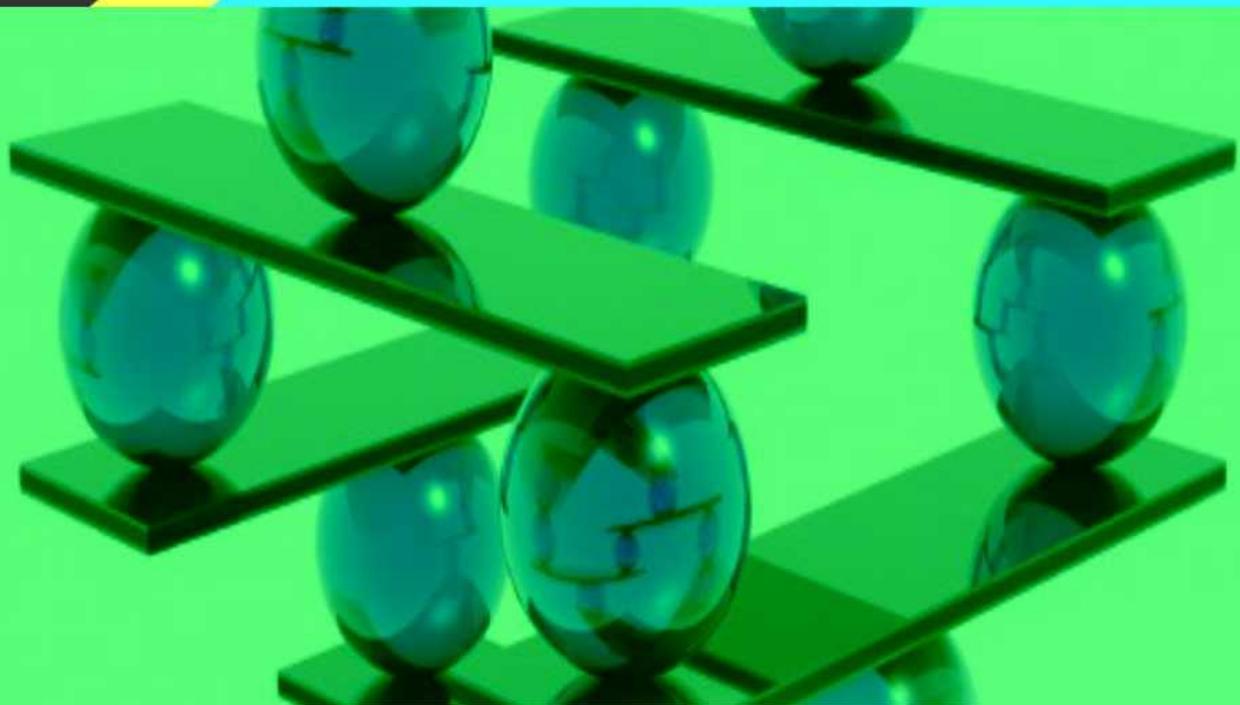


The State of Play of Competition Policy and Law Reforms *The Case of Tanzania*



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The Case of Tanzania

Published by



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With the support of



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First Published: February 2015

This report has been produced under a project entitled, 'Accelerating Implementation of EAC Competition Policy and Law' supported by Trade Mark East Africa (TMEA), and implemented by CUTS Nairobi. However, the views expressed in this report are those of the authors and do not necessarily reflect the position of CUTS or TMEA. Accordingly, any views and comments on the report may be addressed to the authors.

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Abbreviations

ACP	African, Caribbean and Pacific States
AGOA	African Growth and Opportunity Act
ASDS	Agricultural Sector Development Strategy
ASLM	Agriculture Sector Lead Ministries
AU	African Union
CEF	Common External Tariffs
CSO	Civil Society Organisations
CTI	Confederation of Tanzania Industries
DTIS	Diagnostic Trade Integration Studies
EAC	East African Community
EACOMP	East African Community Competition EBA Everything but Arms
EU	European Union
EWURA	Energy and Water Utilities
EPZ	Export Processing Zones
FCA	Fair Competition Act
FCC	Fair Competition Commission
FCT	Fair Competition Tribunal
FDI	Foreign Direct Investment
GVC	Global Value Chains
HIPC	Highly Indebted Poor Countries
IFIs	International Financial Institutions
IPR	Intellectual Property Rights
IMF	International Monetary Fund
LDC	Least Developed Countries
LGA	Local Government Areas
MAFC	Ministry of Agriculture, Food Security and Cooperatives
MDGs	Millennium Development Goals
MPIP	Medium-term Public Investment Plan
MVA	Manufacturing Value Added
NAIVS	Government's National Agricultural Input Voucher Scheme
NFRA	National Food Reserve Agency
NSGRP	National Strategy for Growth and Reduction of Poverty

ODA	Official Development Assistance
PE	Procuring Entity
PPP	Public Private Partnership
PPCU	PPP Co-ordination Unit
PPFU	PPP Finance Unit
PRSP	Poverty Reduction Strategy Papers
PADEP	Participatory Agricultural Development and Empowerment Project
RTA	Regional Trading Arrangements
SADC	South African Development Community
SEZ	Special Economic Zones
SME	Small and Medium Enterprises
SIDP	Sustainable Industrial Development Policy
REPOA	Research on Poverty Alleviation
SAGCOT	Southern Agricultural Growth Corridor
SUMATRA	Surface and Marine Transport Regulatory Authority
TBS	Tanzania Bureau of Standards
TDV	Tanzania Development Vision
TCAA	Tanzania Civil Aviation Authority
TCCIA	Tanzanian Chamber of Commerce, Industry and Agriculture
TFDA	Tanzania, Food, Drug and Cosmetics Authority
TIC	Tanzania Investment Centre
TPSF	Tanzania Private Sector Foundation
TTIS	Tanzania Trade Integration Strategy
UNCTAD	United Nations Conference and Trade and Development
URT	United Republic of Tanzania
EPZA	Export Processing Zones Authority
TANROADS	Tanzania's National Roads Agency
TBS	Tanzania Bureau of Standards
TCRA	Tanzania Communications Regulatory Authority
WB	World Bank
WHO	World Health Organisation
WTO	World Trade Organisation

Executive Summary

This study is a part of the project "Accelerating the Implementation of EAC Competition Policy and Law (EACOMP) and is an outcome of a study carried out by Research on Poverty Alleviation (REPOA) on Tanzania Competition Law and Policy".

The purpose of the study is to assess Competition Law and Policy in Tanzania, and look *inter alia*, at 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. Further, the study also aims to explore the cooperation between different agencies implementing Competition Law and Policy, assess the implications of natural monopolies on Competition and some of the existing anti-competitive practices.

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

The main findings of the study is that Tanzania has put in place a sound legal and institutional framework for the implementation and development of Competition Law and Policy; which contains some of the international best practices and standards. However, there are a number of challenges that were observed though including but not limited to: lack of awareness on the part of some of the consumers and this is a challenge that needs to be addressed by both the government and institutions that are tasked with implementing Competition Law and Policy. Another challenge detected is the perception by some of the consumers of anti-competitive behaviour in cement, sugar, pharmaceuticals and soft drinks sectors. Finally, another challenge observed is that some of the organisations that are concerned with protecting the consumers lack adequate financial resources and thus making difficult for them to carry out their mandate.

