UNDERSTANDING THE LEGAL FRAMEWORK OF FAIR COMPETITION LAW IN TANZANIA:INSIGHTS INTO THE 2024 AMENDMENTS.

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In a well-functioning economy, businesses must compete fairly to foster innovation, efficiency, and consumer choice. **Fair competition** is a market environment where businesses operate on equal footing, without deceptive, coercive, or monopolistic practices that stifle competition. It ensures that companies thrive based on merit—offering quality products, competitive prices, and improved services—rather than through unfair advantages such as monopolies, collusion, or predatory pricing.

Governments worldwide recognize that unrestricted market dominance can harm economies, leading to price manipulation, poor service delivery, and limited consumer options. As a result, most countries have established **competition laws** to regulate business conduct and prevent anti-competitive behavior. For instance, the United States enforces the **Sherman Antitrust Act**, the European Union implements the **EU Competition Law**, and Tanzania operates under the **Fair Competition Act of 2003**, overseen by the **Fair Competition Commission (FCC)**.

However, while fair competition is vital for economic stability, **its enforcement remains a challenge**. Some companies engage in cartel activities, price-fixing schemes, or abuse of dominance to eliminate competitors. This article explores **the concept of fair competition, its importance, legal frameworks, and challenges in its implementation**, focusing on global and Tanzanian perspectives.

A. What is Fair Competition?

Fair competition is a **market condition where businesses operate under transparent and equal rules, ensuring that no entity gains an unfair advantage over others**. It means that companies and individuals must compete by offering better products, services, and prices rather than through unethical or anti-competitive strategies. Fair competition promotes **economic efficiency**, encourages businesses to invest in innovation, and ultimately benefits consumers through better choices and fair pricing.

B. Principles of Fair Competition.

Non-discrimination is a fundamental principle of fair competition that ensures all market participants operate on a level playing field, free from favoritism or undue advantages. Regulatory bodies must enforce policies that prevent preferential treatment, ensuring that no business, whether local or foreign, gains an unfair competitive edge through exemptions, subsidies, or selective enforcement of regulations, Moreover, transparency in market rules and decision-making processes is essential to uphold fairness. Stakeholders should be well-informed about their rights, obligations, and market conditions to enable them to compete effectively. By fostering an environment of equal opportunity, non-discrimination promotes healthy competition, encourages innovation, and safeguards consumer interests.

Consumer welfare is at the heart of fair competition, ensuring that markets operate in a manner that prioritizes the interests of consumers. Competitive markets drive businesses to offer high-quality goods and services at fair prices, fostering innovation and efficiency. To achieve this, regulatory frameworks must prevent anti-competitive practices such as price-fixing, market monopolization, and deceptive trade practices, which can harm consumers by limiting choices and inflating costs. Additionally, consumers should have access to accurate information about products and services to make informed purchasing decisions. By safeguarding consumer welfare, fair competition enhances market efficiency and promotes economic growth and social well-being.

Market transparency is a critical principle of fair competition, ensuring that all market participants have access to accurate, timely, and comprehensive information. Transparent markets allow businesses and consumers to make informed decisions based on clear pricing, product specifications, and terms of trade. Regulatory bodies play a key role in enforcing transparency by mandating the disclosure of essential information and preventing deceptive practices that can distort competition. This principle helps to foster trust among stakeholders, reduce the likelihood of fraud, and enable fair pricing and competitive dynamics. Promoting market transparency upholds the integrity of the competitive environment, benefiting both consumers and businesses.

C. **LEGAL FRAMEWORK GOVERNING FAIR COMPETITION.**

In Tanzania, fair competition is governed by the Fair Competition Act (2003) as amended by The Fair Competition (Amendment) Act, 2024, according to the above law highlights what amounts to unfair competition.. To be in a position that is considered to be unfair competition practices the law restricts the following.

1. **Anti-competitive Agreements.**

Under Section 8 of the **Fair Competition Act, 2003**, any agreement that has the objective or effect of preventing, restricting, or distorting competition is expressly prohibited. Such agreements are deemed **unenforceable** as they undermine fair market practices. Section 9 of the Act further elaborates on the specific types of anti-competitive agreements that fall within this prohibition. These include **price-fixing**, where competitors collude to manipulate prices rather than allowing market forces to determine them; **collective boycotts**, where businesses agree to exclude certain competitors or suppliers from the market; and **collusive bidding or tendering**, where bidders conspire to manipulate the outcome of a procurement process, These provisions are designed to promote a competitive market environment by discouraging practices that unfairly restrict market access, limit consumer choice, or inflate prices. **However,** the commission may grant exemptions to restrive agreements when they satisfy the test **Under section 12** which requires such agreements to be for public benefit.

