

AN EXAMINATION OF THE DISPUTE SETTLEMENT MECHANISM WITHIN THE COMPETITION LEGAL FRAMEWORK IN TANZANIA

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ABSTRACT

Competition is an economics term which generates its origin from the ultimate point of view that excludes the seller from provision of services and or goods in a substandard manner while charging the consumers more. This is usually done by business firms as a market strategy in order to ensure their monopolization is sustained. The powers can be attained through various forms such as trade and commerce barriers, formulation of mergers and acquisitions and securing anti-competitive agreements between them; these acts hinder consumer power in the market. Alternatively, the anti-competitive practices lead to the formation of various laws and policies in the country so as to neutralize the situation, solving the arising disputes as well as protect the welfare of the consumers in the country.

This paper intends to focus on the examination of the dispute settlement mechanism within the competition legal framework in Tanzania.

The focal point of this paper is to examine on whether the dispute settlement mechanism within the competition legal framework is efficient and supportive to the Tanzania consumer circumstances and further assess the implications of natural monopolies on Competition and the existing anti-competitive practices. Further, the paper aims to explore competition law and policies in Tanzania, and look at a sound legal and institutional framework for the implementation and development of Competition Law and Policy; which incorporates some of the international best standards and practices.

INTRODUCTION

Competition is a purely economic term which basically refer to individual firms striving for a greater share of a market to sell or purchase goods or services. Competition goes hand in hand with monopoly, and being monopolistic is not a negative characteristic however what a firm does with effect to monopoly can determine negativity and positivity of competition in the market.

Therefore, competition law involves adopting, interpreting and enforcing framework rules to ensure that the market remains as self-regulating as possible. The market is to self-regulate itself and not be regulated by business firms at any time or place or circumstance. To ensure that, it involves preventing firms from making anti-competitive agreements, abusing dominant positions and creating anti-competitive mergers.

Consumers are to have a wide range of choices of products and or services in the market and this is ensured by the existence of competition laws, policies and regulations.

ORIGIN OF ANTI-TRUST LAWS

The origin of anti-trust law is traced back after mergers of large companies to subside the smaller ones creates monopolization of the market to throw out competitors from the market. The above attempt made the United States to create anti-trust laws in the 1800's.

In the late 1800's was the time when industrialization was booming at a high rate in the United States. Therefore, manufacturing and distribution companies emerged very fast. The rapid growth led supply to be inversely proportional to demand, to reduce the number of competitors, companies formed restraint methods such as mergers, monopolies and price fixing. This led to reduction of the number of smaller companies that tried to compete with them and they created the so-called Business Trusts. During that time, trusts became an umbrella term for any sort of collusive or prohibited behavior that was seen to render competition.ⁱ

Business trust is an arrangement whereby stakeholders in various companies transferred shares to a single set of trustees, in exchange of stakeholder's certificate entitling them to a specified share of the consolidated earnings of the jointly managed company.

Due to formation of Trusts as a form of monopoly then the United States decided to form a law called the Sherman's Act of 1890 that came into force in 1904. major reason was that a

monopoly is characterized by the lack of competition, higher prices, substandard goods on a result of price fixing by merged firms, hence a need to regulate the transaction.

The major objective of the law is to regulate the business as well as protect the consumers against unfair anti-competitive transactions.

COMPETITION POLICY AND LEGAL FRAMEWORK IN TANZANIA

The existence and formations of competition laws and policies in Tanzania was a result of pressing demands of the Parliamentarians in the years of 1990's. this is was facilitated by the need to repeal the first Act that regulated price in the country; the Regulation of Prices Act, 1973. The Market was chaotic during that particular time due to the introduction of trade liberalization and free market economy and therefore the government saw a need to regulate the market situation at the moment. As a result, the government enacted its first competition law to oversee the matter which is the Fair-Trade Practices Act, 1994 and set up a department under the Ministry of Trade and Industry to foresee its implementation and conducts. The Act conferred too much power to the minister including the power to fix prices which was one of the reasons for the repeal of the Act. The law was later repealed and replaced by the current Fair competition Act, 2003. Furthermore, the remarkable vital change that came along with this was to then separate the regulatory bodies governing mechanisms from those of competition so the bodies are now monitored by different institutional framework, which currently places a lacuna to the unregulated bodies. The laws and policies were fundamental in order to control anti-competitive behavior and conducts and protect consumers from unfair market practices.ⁱⁱ