1. Characteristics of the Macro-economy

Geographical location, population and other characteristics

The United Republic of Tanzania's outstanding characteristics comprise its large size (945000 sq km), low population density and vast agro-ecological diversity. Tanzania is the largest nation in East Africa, with a population of approximately 44.928,93million, according to the population and housing census of Tanzania. Moreover, it is the 11th largest and the 6th most populated country in Africa. The State is a United Republic, formed by the 1964 union of Tanganyika and Zanzibar. Moreover, the legal system is based on English common law, the 1977 union and 1985 Zanzibar constitutions, as amended. Tanzania lies on the East Coast of Africa and has a common border with eight countries. The capital city is Dodoma but Dar-as-salaam is the main port, the dominant industrial centre, place of government's focus and commercial endeavours. Tanzania is a member of East African Community (EAC) and also a member of South African Development Community (SADC). It is also a founding member of the World Trade Organisation (WTO).

With a current Gross Domestic Product (GDP) of US\$23.7bn and per capita income of US\$570 (World Bank, 2014), Tanzania remains one of the world's poorest economies. Despite the indicated strong economic performance of about 6 to 7 percent in the previous decade, Tanzania's growth is not sufficiently broad-based and poverty levels presently remain high. According to the recent household budget survey results, 28.2 percent of the Tanzanians are poor, and the poverty incidence is higher in rural areas (33.0 percent) than in urban areas (21.7 percent). The high-level of growth has not translated into rapid poverty reduction. This is partly because the agriculture sector, which employs about three quarters of the workforce, contributes only about a quarter of the GDP, while growing at less than 5 percent annually. Therefore, the key to achieve broad-based growth lies in the transformation of the rural economy largely through significant improvements in agricultural productivity and with an increased employment generation in the non-agricultural sectors, and youth employment opportunities in urban areas, making growth more inclusive¹.

¹ Prosper Charles, Rogers Dhliwayo, Josef Loening, "Tanzania 2014"
www.africaneconomicoutlook.org, (http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Tanzanie_EN.pdf)

GDP and the economic configuration

The state of the Tanzanian economy has remained strong, recording a growth of 6.9 percent in 2012, driven by a high upsurge in manufacturing, agriculture, trade, transport, communications and financial intermediation. In addition, growth was boosted by favourable weather and a timely supply of subsidised inputs, which supported agricultural production and normalisation of power generation, which in turn buoyed industrial production. Estimates indicate that the economy grew to about 7.0 percent in 2013, having posted a growth of 7.5 percent in the first quarter of 2013 and further to 6.7 percent and 6.5 percent in the second and third quarters of 2013, respectively. In addition, growth in 2013 has been driven by a robust progression in agriculture, transport, communications, construction, mining and excavation, electricity, tourism and financial intermediation. The economy is projected to grow by nearly 7 percent in 2014 and 2015, driven by transport, communications, manufacturing and agriculture and supported by public investment in infrastructure².

In general, the economy is driven largely by communications, transport, financial intermediation, construction, agriculture and manufacturing. In medium term, growth would be supported by 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 aiming at stabilising power generation in the country.³

Tanzania has continued to strengthen its fiscal position by embarking on fiscal consolidation measures throughout 2012/13. Its financial system remains sound and stable, underscoring several years of successful financial sector reforms. In addition, external debt grew to US\$13bn in November 2013, marking an increase of about 23 percent, over US\$10.6bn recorded during the same period, in the previous year. However, despite such an increase in external borrowing, Tanzania's external debt remains sustainable. Substantial exports driven by gold and services receipts account for a combined share of about 44 percent of total exports. It has continued to promote regional integration through tariff reduction. In 2012-13, the Common External Tariff (CET) on electricity was reduced from 10 percent to zero percent. The objective was to reduce the cost of importing electricity into EAC member states. The volume of trade between Tanzania and EAC partners has more than doubled, from US\$520mn in 2008 to about US\$1.2bn in 2012.

Tanzania's participation in Global Value Chains (GVC) remains low, mainly on account of its economic structure. Industry accounts for about 25 percent of GDP, and the most important industrial sub-sectors are manufacturing, whose share in GDP is around 10 percent,

² *Ibid.*

³ *Ibid.*

and construction, with a share of about 7.3 percent in GDP. Tanzania continues to enjoy strong export growth and diversification from traditional markets and products, but it remains significantly reliant on primary commodity exports. However, manufacturing exports have grown significantly, over the past decade and have been diversified. Tanzania remains a major Foreign Direct Investment (FDI) destination, with mostly greenfield investments in the extractive and tourism sectors. Moreover, its potential to integrate into GVCs lies in the successful exploitation of trade linkages with regional trading partners, as well as careful exploration of natural resources, including minerals and natural gas and to ensure economic spinoffs and employment generation⁴.

Recent developments and prospects

Growth of the agriculture sector is estimated at 4.3 percent in 2013, driven by increased production of the major food crops, including maize, paddy, millet/sorghum and cassava. Good rainfall, together with the government's provision of subsidised farm inputs and implements have continued to support agricultural performance, but the sector still remains heavily dependent on the weather and is poorly mechanised. It is estimated that only about a fifth of the area with high irrigation potential is currently under irrigation. The growth of the agriculture sector continues to be constrained by existing infrastructure gaps, including poor road transport – especially in rural areas – lack of storage facilities. Strong performance of the communications and trade sub-sectors resulted from increased use of mobile phone services, the start-up of new trade services and an increase in the trade of domestically manufactured and imported goods. Strong performance of the mining sector (estimated growth of 7 percent in 2013) resulted from increased production in gold and tanzanite.

Moreover, financial intermediation continued to perform strongly, growing at about 11 percent in 2013. Increased levels of deposits and lending by commercial banks as well as the services provided by insurance companies all drove this growth. Tanzania has licensed 16 international energy companies to search for oil and gas. Based on discoveries, recoverable natural gas resources are currently estimated to exceed 43tn cubic feet. As oil and gas exploration activities continue to attract foreign investments, it is projected that net FDI to Tanzania could increase from about 6.3 percent of GDP in 2013 to 7.0 percent of GDP in 2014. Apart from these investment prospects, regional integration initiatives would also continue to contribute positively to growth through increased exports of manufactured goods and an increase in transport services in the region⁵.

⁴ *Ibid.*

⁵ *Ibid.*

Table 1: GDP in Various Sectors (in percentage)

	2008	2012
Agriculture, hunting, forestry & fishing	29.7	28.7
Fishing	1.3	1.6
Mining	3.7	3.8
Manufacturing	8.6	9.2
Electricity, gas and water	2.3	2.4
Construction	8.5	8.9
Wholesale and retail trade, hotels and restaurants	15.7	16.0
Hotels and restaurants	2.9	2.5
Transport, storage and communication	7.3	8.3
Finance, real estate and business services	11.2	10.1
Public administration, education, health and social work, community, social and personal services	9.0	8.6
Other services	3.8	4.0
GDP at basic prices / factor cost	100.0	100.0

Source: Data from domestic authorities⁶

Participation in international trade and regional integration agreements

Tanzania is a member of several international trade agreements as well as African regional trade and integration agreements. Its trade policy measures are notified by its commitments, under these agreements and the on-going negotiations, under several fora. As already mentioned Tanzania is a founding member of the (WTO) World Trade Organisation and has often led the Least Developed Countries (LDC) Group in the WTO discussions and negotiations. Tanzania was a beneficiary of the non-reciprocal preferences, under the Lomé and then Cotonou Agreements as an African, Caribbean and Pacific States (ACP) country. It has initiated an interim EPA agreement with the European Union (EU) and is part of the ongoing EPA negotiations between the EU and the EAC, as a bloc.

Tanzania is a beneficiary of trade preferences granted to the Least Developed Countries (LDCs) by developed and some developing countries. The most important preferential trade benefits accrue, under the Everything but Arms (EBA) initiative and the African Growth and Opportunity Act (AGOA), in the EU and the US markets respectively. Tanzania is an active member of the African Union (AU), and hence, committed to the goal of continent-wide, comprehensive African integration. It is a founding member of EAC and SADC. The EAC Secretariat and Parliament are housed in Arusha, Tanzania, demonstrating Tanzanian commitment to the goals of EAC regional integration agenda.