2. **Misuse of market power.**

Taking guidance from section 10 the law provides that a person with a dominant market position shall not use his dominance advantage if such object aims to affect. Prevent, restrict, or distort competition.

3. **Mergers and Acquisitions Under the Fair Competition Act**

The Fair Competition Act, 2003, as amended by the Fair Competition (Amendment) Act, 2024, provides a regulatory framework for mergers and acquisitions in Tanzania. Under Section 11, a merger is prohibited if it creates or strengthens a dominant position in the market. Additionally, a merger becomes notifiable if it involves assets or turnover exceeding the threshold set by the Fair Competition Commission (FCC) through an official order published in the Gazette.
Once a merger is notified, the Commission has 14 days to determine whether it warrants further examination. If the Commission decides to proceed with an investigation, the merger is prohibited for 90 days or for an extended period as determined by the Commission. This ensures that any potential anti-competitive effects are thoroughly assessed before approval..

However, Section 11A of the Fair Competition (Amendment) Act, 2024, provides detailed exceptions to the prohibition on mergers that may create or strengthen market dominance. The Commission may approve such a merger if it is satisfied that the resulting public benefits outweigh any anti-competitive effects. These public benefits include increased efficiency in resource allocation, promotion of technical and economic progress, enhancement of skills transfer, and improvements in the production or distribution of goods and services in Mainland Tanzania.

Furthermore, the Commission evaluates the extent to which a merger can boost exports, create employment, or impact specific industrial sectors or regions. It also considers whether the merger helps national industries compete in regional and international markets and how it affects the competitiveness of small businesses. Notably, if the target firm is facing imminent financial failure, the merger may be permitted if it presents the least anti-competitive alternative for the firm’s assets.

To qualify for exemption, a merger must not restrain competition more than necessary, and its public benefits must significantly outweigh any potential detriment to market competition. This framework ensures that while competition is safeguarded, mergers that contribute to economic growth and public welfare can still be facilitated under appropriate regulatory oversight.

4. Prohibition of Misleading and Deceptive Conduct Under the Fair Competition Act.

The Fair Competition Act, 2003, as amended by the Fair Competition (Amendment) Act, 2024, prohibits any person from engaging in misleading or deceptive conduct in trade. Section 15 explicitly states that no individual or entity shall engage in conduct that is misleading, deceptive, or likely to mislead or deceive. This prohibition is broad and applies to all forms of commercial transactions.

Furthermore, Section 16 elaborates on specific forms of false or misleading representations concerning goods and services. It prohibits misrepresenting the quality, standard, grade, composition, or history of goods and falsely claiming that services meet a particular standard. It also forbids misrepresentations about a product's origin, sponsorship, approval, performance characteristics, or necessity.

Additionally, making false claims regarding pricing, availability of repairs or spare parts, and the existence or effect of warranties or guarantees is strictly prohibited.
Concerning pricing, Section 17 mandates that if a representation is made regarding an amount payable as part of the total cost of goods or services, the full cash price must also be clearly stated. This provision ensures transparency in commercial transactions and prevents misleading pricing tactics.

Sections 18 and 19 extend these prohibitions to conduct that misleads the public regarding the nature, manufacturing process, characteristics, suitability, or quantity of goods and services. This provision ensures that consumers are not deceived about the true attributes of products and services offered in the market.

Additionally, Section 20 addresses explicitly misleading representations concerning certain business activities, particularly those that involve investments or work-from-home opportunities. It prohibits false or misleading claims about profitability, risk, or any other material aspect of such business activities. Any person who invites others to participate in a business requiring investment and labor must not misrepresent the financial risks or expected returns associated with that activity.

However, Section 21 provides exemptions for certain prescribed information providers. This includes businesses that primarily provide information, such as media houses, as long as their publications are not made in connection with the supply or promotion of goods and services. However, if a publication involves advertisements or promotional material on behalf of a supplier, it does not qualify for this exemption.

Overall, the Fair Competition Act seeks to ensure integrity in trade by preventing businesses and individuals from engaging in deceptive practices. These provisions protect consumers from being misled and promote fair competition within the market.

5. Prohibition of Vertical Arrangement Under Fair Competition Act.

Vertical agreements refer to arrangements between businesses operating at different levels of the **supply chain, such as manufacturers and distributors or wholesalers and retailers**. These agreements can regulate pricing, distribution, or sales conditions, often influencing market competition. While some vertical agreements can enhance efficiency, others may restrict market access, limit consumer choice, or lead to anti-competitive practices. Recognizing these risks, the **Fair Competition (Amendment) Act, of 2024**, introduces specific provisions to prohibit harmful vertical arrangements that could distort fair trade practices.