The rationale behind the formation of competition laws and policies was based on the following government statement;ⁱⁱⁱ

“Government policy is to allow competition to regulate the market. However, where competition is not available and natural monopoly characteristics exists, or the incumbent firm displays significant market dominance, is able to fix prices and extort monopoly rent to detriment of the consumer, or where completely free market leads to excessive competition and market instability damaging consumer interest, government policy to introduce administrative regulation. Administrative regulation, however will only be introduced where benefits outweigh the costs of regulation.”

Which draws attention for the discussion of various laws and institutions that establish dispute settlement mechanisms under competition in Tanzania.

The Constitution of the United Republic of Tanzania, 1977

The constitution is the supreme law of any country as all the laws of a country derive their essence from the constitution. Among other laws, the constitution of the United Republic of Tanzania^{iv} also acknowledges the existence of consumer rights and obligations as per Article 11, 14 and 18^v providing for the rights and obligations of Tanzanian citizen pertaining to access to basic necessities of life. By virtue of this provision of the Article 14 of the Constitution of The United Republic of Tanzania Constitution,^{vi} the state and its agencies have an obligation to protect consumers and make sure that their rights are not violated. The citizen is also a consumer and therefore constitutional rights and obligations connote universal consumer rights and obligations. *However Article 30(3)^{vii} it provides the right to access before the court of law for every person who see his right is being or is likely to be violated.*

By virtue of article 30(3) of the Constitution all consumer in Tanzania have the right to lodge out complaints and be heard to competent authorities that are establish if their right are being or likely to be violated. Apart from that, the Constitution of the United Republic of Tanzania also provides for the Alternative Dispute Resolution *under Article 107A (2)(d) which requires dispute resolution among persons involved in the dispute. According to that, the Constitution indirect way protect consumer on the issue of dispute settlement mechanism by promoting and enhance ADR as the mechanism of resolving dispute among the parties.*

Fair Competition Act, 2003

As prior stated that the Tanzanian parliament sought a need to repeal the Price Control Act, 1973 due to free market economy in the country and the Act was replaced by the Fair-Trade Practices Act, 1993. And later the Act was observed to have major lacunas which were required to be amended and incorporate various regulatory bodies to ease competition and control the market against monopoly then the Fair Competition Act of 1994 was enacted and later repealed in 2003.

The Fair Competition Act is the main law in Tanzania to promote and protect effective competition in trade and commerce, to protect consumers from unfair and misleading market conducts and to as well provide for other related matters as per the preamble of the Act. It is a two Act in one because it provides for consumer protection as well as competition framework;

the first part of the Act deals with Competition matters and adjudication of matters thereto and the second part deals with consumer protection. This current position of the law is to be separated in order to be exhaustively dealt with.

Objectively the Act intends to protect the consumers, promote and protect effective competition in the market, to prevent unfair and misleading market conduct, promote innovation and maximize the efficient allocation of resources and to protect the consumers.^{viii}

By the virtue of section 8 (1) of the Fair Competition Act^{ix} anti-competitive agreements are prohibited in the market. Whereby, it is strictly prohibited for any person who intends to make agreements that will distort, prevent or prohibit competition in the market. Other anti-competitive practices that are prohibited by the law irrespective of their impacts includes price fixing between competitors, a collective boycott, collusive bidding or tendering as per section 9 of the Act, all fall under horizontal restrictive practices since it prohibits agreements between competitors on the same market level.

All other agreements which do not fall under section 9 of the Act receive the lenient approach of rule of reason prohibition. The rule of reason is a legal approach by competition authorities or the courts where an attempt is made to evaluate the pro-competitive features of a restrictive business practice against its anti-competitive effects in order to decide whether or not the practice should be prohibited.^x

The Act further establishes both the Fair Competition Commission (FCC) and the Fair Competition Tribunal (FCT) which are both set to deal with dispute settlement arising among the parties such as the manufacturers and suppliers as below elaborated.