⁶ Taken from Dhiliwayo, *et al* Footnote 1.

2. Government Policy Impinging on Competition

Development strategy of Tanzania

The first development strategy followed soon after independence adopted a mixed economy in which private investment was encouraged, including the FDI. The disappointing shortfall in FDI inflows, coupled with political economic concerns in the five years after independence when the economy was still largely in the hands of foreigners and Tanzanians of alien origin, led to changes in the development strategy with a view to facilitate broader ownership of the major means of production and distribution. These concerns precipitated the Arusha Declaration of 1967 whereby Tanzania adopted the policy of socialism and self-reliance. This policy adopted nationalisation as a way of putting the major means of production and distribution into the hands of the majority and, at the same time, the government adopted a development strategy, which emphasised investment in human development consistent with a basic needs approach⁷.

The second policy option emerged as a result of the economic crisis of the late 1970s and early 1980s whereby Tanzania embarked on an economic recovery programme, under the International Monetary Fund (IMF), and the World Bank (WB) sponsored Structural Adjustment Programmes in 1986. Under the Economic Recovery Programme (1986-89), Tanzania adopted stabilisation measures, macro-economic policy reforms and reforms in trade and the exchange rate regime. The outcome of these reforms was that access to additional external support was enhanced and the decline of the economy was halted with output growth recovering to about 4 percent per annum. Towards the end of the 1980s, the economic recovery process began to address concerns about poverty reduction as a result of the social dimensions of structural adjustment in the late 1980s. The formulation of the Economic and Social Action Programme (1989-92) was partly an attempt to take on board the social dimensions of adjustment. The social dimension, however, was introduced as an 'add on' rather than being integrated in the policy-making process. The fact that poverty is multi-dimensional and cross-cutting was not appreciated at that time⁸.

Need for institutional reforms

In general, the shift in management of the economy towards market orientation and private sector development eased the otherwise tight control system and generated initial growth accordingly. However, the growth recovery could not be sustained as it soon came up against infrastructural bottlenecks and an institutional framework that was inappropriate for a market economy and private sector development and, therefore, need for institutional reforms was realised.

⁷ Wangwe, *et al*, footnote 10.

⁸ *Ibid*.

By the mid-1990s, it became apparent that the adjustment and stabilisation measures had resulted in erosion in the previous gains in social development in the country. Tanzania started to address poverty, as a major policy concern. These initiatives coincided with the WB's introduction of the Comprehensive Development Framework, which essentially recognised that development had to be pursued in a comprehensive manner, taking into account economic as well as social and political processes. It is, in this context that the international financial institutions (IFI) came up with the concept of Poverty Reduction Strategy Papers (PRSP) bound to Highly Indebted Poor Countries (HIPC) debt relief funds.

The Tanzania Government responded promptly to the demand to prepare a PRSP in order to gain access to the HIPC debt relief resources. The PRSP approach brought poverty reduction policy in line with the fiscal framework, promoted a more participatory approach to public policy-making and helped the Government to adopt a policy of eliminating primary school fees. The PRSP process also made the availability of resources for poverty reduction more predictable and, in general, there have been significant improvements in public expenditure management. Moreover, the poverty reduction strategy has been subjected to reviews annually, since 2000, giving room for improvements as many lessons were learned in the process of implementation.

National strategy for growth and reduction of poverty

Drawing lessons from the experience with PRSP, the preparation of the revised PRS known as the National Strategy for Growth and Reduction of Poverty (from the end of 2003) made at least three major deviations from the earlier PRSP. First, the coverage was expanded to include growth concerns along with two other clusters: (1) human development and social well-being and (2) governance. The broadened coverage of PRSP warranted the change of name of the document to the National Strategy for Growth and Reduction of Poverty (NSGRP). Second, the consultative process was extended and strengthened in the sense that more time was given for consultations and all regions in the country managed to hold consultations. Third, the strategy was based on the outcomes and results rather than on identifying a few priority sectors as the priority of a sector is not as important as the contribution a sector makes to growth and poverty reduction⁹.

Development vision of Tanzania

Currently, Tanzania has two development visions: Vision 2025 (URT 1997) for mainland Tanzania and Vision 2020 for Zanzibar (RGZ 2000). The Tanzania Development Vision (TDV) is the umbrella policy framework that outlines the long-term social and economic development aspirations for enhancing quality of life, governance, the rule of law and transforming the economy to a middle income country by the years 2025 and 2020 respectively. The visions' long-term developmental perspectives are aligned with medium

⁹ *Ibid.*

terms strategies, such as MKUKUTA/MKUZA and global commitments like as the Millennium Development Goals (MDGs).

During the implementation of MKUKUTA I (2005-2010) and MKUZA (2006-2010), various challenges have surfaced, such as low production and productivity of economic sectors, inadequate linkage of agriculture and drivers of growth, such as manufacturing, tourism and trade, low productivity of labour, poor economic infrastructure, such as ports, feeder roads, railways, markets, information, storage, transport, and poor availability and accessibility of investment capital. In addition, the agricultural sector has been hampered with weak value addition chains, which reduce the competitiveness of local products and access to both domestic and export markets. Major identified shortcomings of MKUKUTA I were the insufficient prioritisation of key economic sectors, inadequate attention given to establishing Public Private Partnerships (PPP) and ensuring that the policy reform processes were comprehensive and complete.

MKUKUTA II (2010-2015) comprises three key pillars: growth, well-being and good governance. Growth (pillar one) of MKUKUTA II aims to improve rural based agricultural production, under the KILIMO KWANZA (Agriculture First) initiative to be discussed later. Another area is investment in business infrastructure by utilising the existing business resources and opportunities to create a more competitive economy. In addition, the Government intends to expand and strengthen industries, to create sustainable enterprises and provide a supportive environment.

Well-being (pillar two) focusses on sustaining the MKUKUTA I achievements in social services, such as education, health and water through expanded infrastructure and the provision of additional human and financial resources. Good governance (pillar three) focusses on financial management, property rights and the improvement of economic strategic management.

The Vision 2025 postulates that, by 2025, Tanzania should eradicate abject poverty and attain a level of development equivalent to that of a middle-income country. The vision envisages transforming the economy into a strong and diversified economy that is regional and globally competitive. The National Strategy for Growth and Reduction of Poverty (NGRP) or MKUKUTA, 2005-2010) is a medium term framework for implementing vision 2025. The strategy is output oriented providing more emphasis on the development of economic productive sectors and the private sector, in particular the agriculture and small and medium enterprises (SME) sectors, in order to accelerate economic growth (GDP growth target of 6-8 percent per annum).

NGRP mainly works on the below given three clusters:

Cluster 1: Growth and poverty-reduction

Cluster 2: Improved quality of life and social well-being and

Cluster 3: Governance and accountability.

Since 2011, MKUKUTA, has been complemented by the National Five Year Development Plan (FYDP 2011/12-2015/16), the first of series of three five-year plans attempts to address MKUKUTA implementation challenges. In addition, as part of the Tanzania Government's effort to transform the country from low to middle-income economy, Tanzania has adopted the Malaysian Model of Development; The Big Fast Results Initiative (BRN) in its own development outlook to be implemented in the beginning of 2013-2014 financial year. A comprehensive system of implementation will focus on six sectors of the economy:

1. Energy and natural gas
2. Agriculture
3. Water
4. Education
5. Transport
6. Mobilisation of resources

The BRN approach involves the establishment of delivery laboratories in the six selected priority areas with each generating results frameworks. The approach focusses on prioritisation, monitoring and accountability in terms of functioning.

