



Need to Address Policy-induced Competition Concerns in Key Sectors of Tanzania

This policy brief is extracted from a study carried out by REPOA, Tanzania on 'The State of Competition Law and Policy in Tanzania'. The purpose of the study has been to assess the current state of the national competition regime in the country – specifically the progress made by the Tanzanian government on competition reforms, sectoral regulation and competition interface in selected sectors and identify cross sectional perceptions regarding competition concerns. Furthermore, the study aimed to explore the cooperation between different agencies implementing the competition law, assess the implications of natural monopolies on competition and some of the existing anticompetitive practices.

Introduction

The performance of the Tanzanian economy has remained strong, recording growth of 6.9 percent in 2012, driven by a high upsurge in manufacturing, agriculture, trade, transport, communications and financial intermediation. Growth was boosted by good weather and a timely supply of subsidised inputs, which supported agricultural production and the normalisation of power generation, which, in turn, buoyed industrial production. Estimates indicate that the economy grew 7.0 percent in 2013, driven by robust performance in agriculture, transport, communications, construction, mining and quarrying, electricity, tourism and financial intermediation. The economy is projected to grow by around seven percent in 2014 and 2015, driven by transport, communications, manufacturing and agriculture and supported by public investment in infrastructure.¹

In general, the economy is driven largely by communications, transport, financial intermediation, construction, agriculture and manufacturing. In the medium term, growth will be supported by the ongoing investments in infrastructure and the projected good weather conditions. Also, these medium-term growth projections are backed by continued investments in the recently discovered natural gas reserves in Tanzania and the expansion in public investments (including the ongoing construction of US\$1.2bn gas pipeline from Mtwara to Dar es Salaam), as well as the related investments aimed at stabilising power generation in the country.²

Methodology

The study is based on extensive desk research. The desk research covered a review of among other things, the legal and institutional framework aimed at fostering competition, including consumer protection and dispute settlement systems. The study further investigated independence of the institutions tasked with fostering competition and protection of consumers (Fair Competition Commission, Tanzania). There has also been an in-depth analysis of national policies that impinge on competition issues. Interviews with key stakeholders representing the government, business community and civil society organisations including consumer groups were carried out. This was followed up with opinion seeking that targeted some key respondents in order to gain information regarding prevailing anti-competitive practices at the micro level and to ascertain the extent to which such practices hurt consumers and/or the economy. A predetermined questionnaire was administered to the respondents

Findings

Independence of Sectoral Authorities, FCC and FCT

Overall, the findings showed that the sectoral authorities, the Fair Competition Commission (FCC) and the Fair Competition Tribunal (FCT) are provided with adequate independence and mechanisms for carrying out their duties which include, defined terms of office without

assurance of reappointment, requirement of the agencies to file regular reports, imposing fiscal controls for the expenditure of agency funds, conducting periodic audits of the agencies and having multiple members rather than a single individual making decisions. Furthermore in place are provisions and enforcement of codes of ethics and conduct, as well as a general law prohibiting various forms of corruption while also providing a means of appealing regulatory and FCC decisions.

The FCC and FTC are overseen by the Ministry of Industry and Trade (MIT). Other regulatory authorities are overseen by the relevant line Ministries. The responsible Minister gives direction in terms of operations and not adjudication of cases. The FTC has no Board of Directors but it does have Members who are not part of the administration rather they sit in the tribunal and adjudicate cases.

Government Policy and Competition (Price Setting and Exemptions)

The findings established that there is considerable influence of marketing boards in the market of most of the commercial crops. These crops include sugar, coffee, cotton, cashew nuts and tobacco. The marketing boards are tasked with regulating, setting the prices and the distribution for major cash crops such as coffee, cotton, cashew nuts and tobacco. They are also legally empowered to fix crop prices through minimum price-setting arrangements annually. Sectors which are under a legal monopoly³ (all

established under the Public Corporations (Amendment) Act, 1993 Cap 12 [R. E. 2002]) include: water supply and sewerage services (Dar es Salaam Water and Sewerage Corporation – DAWASCO), electricity (Tanzania Electricity Supply Company Limited – TANESCO) and fixed line telephone system (Tanzania Telecommunications Company – TTCL).

Reasons for Exemptions

There are four categories of exemptions (under the provisions of FCA, 2003) allowed benefits: greater efficiency in production or distribution; greater efficiency in the allocation of resources; technical or economic progress; or protection of the environment.