Fair Competition Commission

The competition law and policies are administered under one roof, that is the Fair Competition Commission of Tanzania. Which is an independent government body established under the Act, to promote and protect effective competition in trade and commerce and to protect consumers from unfair and misleading market conduct. The FCC is responsible for issuing enforcement and compliance with the law. The Act contains both competition and consumer protection provisions. This connotes a dual mandate to the Fair Competition Commission. It derives its principles from the United Nations Conference on Trade and Development (UNCTAD) model law.

The government of Tanzania therefore, established institutions responsible for administration of the law besides enactment of the Act and the Acts for regulation of networks such as energy

and utilities, communication, civil aviation and so on. The institutions established by the Fair Competition Act includes the Fair competition Tribunal and the Fair Competition Commission together with the National Consumer Advocacy Council.^{xi}

Fair Competition Tribunal

The Fair Competition Act establishes the tribunal as per section 83(1) and it consists of seven members; the chairman being the Judge of the High Court appointed by the president after the consultation of the Chief Justice and the rest six members are also appointed after the consultation of the Attorney General. The Fair Competition Tribunal is a quasi-judicial body entitled with appellate jurisdiction to entertain matters from the Fair Competition Commission (FCC) as well as other regulatory bodies such as EWURA, TCAAA, TCRA and the decisions from the Chief Inspector, whose decisions and orders are final and binding. The quasi-judicial body is guided by the rules of natural justice in order to ensure that fairness and justice is attained between the parties.

OTHER ESTABLISHED INSTITUTIONS

in ensuring competition is attained in the market, FCC is set to watch the overall performance and conducts thereto. However below are few discussed institutions that are set forth to supervise and regulate competition from being misused, other regulatory bodies include Tanzania Civil Aviation Authority and Surface and Marine Transport Regulatory Authority. These regulatory bodies are set forth to regulate the aviation and surface and marine transport sectors respectively at hand in Tanzania.

Energy and Water Utilities Regulatory Authority

The Energy and Water Utilities Regulatory Authority (EWURA) is an autonomous multi-sectoral regulatory authority established by the Energy and Water Utilities Regulatory Authority Act Cap 414 of the laws of Tanzania^{xii}. It is responsible for technical and economic regulation of the electricity, petroleum and natural gas and water sectors in Tanzania pursuant to cap 414 and sector legislation.

The authority is an independent quasi-judicial regulatory body which has the duty of solving and making resolution of complaints and disputes which are vital elements on consumer protection and promoting effective competition in the market.

The goods and services in the energy, water and utilities are regulated by the Energy and Water Utilities Regulatory Authority (EWURA). The interests and concerns of consumers within this regulated economic realm are handled by Energy and Water Utilities Regulatory Authority Consumer Consultative Council as abbreviated as EWURA-CCC.

EWURA is mandated with the duties of ensuring fulfillment of the following duties including; promoting effective competition and economic efficiency, to protect the interests of the consumers, to protect the financial availability of efficient suppliers, to promote the availability of regulated services to all customers including the low privileged customers without regards of their status, to enhance public awareness, knowledge and understanding of the regulated sectors including the rights and obligations of consumers and regulated suppliers, the ways in which complaints and disputes may be initiated and resolved.

The regulatory authority is set to focus on existence of effective competition policies and laws and the protection of public interest at all times of performance of their duties and functions. In case of any further complaints, appeals and dissatisfaction of consumers in the market then the consumers can further present their concerns before the Fair Competition Tribunal (FCT). In order to ensure justice since the FCT is led by the rules of natural justice.

Tanzania Communications Regulatory Authority

Tanzania Communications Regulatory Authority abbreviated as TCRA is a communication sector-based organ which is set to regulate telecommunications, broadcasting, postal services. It is also set to provide for allocation and management of radio spectrum including Information and Computer Technology (ICT) applications.