Liberalised market economy and expansion of financial sector

To conclude, Tanzania has achieved overall a high growth and has turned into a liberalised market economy, though the Government retains a presence in sectors, such as telecommunications, banking, energy, and mining. As already mentioned, the economy depends largely on agriculture, which accounts for more than one-quarter of the GDP, provides 85 percent of exports, and employs about 80 percent of the work force. Recent banking reforms have helped increase private-sector growth and investment, and the government has raised expenditure on agriculture to 7 percent of its budget.

Further, the financial sector in Tanzania has expanded in recent years and foreign-owned banks account for about 48 percent of the banking industry's total assets. Competition among foreign commercial banks has resulted in significant improvements in the efficiency and quality of financial services, though interest rates are still relatively high, reflecting high risk of deception. All land in Tanzania is owned by the Government, which can lease land for up to 99 years. Proposed reforms to allow for land ownership, particularly foreign land ownership, remain unpopular. Continued donor assistance and solid macro-economic policies supported a positive growth rate, despite the world recession.

Table 2: Planned Sectoral Contributions to Medium and Long-term GDP

Sector-wise % of GDP	Baseline Current status Targets				
	Baseline	Current status	Targets	Targets	Targets
Agriculture	50.0	28.0	24.0	21.0	18.0
Industry	10.0	12.0	16.0	19.0	22.0
Manufacture	8.0	10.0	14.0	15.0	17.0
Services	45.0	48.0	46.0	45.0	43.0
Employment in agriculture (% of Total)	74.6	74.6	65.0	55.0	41.2
Agriculture	50.0	28.0	24.0	21.0	18.0

Source: Government of the URT, 2011b.

Trade policy

The process of trade mainstreaming has evolved into distinct trade policy regimes, since Tanzania attained independence in 1961. These trade policy regimes and the accompanying institutions have been influenced by the extent to which the general economic policies that were followed were outward looking or inward-looking. Inward looking policy regimes primarily focussed on administrative controls and regulations and through extension, trade controls while outward-looking policies were more associated with facilitation of the workings of a market economy and these were associated with trade liberalisation¹⁰.

Tanzania's trade policy has thus evolved and been shaped by changes in its socio-economic regime and political philosophy, over the past four decades. The first five to six years after independence were essentially a continuation of the private-sector-led mixed market economy and the trade policies that were pursued were fairly liberal. The post-independence trade regime mirrored the relationships inherited from the colonial regime, whereby trade flows and relations rested on continued increased production of agricultural commodities and raw materials for export, largely in unprocessed form. Domestic trade relations reflected the predominance of a subsistence economy in which policies and laws encouraged commercial activity based on export commodities and the discouragement of commercialisation of the production of food-crops. The export-import trade was dominated by foreigners and Tanzanians of Asian origin, which means that the major means of production and trade in the economy were in alien or foreign hands¹¹.

This phenomenon posed a politico-economic challenge, which was to be addressed through the formation of cooperatives to handle crop marketing in selected areas and through nationalisation in 1967. As already mentioned, in 1967 the Arusha Declaration was introduced with a policy orientation towards promoting public ownership and of commanding

¹⁰ Prof.Samuel M. Wage & and Godwill G. Wanga, The Process of Trade Mainstreaming into national Development Strategies in Tanzania, <http://www.uneca.org/sites/default/files/publications/50.pdf>

¹¹ *Ibid.*

heights of the economy covering production and distribution. In terms of trade policy, it can be pointed out that the import trade was controlled following the logic of inward looking state-led import substitution and industrialisation. Large-scale domestic and foreign trade was controlled through the policy of confinement (whereby trade of key products was placed, under the monopoly of state trading companies).

The policy of confinement continued to be implemented through the mid-1980s placing domestic and foreign trade, under public sector control and management. Eventually, direct Government intervention in all operational aspects and the common use of instruments, such as administrative resources allocation, price controls, import quotas, rationing and use of permits to control the internal movement of goods and services became the primary policy tools. As the economic crisis deepened with production stagnating or declining the shortages of goods to be traded became more acute in the early 1980s.

The Government policy response was more intensified including control of trade and greater confinement. These developments culminated in the emergence of parallel markets in the financial and goods markets, with a larger proportion of transactions taking place in unofficial channels leading to worsening of balance of payments, position, shortages of goods and widening fiscal deficits. By mid-80s the prevalence of managing a situation of increasing shortages made it apparent that there was need to make a major policy shift. The change in policy started with partial trade liberalisation, which was introduced in 1984, targeting initially a few selected products but later extended to cover more product categories.

With the adoption of the Economic Recovery Programme, under the structural adjustment programmes, (1986-1989), trade liberalisation policies was practically generalised and formalised. This new policy change was characterised by the extension of the liberalisation of internal as well as foreign trade in keeping with the policy of economic liberalisation. The trade liberalisation policy regime was complemented by a set of policies, which were essentially designed to achieve macro-economic stability and to 'get the prices right' (freeing prices of goods, capital and foreign exchange). Trade liberalisation at national-level was consistent with the efforts, which were being made to formalise the liberalisation of trade at the global level. The coming into force of the WTO and the deepening process of globalisation provided the impetus for trade liberalisation at the global level. As from the 1990s, reforms entered the second generation whereby the major concern was institutional reforms and evolution of efforts to integrate trade issues into broader development concerns¹².

By the 1990s, it was increasingly becoming clear that the institutions that existed had essentially been better suited to function in an earlier regime of a centrally controlled economy rather than in the market-oriented system. Moreover, the legacy of the past

¹² *Ibid.*

continued to hamper the functioning of trade-related and other institutions in the new policy and trade regime. The inappropriateness of the existing institutions coupled with developments at the global-level necessitated a fresh spurt of institutional reform. It was becoming imperative to build a competitive market economy to withstand competitive pressures in the domestic market.

Participation in Regional Trading Arrangements (RTAs) and in the Multilateral Trading System (MTS) had to be enhanced. It is against this background that Tanzania's trade policy concerns from the late 1990s to date actually go beyond the traditional focus on tariffs, quantitative restrictions or changes in relative prices, to embrace deeper transformational and production issues. The concerns that were underpinned by broadened participatory development and modernised rules on increased international competitiveness that have gained ground. These concerns were the driving force behind the current National Trade Policy whose formulation was finalised in 2003.

The trade policy concerns began to address the critical issues facing the Tanzanian economy, such as¹³:

- Consolidating consensus on trade development measures and entrenching a consistent policy shift from a protected and controlled economy towards a competitive market economy
- Highlighting the central role and contribution of the trade function and aligning it with the national development goals as stipulated in Development Vision 2025
- Aligning the national development agenda with regional and international trade obligations and maximising the benefits of participation in regional and international trade arrangements; adopting appropriate transitional measures to provisionally safeguard those areas of domestic industry and economic activity that might be threatened by liberalisation and identifying the sectors to be protected, the rationale and costs of protection, and the maximum duration for protection and
- Addressing the supply-side constraints that inhibit trade expansion and competitiveness as a prerequisite for rapid economic growth, and exploring Official Development Assistance (ODA) options in the trade sector.

Import Products

Major import commodities include agricultural machinery, implements and pesticides, industrial raw materials, machinery and transportation equipment, petroleum and petroleum products, construction materials, consumer goods, textiles and clothing. It must be borne in mind, the list is not exhaustive.

¹³ *Ibid.*

Export Products

The principal export commodities include minerals (gold, gemstones, diamonds, coal etc.), coffee, cotton, cashew nuts, tea, sisal, tobacco, pyrethrum and cloves.