What Key Stakeholders Feel?

The findings revealed that a sound legal and institutional framework exist and reflect some of the international best practices and standards. However, some amendments are required to the FCA (Fair Competition Act) of 2003 and the institutions tasked with implementing competition issues need financial support this was an observation expressed by key stakeholders from the National Reference Group (NRG) meetings. The view is that some of the organisations that are tasked with protecting consumers lack adequate financial resources and this makes it difficult for them to carry out their mandate.



Sugar cartel blamed for abnormally high prices

Dar es Salaam, July 10, 2014

Consumers want authorities to probe monopolistic tendencies in the sugar supply in the country, which keep prices higher than normal, hurting the low income earners the most. The Executive Director of the Tanzania Consumer Advocacy Society, Bernard Kihyo, said the possibility of a cartel is high because the sugar supply business is controlled by a few powerful, food trading firms.

"There are only five major dealers allowed to purchase sugar in bulk and distribute it to wholesale traders. These dealers, according to allegations, collude to fix prices. Now this issue needs to be probed," he said.

Despite the government efforts to allow duty-free importation of sugar to bridge the supply gap sugar prices keep on increasing. Retail sugar prices in the major urban centres in the country currently range between Sh1,800 and Sh2,000 and could reach Sh2,500 per kilo in remote areas. Wholesale prices range between Sh85,000 and Sh90,000 for a 50kg bag.

Consumers say this is still too high and should have had a bigger difference margin than that of Sh2,000 for retail and Sh5,000 for wholesale had the prices been free-float. The FCC also agrees that a cartel in sugar business in the country is a possibility but it cannot intervene.

Source: Tanzania Consumer Advocacy Society

(<http://tanzaniaconsumer.blogspot.in/2014/07/sugar-cartel-blamed-for-abnormally-high.html>)

It was also discovered that there is a perception of 'price fixing' prevailing in some industries like cement, beer, construction industries, soft drinks and sugar industries.

Consumer awareness is quite low on competition matters. The FCC, FCT and regulatory authorities have independence from the Executive to a certain extent. While in theory the law is clear in the mandate given to different agencies, the reality in implementation is different. The perception of industry and civil society is that while the different agencies might consult each other, in actual fact when it comes to implementation, cooperation does not exist as agencies are engaged in turf wars.

followed by 28 percent who said there is moderate degree of competition with the same 28 percent saying there is high degree of competition with only 8 percent saying there is no competition (see Figure 1).

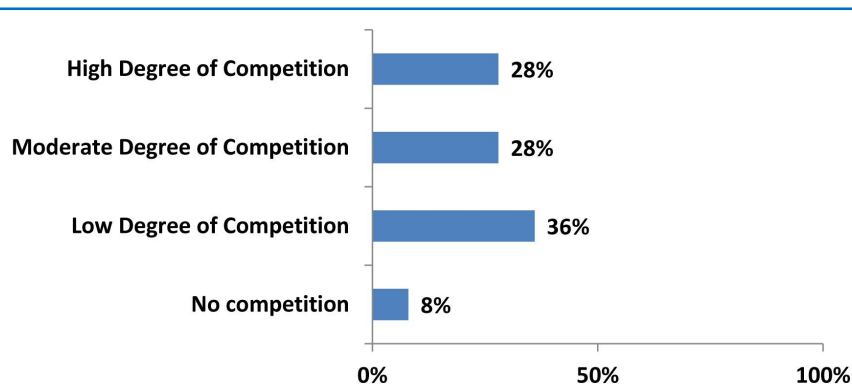
Reasons given by respondents that there is high degree of competition is because of the presence of several businesses/players in different areas and these businesses are flourishing in every corner of the country, with entry and exit controlled by market forces of demand and supply giving consumers a wide range of choices on goods and services such as telecommunication and commuter services in urban areas.

Survey Findings

Identification of Cross-Sectional (Business, Consumers and Government) Perceptions on Competition

A perception survey was conducted aimed at business, civil society and consumers through questionnaires on anticompetitive practices, degree of competition and its level of impact in the country, etc. 36 percent of respondents (n=25) felt that there is low degree of competition in the country

Figure 1: State of Competition and Anticompetitive Practices



Question: Broadly speaking, what is your assessment of the level of competition (in terms of access, price, choice and quality) among companies in Tanzania?