The body is established as per section 4 of the Tanzania Communications Regulatory Authority Act, 2003 hereinafter referred to as TCRA Act to the effect that there shall be a body to regulate communications sector known as TCRA.

TCRA is a full body corporate with all characteristics of a corporate such as perpetual succession, the ability to own property, contractual abilities and performance, the ability to sue and be sued^{xiii} and so forth. This body corporate is installed in it with various functions, duties, power and mandate in ensuring the protection of consumers and promotion of effective competition in the market.

The duties of the Authority are stipulated as per section 5 of the Act^{xiv} including but not limited to; promoting effective competition and economic efficiency, protect the consumer's interests

in the market, promoting the availability of regulated services to all consumers and enhancing public awareness with regards to competition and their rights and interests.

Among many functions of the regulatory body includes to facilitate resolution of disputes and complaints that arises between the parties in the market.^{xv}

The regulatory authority consists of a board of seven members; the chairman and vice chairman, four non-executive members and the director general who are appointed per the requirements of section 7(1) of the Act.^{xvi}

On mandatory basis the authority shall at all times when exercising its duties, powers, authority and functions take into account the existence of effective competition policies and laws and notwithstanding the public interest and welfare.

The law gives mandate and opportunity to any person aggrieved by the decision of the board and or authority to appeal before the Fair Competition Tribunal (FCT).^{xvii}

Lastly, there is a council that is established for the purposes of consumers and their interests known as Tanzania Communications Regulatory Authority Consumer Consultative Council (TCRA-CCC).^{xviii}

DISPUTE SETTLEMENT MECHANISM WITHIN THE COMPETITION LEGAL FRAMEWORK IN TANZANIA

Disputes are basically disagreements or controversies that often gives rise to a legal proceeding,^{xix} whereas dispute settlement is the mechanism that involves solving of controversies that arises between two or more parties, they can involve both natural persons and or artificial persons. Dispute settlement mechanism within the competition legal framework are categorized into all regulated economic sector as well as FCC/FCT and also unregulated economic sector, Whereby regulated sector FCA comply with the protection of the interest of consumer remedies. However in regulated economic sector there are scattered various legislations enacted to serve other matters but also provides for consumer disputes settlement mechanism. While in unregulated economic sector FCA it does not provide the mechanism and procedure of resolving dispute when consumer suffered injuries.

Dispute Settlement Mechanism in Regulated Economic Sector

Regulated economic sector they have their own procedures of handling complaint or claim against any supplier of regulated services in relation to any matter connected with the supply,

possible supply or purported supply of the goods or services. Further regulated economic sector laws provides for ways to be used in dealing with the consumer complaint. And these regulated sectors include but not limited to LATRA, EWURA, TCAA, TCRA, and PURA.

Complaint and Dispute Settlement under EWURA

EWURA is an independent multi-sectoral regulatory authority established by the EWURA Act.^{xx} It is responsible for technical and economic regulation of sector such as electricity, water, petroleum and natural gas in Tanzania and sector legislation. Section 34 of EWURA Act states to the effect that the autonomous Authority is to attend to complaint against a supplier of regulated goods or services in relation to any matter connected with the services.

This complaint handling procedure focuses on amicable settlement in order to protect the interest of consumer as well as speedy track and to avoid technicality procedure. Although there are laws and rules regulated the procedure of handling consumer complaint but still there are challenges on the consumer who were not satisfied with the services provided to them and do not understand the procedures to lodge any form of complaint that involves in their services. Let's take an example of the period started on August and September 2023 there are insufficient supply and distribution of full-time electricity services. And the user of that services are silent because mostly they don't know the procedure of lodging the complaint and where to go.

