii</sup> Available at [https://europa.eu/youreurope/business/dealing-with-customers/consumer-contracts-guarantees/consumer-guarantees/index\\_en.htm](https://europa.eu/youreurope/business/dealing-with-customers/consumer-contracts-guarantees/consumer-guarantees/index_en.htm), accessed on 24<sup>th</sup> September, 2020

<sup>ix</sup> <https://www.which.co.uk/consumer-rights/advice/when-can-i-use-a-manufacture's-warranty-or-guarantee>, accessed on 24<sup>th</sup> September, 2020

<sup>x</sup> Ibid 9

<sup>xi</sup> Ibid 9

<sup>xii</sup> Available at <https://study.com/academy/lesson/what-is-consumer-protection-product-liability-laws-rights.html>, accessed on 21<sup>st</sup> September, 2020

<sup>xiii</sup> Ibid 12

<sup>xiv</sup> Ibid 12

<sup>xv</sup> Ibid 12

<sup>xvi</sup> Ibid 12

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<sup>xviii</sup> Available at [https://www.nyulawglobal.org/globalex/International\\_Law\\_Consumer\\_Protection.html](https://www.nyulawglobal.org/globalex/International_Law_Consumer_Protection.html), accessed on 19<sup>th</sup> June, 2020

<sup>xix</sup> Ibid 18

<sup>xx</sup> Ibid 18

<sup>xxi</sup> Ibid 18

<sup>xxii</sup> Sekhar Sonika on [lawtimesjournal.in/the-history-of-consumer-protection/](http://lawtimesjournal.in/the-history-of-consumer-protection/), accessed on 19<sup>th</sup> June, 2020

<sup>xxiii</sup> Ibid 22

<sup>xxiv</sup> Available at [https://www.nyulawglobal.org/globalex/International\\_Law\\_Consumer\\_Protection.html](https://www.nyulawglobal.org/globalex/International_Law_Consumer_Protection.html), accessed on 19<sup>th</sup> June, 2020

<sup>xxv</sup> Ibid 24

<sup>xxvi</sup> Ibid 24

<sup>xxvii</sup> Available at <http://press-files.anu.edu.au/downloads/press/n2304/pdf/ch36.pdf>, accessed on 27<sup>th</sup> September, 2020

<sup>xxviii</sup> Ibid 27

<sup>xxix</sup> Available at <http://press-files.anu.edu.au/downloads/press/n2304/pdf/ch36.pdf>, accessed on 27<sup>th</sup> September, 2020

<sup>xxx</sup> Ibid 29

<sup>xxxi</sup> Ibid 29

<sup>xxxii</sup> Ibid 29

<sup>xxxiii</sup> Section (3) of the Fair Competition and Consumer Protection Act No. 5 of 2018

<sup>xxxiv</sup> Section 5(a-t) of the Zanzibar Fair Competition and Consumer Protection Act of 2018

<sup>xxxv</sup> Section 6(a - j) of the Zanzibar Fair Competition and Consumer Protection Act of 2018

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- xlv Section 60(1-5) of the Zanzibar Fair Competition and Consumer Protection Act of 2018
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- xlvii Ibid 46
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- l Section 63(1-3) of the Zanzibar Fair Competition and Consumer Protection Act of 2018
- li Section 3 of The Public Procurement and Disposal of Public Assets Act of 2016
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- lxv Section 48(1) of the Zanzibar Fair Competition and Consumer Protection Act of 2018
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- lxxiii Ibid 71
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- lxxxviii Section 49(3) of the Zanzibar Fair Competition and Consumer Protection Act of 2018
- lxxxix Section 49(4)(a-c) of the Zanzibar Fair Competition and Consumer Protection Act of 2018
- xc Section 49(5) of the Zanzibar Fair Competition and Consumer Protection Act of 2018
- xci Section 2 of the Zanzibar Fair Competition and Consumer Protection Act of 2018
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- cxii Ibid 111
- cxiii Section 62(a-d) of the Zanzibar Fair Competition and Consumer Protection Act of 2018
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- cxvi Section 72 (2) of the Zanzibar Fair Competition and Consumer Protection Act of 2018
- cxvii Section 72 (3) of the Zanzibar Fair Competition and Consumer Protection Act of 2018
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