Of the 28 percent who answered there is moderate competition, shared views of the first group but were concerned about the existence of state monopolies on essentials such as electricity and water supply. Of those who answered there is no competition were only concerned about the state monopolies and were of the opinion that it seemed that

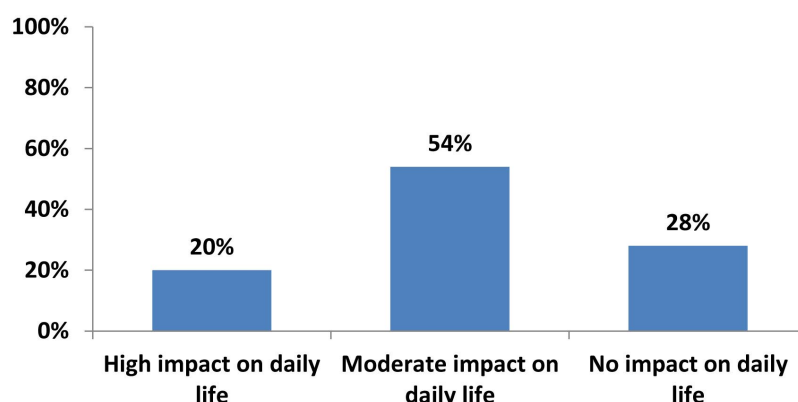
competition issues were not paid sufficient attention by the government.

About 20 percent of respondents (n=25) felt that the degree of competition and the impact on their daily lives are high, and more than half of the respondents 54 percent (n=25) were of the opinion that the degree of competition and the impact on their daily lives are moderate; while 28 percent were of the opinion there was no impact on their lives (see Figure 2).

Reasons given by those in the high category said there are low prices and better services on most of consumers' goods in the market including clothes, household goods, electronics, etc. On the negative side, the opinion was that there is no government body that is monitoring anticompetitive practices in the country and their harmful impacts on consumers and the economy as a whole.

Respondents were asked how frequent anticompetitive practices occur in the country.

Figure 2: Degree of Competition and its Impact on Consumers



Question: To what extent do you think that the level of competition (in terms of access, price, choice and quality) in Project country has an impact on the daily lives of consumers?

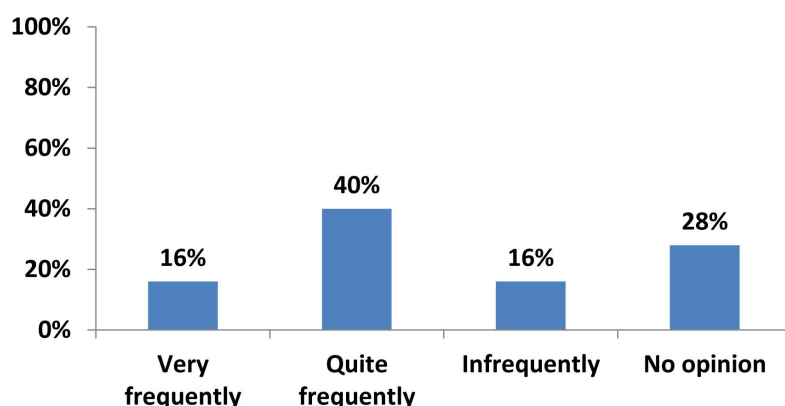
16 percent of respondents said anticompetitive practices happen very frequently, while 40 percent said it happens quite frequently, another 16 percent saying the practices appear infrequently and 28 percent having no opinion at all (see Figure 3).

Reasons given for those who responded 'very and quite frequently' that anticompetitive practices happen are almost the same, respondents saying that the existence of State Monopolies in power and water supplies harm consumers as they have no other alternative to obtain these two essential services. These monopolies use their powers to increase prices, causing untold suffering to poor consumers. The business people answered infrequently their answers partially based on the above, adding that the market is full of several players in almost every sector. May be the business people have other option such as buying of generators, etc. and as

such do not consider that there is no competition in electricity, etc. sectors.