Complaints and Dispute Settlement under TCAA

The legal framework establishes the prescribed procedure for addressing complaints against suppliers. The supplier must give due consideration to the complaint. If the supplier fails to effectively address the complaint or neglects to do so, the authority has the option to escalate the situation if the complaint remains unresolved to the satisfaction of the complainant within a period of sixty days. In such cases, the authority is empowered to intervene by conducting an investigation and thereafter referring the matter to the committee. Once the matter has been submitted to the committee, both the complainant and the provider were designated as parties involved in the reference. Within the various divisions, a specialized unit will be assigned the responsibility of amicably resolving the situation at hand. If the unit is unable to address the situation within a period of thirty to sixty days, the division in question will propose a course of action to be taken.^{xxi}

The decision-making process of authorities involves the issuance of orders, which may entail the supplier's obligation to make monetary payments or provide goods and services in

accordance with predetermined terms and conditions.^{xxii} Nevertheless, these orders possess enforceability equivalent to that of high court orders. In the event that a party involved in a complaint expresses dissatisfaction with the decision, they have the option to initiate an appeal to the Fair Competition Tribunal within a period of twenty days.^{xxiii}

Complaint and Dispute Settlement under TCRA

The legislation includes provisions for a process to resolve disputes, whereby matters in dispute are referred to the Authority based on the nature of the disagreement and the qualifications of the complainant. The subject is to be examined by the council. Prior to initiating a formal complaint with the appropriate governing body, it is necessary for the complainant to first bring the matter to the attention of the company, agency, or service provider from whom they have procured unsatisfactory services or products. In the event that the issue remains unresolved or fails to receive the requisite attention, the consumer may express dissatisfaction with the outcome or the level of attention afforded to their complaint.^{xxiv} “The second step is to lodge the complaint to the Authority.^{xxv}

The TCRA will inquire over two issues, first satisfy itself that the complainant has an interest in the matter to which the complainant relates and secondly that complaint is not frivolous or vexatious,^{xxvi} then the Authority shall investigate the matter within 60 days.^{xxvii} However if aggrieved by the above decision the complainant may appeal to the TCRA Internal Review Committee within 60 days.^{xxviii} If any party aggrieved by the decision of the Authority, he may appeal to the Fair Competition Tribunal within twenty days.^{xxix}

“..... in the case of Juma Mpuya Vs Celtel Tanzania Ltd^{xxx} whereby the complainant was dissatisfied with the decision of the TCRA Complaints Committee and appeal to the Tribunal. The Tribunal after analyzing the findings by the TCRA decided otherwise and awarded the appellant damages of two million seven hundred shillings, for a return bus ticket Mtwara- Dar es Salaam and cost of the appeal...”

However the dispute settlement mechanism under the TCRA Act is also expensive for consumers who are not lived in Dar es Salaam, because they need to the Head officers of the suppliers to submit their complaints or to attend hearing by either the committee, the Authority or the FCT whose officers are also situated in Dar es Salaam, and also to meet any other associated costs that include meals, transport and accommodation.

Dispute Settlement Mechanism under Fair Competition Act

The *Fair Competition Act* is the main law on competition issues and its enforcing organ the FCC, but despite it is the main legislation on issue concerned competition and consumer protection in Tanzania but it lack enforceability due to the presence of other sector based laws and organs with concurrent jurisdiction on competition and consumer protection and causing overlapping of jurisdiction in the process of execution of the FCA and other sectoral legislation and causing to have different procedures and mechanism when comes to the dispute settlement in Tanzania. According to that justification FCA and its organ became inefficient in protecting competition remedies on the dispute settlement mechanism.

However the establishment of FCC under the virtue of section 62(2),^{xxxii} was for the purpose of promote effective competition in trade and commerce and protecting consumers from unfair and misleading market conducts and also ensure that consumers disputes are tried and resolved accordingly and redressed are awarded the aggrieved parties.

The FCC has its own procedure as provided by the Fair Competition Rules. These provides that the commission shall adopt inquisitorial procedures in conducting hearings.^{xxxiii} Moreover the commission in the dispute settlement shall allow and provide a forum for representation by any additional information or analysis with view to facilitate investigation.^{xxxiii} Also it is provided that in the hearing process the commission is not bound by the formal rule of evidence as in ordinary cases.^{xxxiv} Also settlement of dispute in the FCC take the following procedures as stipulated under rule 19(6) which includes the following.