Trading Partners

Tanzania's major trading partners include: China, Germany, Japan, the EU, United Arab Emirates, United Kingdom, Kenya, Japan, India and South Africa. Its major commercial/trading cities include Dar es Salaam, Mwanza, Zanzibar, Arusha, Mbeya, Tanga, Kilimanjaro and Kigoma.

Sustainable Industrial Development Policy (1996-2020)

After decades of macro-economic stability policies, trade liberalisation and regional integration, and despite improvements in the 2000s, the performance of Tanzania's manufacturing sector remains unimpressive. Tanzania lags behind regional role models both in terms of the quantity and quality of industrial goods produced and exported. It continues to rely heavily on an unproductive agricultural sector, the extractive sector and low value-added manufacturing. Further, Manufacturing Value Added (MVA) as a share of GDP has mostly stagnated at roughly 9.5 percent between 2000 and 2010, which is still below the average for the region, making Tanzania one of the least industrialised countries in the world¹⁴.

Manufacturing value added is also highly concentrated in a few low-tech sectors, making Tanzania's industry vulnerable to international competition and limiting its ability to improve through learning and innovation. Food and beverages alone account for nearly half of total manufacturing value added, followed by non-metallic mineral products (11 percent), tobacco (7 percent) and textiles (5 percent). Industrial activity is largely concentrated in Dar es Salaam (more than half of all large manufacturing establishments are located there) and to a lesser extent in Arusha. The remaining 14 percent is spread out between Mwanza, Singida, Tanga, Kagera and Kilimanjaro¹⁵.

Accounting for 91 percent of all manufacturing establishments, privately-owned companies dominate the manufacturing sector. As a consequence of the privatisation process, large public-owned enterprises have seen their numbers dwindle to 56, which corresponds to around 8 percent of all manufacturing enterprises, with the remaining enterprises being mixed. Manufacturing has also failed to create formal employment for Tanzanians, particularly in the SME sector. Manufacturing employment accounts for less than 5 percent of the total labour force, with the largest 40 manufacturing companies employing 36 percent of all manufacturing labour. This is equivalent to the employment generated by 24,000 micro enterprises. What is perhaps more worrying is the fact that only 11 percent of industrial

¹⁴ Tanzania Industrial Competitiveness Report 2012, (2012)http://www.unido.org/fileadmin/user_media/Services/PSD/TanzaniaIndustrialCompetitivenessReport2012-ebook.pdf

¹⁵ *Ibid.*

employment has been generated by firms, which began operations in 2005 or later. Clearly, new investments in manufacturing have not yet resulted in significantly more jobs. This may be attributable to the current focus on capital-intensive, resource-based sectors (e.g. extractive industries) at the expense of traditional labour-intensive manufacturing (e.g. textiles and clothing, etc.). The trajectory of Tanzania's industrial policy can be summarized as¹⁶:

1960-1980.

Following independence, the government invested heavily in Tanzania's manufacturing sector, which was virtually non-existent at the time, allowing the sector to grow smoothly throughout the decade. However, this trend changed dramatically due to a serious economic crisis caused by external shocks and internal constraints during the late 1970's.

1980-1995.

A Comprehensive and wholesale trade liberalisation, a key ingredient of structural adjustment packages, had a negative impact on the incipient manufacturing sector. Infant industries were particularly affected by sudden removal of protective trade measures and subsequent massive import flow. Industrial stagnation was further severely affected by declining agricultural yields and poor product quality. To address the crisis, the Government adopted restrictive measures, but it was only in 1986, after the conversion of the economic system from a planned to a market economy, that the country returned to the path of recovery. While Tanzania's manufacturing sector showed positive signs of revitalisation, it faced international competition (mainly from Asian products), which caused several industries to close down.

1996-2000

During the second half of the 1990's, the government developed 'The Sustainable Industrial Development Policy (SIDP) 1996-2020', the main purpose being to shift the economy's engine of growth from the public to the private sector, making the latter the key player. The idea in the short run was to consolidate the existing national capabilities in the sector, and to build up new capacities in activities with competitive advantages for export markets in the medium term. This phase was characterised by an improved enabling environment, including the provision of fiscal incentives, transparency, a stable and simple regulatory framework and macro-economic stability. As a result, the industrial sector started to grow steadily and achieved a high growth rate in the 2000's.

2000

Since 2000, consistent economic reforms have transformed Tanzania's manufacturing sector. It got on the track of recovery and has experienced gradual but steady growth due to the acquisition of productive facilities by the private sector and the inflow of FDI. However, the country continues to be dependent on agricultural and resource-based products with limited

¹⁶ UNIDO, 2012.

value addition. The relevance of the industrial sector has been reflected in many key government policy documents and initiatives of the last decade.

Some of these main policy initiatives and development strategies include the following:

Small and Medium Enterprise Policy (2003)

The policy is to foster job creation and income generation through promoting the creation of new SMEs and improving the performance and competitiveness of existing ones so as to increase their participation and contribution to the Tanzanian economy. TTIS 2009-2013 will support SMEs with a focus on meeting sanitary and phyto-sanitary measures (SPS), and other technical and Intellectual Property Rights (IPR) standards.

Export Development Strategy (2007)

The Government has developed recently an Export Development Strategy alongside Tanzania Trade Integration Strategy (TTIS) 2009-2013. The strategy confirms the importance of the priority export sectors identified in the Diagnostic Trade Integration Studies (DTIS) 2005. The Export Development Strategy is not supposed to be a stand-alone strategy, but is revised and incorporated, under the TTIS 2009-2013 framework.

Tanzania Mini-Tiger Plan 2020

This plan was introduced in 2005 as an effort to fast-track the implementation of TDV 2025, by replicating the Asian Tigers model in Tanzania. The plan explicitly states that ‘the successful development of the manufacturing sector is the formula that all economically thriving Asian countries followed and it is not an exaggeration to say that the sector’s success holds the key of the nation’s further development’.

The most important contribution of the Mini-Tiger Plan was the introduction of Special Economic Zones in Tanzania (SEZs) and the plan’s focus on export-led manufacturing growth. Unfortunately, the Mini-Tiger Plan failed to attract subsequent attention with the donor community’s shift in focus towards the implementation of the NSGRP/MKUKUTA.

Export Processing Zones Programme

The programme was initiated by the Export Processing Zones (EPZ) Act of 2002, but was formally institutionalised by the creation of the Export Processing Zones Authority (EPZA) in 2006. The objective of establishing EPZs was, among others, the promotion of investment for export-led industrialisation, an increase in foreign exchange earnings, an increase in employment and the promotion of the processing of local raw materials.

Currently, six industrial parks are operational in Tanzania, while EPZA have identified 17 regions for developing EPZ/SEZ in future. However, insufficient funds for the development of infrastructure for EPZ/SEZ remain the main constraint for this programme.

Considering the sheer number of programmes, plans, strategies and initiatives focussing on industrialisation that have been introduced, since 2000, one thing becomes quite clear: over the past decade, industrialisation has received more attention in the national development framework than ever before. However, what matters far more than the ‘priority status’ of industrialisation in policy documents is priority resource allocation and timely, consistent and effective policy implementation.

Unfortunately, the Tanzanian industrial policy framework is found wanting in several of these crucial factors. Some of the successes in industrial performance can certainly be directly attributed to some of the government’s policy interventions described above. For instance, the liberalisation agenda the Government has diligently followed, since the 1990s, has paved the way for major investments in several resource-based sectors. At the same time, there is still considerable room for efficiency gains through policy intervention in the industrial sector¹⁷.