When asked about the most common types of anticompetitive practices in the country, price fixing at 48 percent was top of the list, followed by tied selling at 44 percent, entry barrier 28 percent, market sharing 16 percent and any other 16 percent (see Figure 4). The respondents were asked why they chose for example price fixing and the answer was that there are cartels on

Figure 3: Anticompetitive Practices in the Country



Question: In your opinion, how often are anti-competitive practices encountered in the country?

cooking gas, petrol and sugar. The respondents also said there is tied selling on sim-card, the moment one is sold or given one for free; then there are requirements to buy airtime and internet bundle, majority of them do not use internet and even their phones do not support internet services but they are automatically forced to buy such services.

Those that answered there are entry barriers, cited the example of the pharmaceutical sector. They believe this sector is very restrictive and as a result, very few businesses are allowed to import essential medicines and those allowed make super profits because of market dominance on importation of essential drugs which makes medicines very expensive in the market.

Recommendations

Although steps have been taken towards the promotion of competition through the adoption of market reforms and enactment of competition laws, there is need for efforts to raise the awareness of consumers on competition matters. The private sector in Tanzania is still in its early stages of development and therefore, efforts must be made to make the private sector an ally in promoting fair markets. Ideally, the capacity of private sector and civil society organisations need to be built such that they play a significant role in advocating for competition and consumer protection issues in the country.

It goes without saying that the lack of competition is an obstacle to economic growth. There are three economic objectives of an effective competition regime: (i) increase efficiency in production, distribution and supply; (ii) to promote innovation; and (iii) maximise the efficient allocation of resources. Removing obstacles to competition will promote these three economic objectives helping sustain the growth trajectory in the country's economy.

The FCT is the country's competition and regulatory appeal body established by law. Therefore, it needs full support of



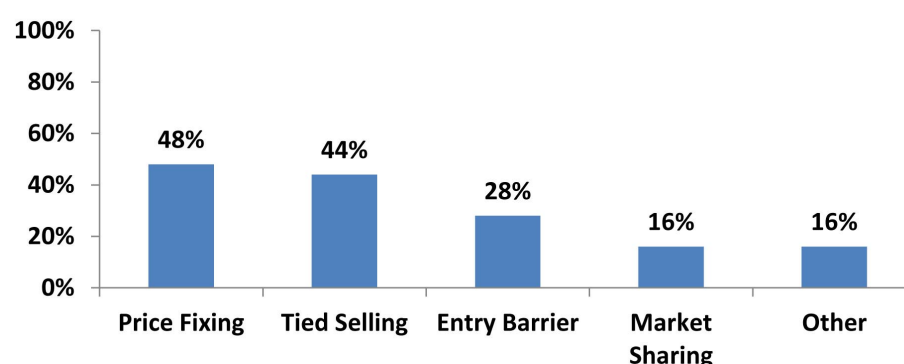
all stakeholders (including the government) so that it can fulfill its responsibilities fairly and efficiently within the context of the country's determination to create an independent and vibrant regulatory regime. It is imperative to ensure that the FCT is financially empowered so that it can conduct its business fairly and effectively in line with the country's socio-economic development efforts.

Conclusion

Going forward, it is suggested that it is important for East African Community (EAC) Member States to complement and learn from each other.

The main findings of the study are enumerated:

Figure 4: Most Common Types of Anticompetitive Practices in the Country



Question: What are the most frequent anticompetitive practices in Tanzania?



- Tanzania has put in place a sound legal and institutional framework for the implementation and development of its competition regime using some of the international best practices and standards
- Certain government policies and practices seem to be promoting anticompetitive outcomes especially in key sectors that affect the ordinary consumers. Deeper investigation and analysis is required in these sectors
- Some of the existing challenges include: (i) lack of awareness of consumers and civil society about benefits of a functional competition regime and this is a challenge that needs to be addressed by both the government and CSOs; (ii) alleged existence of anticompetitive behaviour in the cement, sugar, pharmaceuticals and soft drinks sectors which are not taken any actions on, by the FCC.
- State and non-state organisations tasked with protecting consumers interests lack adequate financial resources and support – thereby making it difficult for them to carry out their mandate.

Endnotes

- 1 Prosper Charles, Rogers Dhlwayo, Josef Loening, 'Tanzania 2014': [www.africaneconomicoutlook.org](http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Tanzanie_EN.pdf), (http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Tanzanie_EN.pdf)
- 2 *Ibid*
- 3 A company that is operating as a monopoly under a government mandate. A legal monopoly offers a specific product or service at a regulated price and can either be independently run and government regulated, or government run and regulated.

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