Applicant shall submit his request to the commissioner either orally or in writing indicating his interest to engage the commissioner in a settlement discussion regarding the matter under the investigation.^{xxxv} The commissioner shall make a determination on the application for settlement,^{xxxvi} then another step is the determination by the commissioner under sub rule 2(ii) shall be final. After the commissioner is satisfied with the information provided will then prepare a settlement plan to settle the matter within 30 days.^{xxxvii}

The Fair Competition Act provides various remedies ranging from pecuniary remedies such as compensatory orders, damages such as compliance orders, injunctions and/or interim orders adverse publicity of orders by respondents and fines. Compliance order and compliance agreement may require respondents to refrain from conduct in contravention of the FCA or take action to comply with the FCA.^{xxxviii}

“.....In the case of Fair competition Commission V. The Bank of Africa, the commission issued a compliance order for failure to notify a merger. It was also

required to publish a notice of compliance to the public (in a newspaper with wide circulation) and expressing to the public on how it acted contrary to the provision of the FCA. Also, there are compensatory orders which may require the respondents to pay money; to supply goods or services for specified time and conditions.....”

Also, the commission may give an order declaring void, terminating or varying a contract and an order requiring the respondent to pay the costs of the application or of any person appearing at the hearing or producing documents.^{xxxix} Also there are fines of not less than five percent of the respondent’s turn over and not exceeding ten percent of his annual turnover can be imposed on him. Additionally, the commission is empowered to impose fines on every person who at the time of the commission of the offence was a director, manager or officer of the body corporate convicted of the offence.^{xl}

Dispute Complaint in Judiciary (Courts)

As far as there is no proper designated consumer redress system under FCA in Tanzania, the court of Tanzania generally filled the complaint under the auspices of the law of torts has been keen, knowingly or unknowingly on consumer rights protection. This paper analyzed as follows, the law of torts is primary a branch of law enacted to protect persons against unprecedented harm. The basis of the law of torts is that all human beings have rights which the law should protect. These rights include personal security, physical health, finances, reputation, and property or the land one owns. Insufficient of consumer protection legal framework on issue of redress system, the law of torts has filled vacuum in protecting consumer rights where they were violated. The courts have been used to address injuries afflicted to workers in factories, industries, the transport sub-sector etc. However, the torts of negligence in relation to physical damage although it is still in its infancy when it comes to economic loss. This take us back to 1932 in the landmark case of

“ in the landmark case of Donoghue Vs Stephenson.. In this case the court was held that, the manufacturer of the ginger beer liable to producing defective products. The manufacturer owned the duty to take reasonable care to the ultimate consumer of the manufactured products. It was in Donoghue’s case that the consumer credo was establish that, you must take reasonable care to avoid acts or omission, which you can reasonably foresee, would be likely to injure your neighbor. It is on this consumer credo that lies the foundation of all eight consumer rights.....”

In Tanzania there are many cases which lack consumer redress mechanism system and causes consumer whose rights were violated to pursue redress through court of law. A few of such cases are mentioned hereunder;

“..... In the case of Tanzania Breweries Ltd Vs Antony Nyingi,^{xli} the applicant in this case sued respondent in ordinary court of law for torts of negligence and claim for damages. He successful awarded Tsh. 50,000,000/= being general damages together with interest and cost of suit. In both High Court and Court of Appeal...

Tanzania like any other country that has incorporated competition matters in the jurisdiction has its ways of regulating the matters. Competition legal framework exists in the country to ensure prohibition of anti-competitive mechanisms to be done by firms in the country. A fair market allows the entry and exit of business firms at any time of the business process. This is regulated by the existence of laws and institutions that regulates the market. However, even in regulated markets disputes are part of the consequences of the ongoing activities in the market.