Furthermore, the Tanzanian Industrial Policy framework has experienced several transformational phases over the course of time. The trend has certainly been progressive, with the government undertaking remarkable efforts to support the industrial sector. Though many of these strategic efforts failed to register full impacts due to problems encountered in the implementation stages, there are clear signs that the government has learned from past mistakes. Further, concerted efforts aimed at better implementation of industrial policies and strategies are imperative for realising the industrial transformation envisaged in TDV 2025.

Investment Regime

Tanzania’s legal regime for investment had opened up considerably to foreign investors by the mid-1990s with the passage of the 1996 National Investment Promotion Policy and the 1997 Tanzania Investment Act (TIA). The establishment of the Tanzania Investment Centre (TIC) in 1997 established, under the 1997 Act as a ‘one stop’ office for investors was another stride in building a more efficient framework for the establishment of businesses. TIC provides information concerning land acquisition, taxes, and investment incentives in priority sectors, and spearheads investment promotion and facilitation efforts in the country.

The institutional set-up leading investment policy reform is composed of the National Investment Steering Committee (NISC, established in 2000 under chairmanship of the Prime Minister), and the Tanzania National Business Council (TNBC) set up in 2001 as the highest consultative organ between the private sector and the government. TNBC brings together government representatives and private sector umbrella organisations, such as the Confederation of Tanzania Industries (CTI), the Tanzanian Chamber of Commerce, Industry

¹⁷ UNIDO, 2012.

and Agriculture (TCCIA) and the Tanzania Private Sector Foundation (TPSF). Twelve business councils have also been established at the regional level¹⁸.

The Government roadmap for improving the Investment Climate was launched in 2009 with the stated aim of improving Tanzania's overall Doing Business ranking from a three digit performance to two. The Government has also sought to attract investment into specific sectors, including agriculture with the Kilimo Kwanza (Agriculture First) strategy and the development of the Southern Agricultural Growth Corridor (SAGCOT). The government currently plans to review its Investment Promotion Policy and the Investment Act so as to tackle the remaining challenges, which are manifold¹⁹.

The existing legal framework for investment has played a significant role in enhancing domestic and foreign investment, but could be improved in certain aspects, especially as concerns land tenure, access regulations for foreign investors in some sectors, the award of investment incentives, and protection of intellectual property rights. Access to land for instance remains a challenge for investment in most economic sectors, particularly agriculture. Partly due to these shortcomings in the legal framework for investment, Tanzania's Doing Business performance remains disappointing compared with other SADC and EAC members. Rankings for seven of the ten World Bank Doing Business indicators have worsened between 2009 and 2011, resulting in an overall slip from 125 to 128 out of 183 countries.

Furthermore, to respond to these challenges, a Steering Committee of Permanent Secretaries and eight task forces were created in September 2009, which resulted in the development of a Government Roadmap for Improvement of the Investment Climate. The Roadmap's Action Plan highlights priority issues to be tackled in the short, medium and long-term, and synchronises other complementing business environment. The Roadmap also comprises interventions to upgrade enabling infrastructure, such as a Power Master Plan in the electricity sector and a National Transport Sector Investment Programme. The Medium-term Public Investment Plan (MPIP) developed in 2009, together with considerable budgetary increases for infrastructure development, demonstrates the increasing importance given to improving infrastructure networks.

Public Private Partnership (PPP)

In 2010 and 2011 the Tanzanian Government overhauled the country's legal framework on projects to facilitate and encourage more private sector participation in the provision of public services. Public Private Partnership (PPP) Act No. 18 of 2010 (the Act) that was

¹⁸ OECD, Investment Policy Review: Tanzania 2013, <http://dx.doi.org/10.1787/9789264204348-en>

¹⁹ *Ibid.*

brought into force in 2010 and is the main governing act regarding PPPs in mainland Tanzania.

The PPP Regulations introduced in 2011 give effect to the Act, and regulate the manner in which PPP projects are identified, parties selected and agreements implemented. The Act establishes various public sector entities; each allocated a specific role in the PPP process such as PPP Co-ordination Unit (PPCU) based in the Tanzanian Investment Centre, to promote and co-ordinate all matters relating to PPP projects. The PPP Finance Unit (PPFU) based in the Ministry of Finance, assesses fiscal risk allocation and other financial matters.

Government Procurement

The Public Procurement Act of 2011 covers all procurement of goods, works, and services, as well as disposal of assets by tender, undertaken by all public institutions, non-government entities using public funds, and public-private partnership projects. Public entities include ministries, parastatal organisations, government departments, and local government authorities. Tanzania has a decentralized procurement system, under which each procuring entity (PE) is mandated to carry out its procurement within the approved budget, and has its own procurement management units, evaluation committees, tender boards (responsible for reviewing tender documents and awarding contracts), and accounting officers, who are in charge of all procurement functions.

In order to increase participation of local firms in public procurement, a preferential margin of 15 percent is to be given for goods manufactured or mined in Tanzania, and a margin of up to 10 percent for domestic contractors and service providers.²⁰ Some commentators are of the opinion that the preferential treatment given for local firms would militate against the purist concept of competition. Perhaps, given the developing character of Tanzania, the preferential treatment may stand justified but it will be in the larger interests of Competition that the said preferential treatment in favour of local firms is reviewed, say after 5 or 10 years. However, there are others who believe that the preferential margin is necessary and there is no reason to limit it to a number of years and should be open ended as is in the Act.

Agricultural Sector

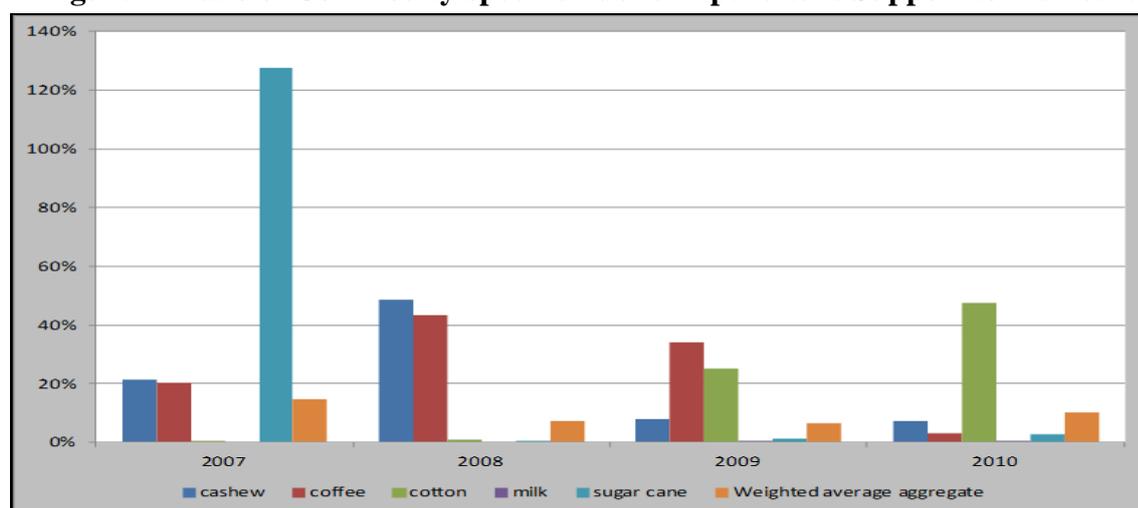
About 75 percent of the population of the United Republic of Tanzania is employed in agriculture, but productivity is among the lowest in Sub-Saharan Africa. Low productivity is mostly due to over-reliance on unpredictable natural precipitation, use of manual labour to work the land, the limited use of improved seed and fertilizer, and low-productivity indigenous animal breeds. Agriculture, which in the past ten years has been growing at the rate of about 4.2 percent annually, makes up a quarter of the United Republic of Tanzania's (URT) Gross National Domestic Product, and about 34 percent of foreign exchange earnings.