The law explicitly prohibits vertical agreements that involve resale price maintenance, foreclosure of customers or competitors from accessing supply sources or outlets, and restrictions on the movement of goods or services between geographical regions. These provisions aim to prevent dominant suppliers from imposing unfair trade restrictions that could harm smaller businesses and consumers. However, the law provides an exception regarding minimum resale price recommendations, allowing suppliers or producers to suggest a price as long as it is clearly labeled as a non-binding recommendation and explicitly stated on the product.

Violating these provisions constitutes an offense, reinforcing the law’s commitment to promoting market fairness. By outlawing restrictive vertical agreements, the amendments ensure a competitive and open market environment where businesses operate independently without undue constraints from suppliers or producers. **This approach aligns with global best practices in competition law, fostering economic growth while protecting consumers and smaller market players from monopolistic behaviors.**

Key Takeaways: The Chinese Business Controversy at Kariakoo and Its Implications on Fair Competition.

The ongoing controversy surrounding Chinese traders operating in Kariakoo, Tanzania, raises critical concerns regarding fair competition and its enforcement. These traders, often entering the market under the umbrella of "foreign investors," benefit from substantial government subsidies, tax incentives, and preferential treatment. However, their business practices—such as selling goods at significantly lower prices than local traders—raise questions about potential anti-competitive behavior and vertical arrangements that could distort the market.

Potential Vertical Arrangements and Market Domination, Many Chinese traders in Kariakoo are claimed to operate in vertically integrated structures, controlling both the importation and retail of goods. By sourcing directly from manufacturers in China—sometimes at subsidized rates—they bypass traditional wholesalers and distributors, effectively undercutting local traders who rely on intermediary supply chains. This setup mirrors a **vertical restraint**, where dominant suppliers influence pricing and market access, limiting competition for Tanzanian traders.

Government Incentives and Unequal Market Conditions, As "foreign investors," Chinese traders may enjoy financial incentives, including duty exemptions, tax breaks, and relaxed regulatory oversight, which Tanzanian businesses do not receive. While foreign direct investment (FDI) is crucial for economic growth, allowing foreign traders to compete in local retail markets—without ensuring a level playing field—creates an unfair advantage.

This goes against the **non-discrimination principle** in fair competition, where all businesses should operate under the same regulatory and fiscal framework.

Price Undercutting and the Threat to Local Enterprises, By leveraging their supply chain control and government-backed advantages, these traders are claimed to engage in **price undercutting**, making it nearly impossible for Tanzanian retailers to compete. This could lead to **market foreclosure**, where local businesses are gradually pushed out, resulting in reduced economic participation by indigenous traders and potential job losses.

Way Forward: Regulatory Interventions.

- **Reviewing Subsidies & Tax Incentives:** Authorities should assess whether foreign traders benefiting from investment incentives are truly engaged in productive investment or merely exploiting tax breaks for retail trade. If subsidies distort competition, policymakers should revise these incentives to prevent unfair market dominance.
- **Enforcing Fair Trade Policies:** The **Fair Competition Commission (FCC)** should strengthen its oversight on vertical arrangements, ensuring foreign traders do not manipulate supply chains to the detriment of local businesses. Strict enforcement against resale price maintenance and predatory pricing is necessary.
- **Empowering Local Traders:** The government should facilitate access to affordable financing, import facilities, and market linkages for Tanzanian businesses to compete effectively. Establishing fair procurement policies that favor local enterprises would also help balance market dynamics.
- **Consumer Awareness:** Tanzanians must be educated on the long-term economic impact of supporting local businesses. While lower prices may seem beneficial in the short term, monopolistic practices by foreign traders could ultimately reduce competition and consumer choice.

In Conclusion

The Kariakoo situation exemplifies the risks of failing to regulate market dominance and unfair competition. While foreign investments are crucial for economic growth, they must align with **fair competition principles** to ensure sustainable development, protect local traders, and promote a competitive and inclusive market. Implementing balanced policies will help Tanzania harness the benefits of FDI while safeguarding the interests of its citizens.

SVTL Advisory combines experience and expertise to navigate the complexities of competition law, ensuring businesses thrive in a fair and regulated market. From mergers and acquisitions to market regulations and compliance with the Fair Competition Act, including the latest 2024 amendments, we provide strategic insights to help businesses mitigate risks, maintain compliance, and stay ahead in an evolving competitive landscape

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