CHALLENGES FACING DISPUTE SETTLEMENT MECHANISM WITHIN THE COMPETITION LEGAL FRAMEWORK IN TANZANIA

Interface between Sectorial Regulators and the Competition Commission

The Fair Competition Act led to the establishment of the Fair Competition Commission. However, it should be noted that this commission lacks the authority to address competition matters in areas where a sector-specific regulatory body is present. As stipulated in section 96 of the Act, regulators such as TCAA, LATRA, EWURA, PURA, and TCRA are granted sole authority to address competition concerns within their respective jurisdictions. It is not mandatory for these regulators to seek guidance or advice from the FCC in fulfilling this mandate. The regulators possess the authority to exercise their discretion in deciding whether or not to engage in consultation with the Fair Competition Commission (FCC).

Unclear Jurisdiction over Determination of Matters

Despite of having the Fair competition Act still a lack of clarity of the proper determination and resolution of consumer disputes. For example, there are three authorities with both investigatory and punitive power to apply penalties and sanction for example to anti – competitive and manipulative practices. These are the EWURA, the FCC and FCT. The fair

competition Act does not specify what it deems to be harmful competition outright; rather it requires the FCC and FCT as experts' bodies to analyze the impact of companies, taking into consideration current and expected infringements. Acquisitions of shares in the energy sector is subject to the provision of the FCA in respect of the activities such as formation of cartels, barriers to entry and exit, abuse of dominant position and market power and formation of mergers and acquisition for anti – competitive purposes.

The Act is prone to Intervention from the Minister

Certain observers argue that the Fair Competition Act (FCA) has a more comprehensive scope of accountability mechanisms compared to international norms, while already having numerous legal provisions in place. Additionally, this paper note that the functions assigned to ministers in organizations such as LATRA, EWURA, and TCRA are also more extensive than what is typically observed in international standards. The rationale supporting the broad authority of the minister lies in the necessity for the minister to possess the capacity to intervene effectively, so guaranteeing accountability, responsibility, and adherence to national policy. One additional consideration is the necessity of effectively utilizing the ministry's substantive competence in regulating the sector.

RECOMMENDATIONS

The paper not only pin points the challenges but gives room to make suggestion on various aspects to be worked upon by the key figures in the country. Through making of recommendations then it is positive to the country to make a move on improving the situation. The study proposes the following the recommendations;

i. Enactment of responsive Consumer Protection Act

The significance of consumer protection in the market economy does not need political debates rather than it need legal framework. Absence of the single Consumer Protection Act poses great challenges to the whole concept of consumer protection in Tanzania. Even though FCA dealing with consumer protection but there are some aspect lack its enforceability because the Act arguably has two Acts in one. However consumer protection legislation are so scattered hence making it difficult when it comes to consumer protection in aspect of dispute settlement mechanism. Consumer protection is one of the controversial areas which need special attention thus having a single legislation will help to carter the problems. The enactment of the new

Consumer Protection Act should also dealing with both regulated and unregulated sectors that neither affect consumer direct and provide proper redress mechanism nor set a simple but responsive consumer redress mechanism for all consumer who suffered injuries.

ii. Provision of consumer awareness

Consumers in Tanzania are not aware that they have power which collectively serves as a countervailing force to promote and protect their interest and thus fight the violence, wastage and manipulations in the market. Consumers are so naïve to realize that their rights concerned human rights which grant them right to life and right to seek redress for any violation of their rights. Many Tanzanian consumers do not take seriously issues affecting them as they are expected to. You can think that Tanzanian consumers are *laissez-faire*, but they are not. The researcher think that, to have provision of consumer rights education to the public in order to increase awareness of their duties, right, and obligation for the purpose of being able and capable of resolving dispute for all issues affecting themselves.

The information should be provided to the consumer all over throughout different mechanism like publication of different materials, articles, and newspapers in the official website. However the advent of smart phones has aggravated the matter as other consumers spend most of their time on whatsapp, facebook, instgram and twitter discussing non-substantive issues occasionally just gossiping so it's better to post the issue concerned consumer rights and how to get relief for consumer who suffered damage in the social media and this it can be one of the easily way to reach all consumers and help them to get some knowledge every day. And also, Youtube channel should be introduced and post all online courses concerned consumer dispute settlement mechanism and their respective rights and the society will be able to understand the whole procedures of initiate the claim.