²⁰ *Ibid.*

Despite progress made in adopting a more coordinated sectoral approach with initiatives, such as Kilimo Kwanza and the Agricultural Sector Development Strategy (ASDS) (discussed below), agricultural policies in Tanzania are still implemented through a myriad of programmes and projects.

Government decisions on trade, especially those relating to tariffs, are numerous and sometimes contradict other policy objectives. While markets have been liberalised to a great extent, indicative prices persist for several commodities. Indeed, the government intervenes directly through the National Food Reserve Authority. Furthermore, commodity boards play a significant role for specific commodities (mainly export products but also sugar). The agricultural sector is still subject to export taxes, high local taxation, ad hoc interventions, such as tariff waivers and frequent export bans. Moreover, the lack of transport and storage infrastructure impedes market integration and processing plants are largely obsolete²¹.

Figure 1: Ratio of Commodity-specific Public Expenditure Support to Disincentives



Source: Quoted from FAO, 2013.

The ASDS was adopted in 2001 to support the realisation of TDV 2025 and achieve the sectoral policy objectives of MKUKUTA. The strategic objectives of ASDS are to: 1) create an enabling and favourable environment for improving productivity and profitability in the agriculture sector; and 2) increase farm incomes to reduce rural poverty and ensure household food security.

To serve the specified objectives five strategic areas are identified: 1) strengthening the institutional framework for agricultural development; 2) creating a favourable environment for commercial activities; 3) enhancing public-private roles in strengthening supporting services; 4) facilitating marketing efficiency for inputs and outputs; and 5) mainstreaming

²¹ FAO, Review of Food and Agricultural Policies in the United Republic of Tanzania, 2005-2011, Country Report, July 2013.

planning for agricultural development in other sectors. ASDS is the main policy framework for agriculture and is accompanied by a set of sub sectoral policies, including:

- the Cooperative Development Policy, established in 1997 and reviewed in 2002, to create an enabling environment for cooperatives to operate efficiently in the liberalised economy
- the National Livestock Policy of 2006
- the Agricultural Marketing Policy of 2008
- the National Irrigation Policy of 2010
- the National Agricultural Policy of 2011 and
- the Horticultural Development Strategy 2012–2021

ASDS is implemented through the Agricultural Sector Development Programme (ASDP), a sector-wide investment programme launched in 2006. The main objective of ASDP is to increase productivity, profitability and farm incomes by: 1) facilitating farmers' access to and use of agricultural knowledge, technologies, marketing systems and infrastructure; and 2) promoting private sector investment in agriculture, based on an improved regulatory and policy environment.

ASDP has five key operational components: 1) policy, regulatory and institutional arrangements; 2) agricultural services – research, advisory and technical services, and training; 3) public investment; 4) private sector development, market development and agriculture finance; and 5) cross-cutting and cross-sectoral issues, such as gender mainstreaming and implementation of land acts. ASDP is implemented at the national level, accounting for 25 percent of its total funds, and the local level, with 75 percent of its funds distributed by Local Government Areas (LGA). The national-level component is supported by the Agriculture Sector Lead Ministries (ASLM) and focusses on agricultural research and extension services; capacity building for food security and nutrition interventions; irrigation development and national-level infrastructure; policy development and planning; and market development and programme coordination. The local-level component leads activities on agricultural services, primarily public and private agricultural extension and LGA-based research, capacity development and empowerment of farmers' groups, LGAs and the private sector; and investments in local infrastructure and productive activities²².

Moreover, the Ministry of Agriculture, Food Security and Cooperatives (MAFC) has drafted a second ASDP for the period 2013-2020. For agricultural investment, Kilimo Kwanza (Agriculture First) – a public-private plan launched in 2009 by the Tanzania National Business Council – aims to achieve a green revolution and boost private sector participation by increasing concessionary lending to agriculture, empowering agricultural cooperatives, creating commodity exchanges, removing market barriers to agricultural commodities,

²² *Ibid.*

enhancing trade integration, promoting public–private partnerships for investment in agriculture-related infrastructure, agricultural services delivery, improving access to and use of agricultural knowledge and technologies, and accelerating land reform.

Likewise, several programmes are in line with the government’s increased emphasis on food markets and mainstreaming of agriculture-related interventions across ministries. For instance, to boost financial institutional development under Kilimo Kwanza, the Tanzania Agricultural Development Bank was established, and the Tanzania Investment Bank has helped to increase the budgetary allocation for agriculture by promoting concessionary lending to agriculture. Other measures include strengthening the role of the National Food Reserve Agency (NFRA); calling for the maintenance of food stocks for six to 12 months to ensure market stability; discouraging exports of raw materials; government procurement of local products; encouraging local processing; and input subsidies.

In addition, other projects, developed under the ASDP framework are as given below²³:

- the Accelerated Food Security Project (AFSP), supporting the government’s efforts to achieve greater food security by increasing food production and productivity
- the Government’s National Agricultural Input Voucher Scheme (NAIVS), providing input subsidies for seeds and fertilizer
- the Participatory Agricultural Development and Empowerment Project (PADEP), providing grants to communities and farmers’ groups for investment in agricultural development project activities focussing primarily on improving soil fertility and land management, adopting sustainable agricultural technologies and increasing efficiency in inputs and outputs marketing
- the Tanzania Social Action Fund of the President’s Office, supporting the implementation of projects related to food security, education, roads, water, health, training and environment
- the Rural Energy Fund, implemented by the Ministry of Energy and Minerals with investments in rural roads from the Ministry of Works and
- other smaller projects addressing a wide range of agriculture-related areas, such as livestock and fisheries development, mechanisation, development of irrigation infrastructure, development of marketing infrastructure, development of agricultural cooperatives, development of agriculture-related small and medium enterprises, development of rural financial services, facilitation of trade, and improvement of food security and nutrition.

²³ *Ibid.*

3. Competition Law and Policies

Formulation of Competition and Regulatory Framework in Tanzania

The process of initiating Competition Law in Tanzania was quite unusual and sudden. It began by demands from the Members of Parliament in 1993 when the Government was tabling a Bill to repeal the Regulation of Price Act, 1973. During the debate of the Government Bill to repeal the said Act, and in view of the chaos in the market at the time, the Parliamentarians requested the Government to search for means and ways of overseeing the market economy. As such the Government enacted its first Competition Law, the Fair Trade Practices Act in 1994 and set up a department within the Ministry of Trade and Industry to oversee its implementation. It was repealed and replaced by the Fair Competition Act (FCA) of 2003. A significant change within the legal regime that came about with the introduction of the FCA was to separate regulatory functions from those of competition, so that they are supervised by different institutions. The rationale for the formulation of competition and regulatory framework in Tanzania was based on the following government statement:²⁴

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

The purpose of introduction of administrative regulation as already mentioned was because of the chaos that resulted from rapid liberalisation and regulation to be introduced was to oversee the market economy and for the protection of consumers, etc.

Following the quoted statement, the Government presented Bills, which were passed into laws by Parliament as shown below:

1. The Fair Competition Act 2003 (FCA);
2. The Energy and Water Utilities Regulatory Authority Act, 2001 (EWURA);
3. The Surface and Marine Transport Regulatory Act, 2001 (SUMATRA);
4. Tanzania Civil Aviation Regulatory Authority Act, 2003 (TCAA);

²⁴ Allan Mlulla, & Grace Freedom Nicholas, Presentation at the Inception & NRG-I Meeting on ‘Accelerating the Implementation of the EAC Competition Policy and Law’ on August 27, 2013 at Protea Hotel, Courtyard, Dar es Salaam.