iii) Introduction of Alternative Dispute Resolution (ADR)

Generally refers to processes or system that helps people to resolve disputes relating to a product or service without having to go to court. Alternative dispute resolution methods can preserve and enhance business relationships that might otherwise be damaged by the adversarial process. ADR is widely regarded as holding great promise for the low-cost and efficient resolution of consumer dispute, resulting in solutions that benefit all parties. Also ADR is flexible to handle different kinds of disputes, procedures and approaches. ADR methods may include arbitration, mediation, negotiation, as well as reconciliation. In most cases, ADR is relatively quicker and cheaper way of resolving complaints. The existence of an ADR system can also increase consumer confidence, as consumer can readily seek redress if

they are facing issues with a particular product or services and this will aiming at higher goals of protect consumer rights and stimulating the economic growth. It is therefore Suggestion that, there is need to overhaul the FCA on the part redress system and introduce ADR as the method or means of resolving consumer dispute in Tanzania.

iv) A need to have Guiding Policy

The Fair Competition Act as the main law regulating consumer issues in Tanzania and its enforcing organ which is Fair Competition Commission. Apart to that law and its regulations there are other sector based laws and organs with concurrent jurisdiction on competition and consumer protection in Tanzania. There has been overlapping of jurisdiction in the process of implementation of the Fair Competition Act and other sectorial legislation. The study suggest that, there is a need to have guiding policy to rescue the situation or alternatively means the government should think of ousting these power and jurisdiction from sector bases regulatory authorities and vest them all to the FCC where they rightly belongs this will help the consumer to get the formal procedures of resolving their dispute when their rights have been violated by either regulated or unregulated sectors. The other authorities should be left to concentrate on regulating economic functions in their respective sectors within the country.

CONCLUSION

In a nutshell, various initiatives have been taken to work on promotion of competition in the country which includes the adoption of market reforms and enactment of competition law and policies, there is still a lot of legal challenges surrounding the Fair Competition Act on consumer dispute settlement mechanism in Tanzania and these are multiplicity of laws, laws on consumer protection in Tanzania are scattered in many pieces of legislation, Multiplicity of laws has proven difficulties in their application and they have created overlaps in implementation and enforcement of the consumer protection interest in the country. And this cause FCA to lack its enforceability and became toothless on the issue concerned consumer dispute settlement mechanism in Tanzania. However, Tanzania must as well engage and allow the expansion and development of private sectors in the market economy to boost competition and promote more choices for the consumers' dispute settlement. Both the civil societies and private sectors are to stretch a hand to help pioneer the advocacy of consumer protection and competition matters in the country.

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ⁱⁱⁱ Allan Mlulla, & Grace Freedom Nicholas, Presentation at the Inception & NRG-1 meeting on ‘Accelerating the Implementation of the EAC Competition Policy and Law’ on 2013, Dar es salaam.

^{iv} The Constitution of the United Republic of Tanzania, 1977 as amended from time to time.

^v *ibid.*

^{vi} The Constitution of the United Republic of Tanzania, 1977 as amended from time to time.

^{vii} The Constitution of the United Republic of Tanzania of 1977.

^{viii} Section 3 of the Fair Competition Act, 2003.

^{ix} *Ibid*, section 8(1).

^x <http://www.stats.oecd.org> accessed on 23rd August, 2023.

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^{xii} Section 4 of the Energy and Water Utilities Regulatory Authority Act Cap 414.

^{xiii} Section 4 (2) of the Tanzania Communications Regulatory Authority Act, 2003.

^{xiv} *Ibid*, section 5.

^{xv} *Ibid*, section 6(1)(d).

^{xvi} *Ibid*, section 7(1).

^{xvii} Section 36(1) of the Tanzania Communications Regulatory Authority.

^{xviii} *Ibid*, Section 37 (1).

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^{xx} Act No 11 of 2001

^{xxi} See Section 53(8) of the Act

^{xxii} Section 54 of TCAA Act

^{xxiii} See Section 55 of the same Act

^{xxiv} Section 40(3) of the TCRA Act

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