5. The Tanzania Communications Regulatory Authority Act, 2003 (TCRA).

The Fair Competition Act (FCA), 2003

In its preamble, the FCA states that the overall objective of the Fair Competition Act (hereafter called ‘the Act’) is to enhance the welfare of the people of Tanzania, as a whole, by promoting and protecting effective competition in markets. This is geared towards bringing about the following effects;

- Increase economic efficiency in production, distribution and supply of goods and services
- Lower prices for consumers and protect them
- Promote innovation and
- Increase the rate of economic growth and maximise efficient allocation of resources

Furthermore, the Act has following two sections;

1. Encouraging competition and
2. Protecting consumers.

The Act applies to all commercial activities and bodies engaged in trade. It has six sections and part I and II are dedicated to core competition issues, such as anti-competitive agreements, abuse of dominant position and merger control. Parts III to IX of the Act include provisions on consumer protection. The Act prohibits anti-competitive agreements (i.e. price fixing; collective boycott by competitors; output restrictions between competitors; and collusive bidding or tendering), abuse of market power (dominant position *per se* is not prohibited), and mergers that create or strengthen a position of dominance in the market. Both in the case of dominant position and mergers, a test of legality (i.e. whether they harm competition) is applied when the market shares of the relevant companies is greater than 35 percent.

Prior notification is required for mergers above certain thresholds, as determined and published by the Fair Competition Commission (FCC). In deciding on the legality of an action, the FCC may take into account any potential benefits arising from it, such as, greater efficiency in production; distribution or the allocation of resources; technical or economic progress; or protection of the environment. If the benefits are deemed greater than the harm to competition, a temporary exemption may be granted to carry out the action. The Act includes many best international practices as shown in Table 3.

Table 3: Fair Competition Act Agreement with the UNCTAD Model Law

Model Law Provision	Provisions in Tanzanian Law
Name of the Law	Section 1
Objectives of the Law	Section 3

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

Changes envisaged, under the Fair Competition Act

After being operational for a number of years, it has been observed that there are a number of amendments that are required to improve the Act²⁵. Some of the amendments proposed include revising the threshold for notification as imposed by the Fair Competition (Threshold for Notification of a Merger) Order, 2006. This Order sets the threshold amount for notifiable mergers at TZS 800mn. The threshold amount is based on the combined annual turnover or assets of the merging parties.

As has been the case in most instances, the majority of entities involved in merger and acquisition activity will usually have a combined turnover or combined assets exceeding the set threshold. Also, given the inflation trends in Tanzania, it is likely that the threshold amount as set was quite substantial in 2006 and this may not necessarily hold true today as the value of the Tanzanian Shilling continues to depreciate. Some of the other proposed changes that are advocated for by United Nations Conference on Trade and Development (UNCTAD) and FCC are as shown below in table 4. It should be pointed out that the FCC proposed amendments have gone to the highest level (cabinet) and approved, The FCC amendments are awaiting ratification by Parliament.

²⁵ *Infra.*

Table 4: Selected Proposed Amendments to the FCA²⁶

Section in FCA	Current Position	Proposed Amendments	Rationale
S.1 (1)	Title This Act may be cited as the Fair Competition Act	To change the name of the Act to read: 'Competition and Consumer Act, 2003'	-Tanzania is the only country using 'Fair' and the intended meaning is not fair trade but trade that is not anti-competitive and is not harmful, etc. The Title of the Act does not reflect the part dealing with the consumer. The FCA is divided into two main parts-the competition and the consumer protection part. It is, therefore, important the consumer part is reflected as well
S. 8(7) and S. 9 (4)	Determination of anti-competitive conduct and whether the conduct was committed intentionally or negligently. For example: S. 8(7) Provides "Any person who intentionally or negligently acts in contravention of this section commits an offence under the Act".	Delete the words intentionally or negligently	It is effect of the conduct that matter but not whether the offence is intentional or negligent
S.9 (1)	Prohibited Agreements and the section provides: "A person shall not make or give effect to an agreement if the object, effect or likely effect of the agreement is": (a) Price-fixing between competitors (b) A collective boycott of competitors (c)Output restrictions between competitors (d) collusive bidding or tendering	Adding sub-section (e) A provision to define 'allocation of markets or customers' and expansion of the list to include customer allocation or market allocation	The provision omits market division, which means to divide a market or region so as to limit or restrain competition. This also limits the rights of others to do business
S.71	Issuance of summons when the Commission seeks information	Rephrase as cooperating companies or individuals should be treated differently	Summons ideally should be issued only upon a person's refusal or inability to voluntarily submit the information

²⁶ The amendments are taken from the report of stakeholders held at PROTEA Hotel Courtyard on 20th April 2011 and UNCTAD Voluntary Peer Review of Competition Law and Policy, 2012.

Section in FCA	Current Position	Proposed Amendments	Rationale
S.10(3)	Enumeration of conduct to be considered abuse of dominant position	To add offences on abuse of dominant position as this is not provided for in the Act	There is need to have clear guidelines for clarity, so that the public are aware what exactly is prohibited and constitutes an offence under the Act and remove any confusion that might arise otherwise. It should be stressed that the dominance <i>per se</i> is not a problem but it is the abuse of the dominant position, which is not allowed
S. 60 (4)	Punishment for a natural person not provided for.	To amend the provision to introduce sanctions against directors, etc. engaged in prohibited behaviour as the section does not provide for natural persons who have committed an offence to be punished and the provision should clearly state the type of punishment	The persons involved etc.in violation of the Act should be individually liable to deter cartel like behavior, etc.

Implementation of Competition Law and Policy

Two bodies that have been set up under the law:

- The FCC and
- The Fair Competition Tribunal (FCT).

Likewise, appointments to these bodies are made by the government, but the bodies are required to act independently when making their decisions. The Commission takes the leading role in administering the law. It is led by five Commissioners, including a Chairman and a Director-General, who directs the Commission’s staff. The law requires that Commissioners should be experienced in industry, commerce, economics, law, public administration or related fields.” The tenure of both members and the director general are specified under Section 63 (7) of the Act. It states that the Chairman and the members of the FCC shall be appointed for the following fixed terms: Chairman for four years; Director General for four years; two members for five years and one member for three years.

Functions of the Commission

Section 65 lists the functions of the Commission. Its roles are divided into two categories: enforcement and advocacy. Enforcement includes investigations into anti-competitive trade practices and advocacy comprises promotion of competition and consumer advocacy. The FCC is entitled to participate in the proceedings of the courts, tribunals, regulatory authorities, government enquiries, commissions, committees and working groups for the purpose of observing proceedings and making representation on matters relevant to its functions.

Achievements in the implementation of competition policy and law

The cases that have been lodged at the FCC and FC are given in table 5

Table 5: Cases and Applications Handled by the FCC 2007-2013²⁷

Cases/ Applications	Action	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	TOTAL
Competition cases	Investigated	4	3	-	3	3	1	14
	Concluded	2		-		2	-	4
	Appealed		2	1	-	-	-	3
Exemption Applications		-	-	1	-	-		1
Mergers and acquisitions	Approved with conditions	-	-	2	-	-	1	3
	Approved without conditions	10	7	2	19	17	21	70
	Prohibited	-	-	-	-	-	2	2
	Referred	1	-	-	-	-	-	1

Mergers and Acquisitions

Since its inception in 2007, the FCC has received a total of seventy six (76) merger applications, seventy (70) were approved without conditions, three (3) were approved with conditions, one (1) was referred to sector regulator for consultations and two (2) were prohibited.

Anti-counterfeiting

The anti-counterfeit functions of the FCC are an important public policy activity and are covered, under the Merchandise Marks Act of 1963. The Director General of FCC was appointed by the Minister to be the Chief Inspector of the Act. The functions of the Chief Inspector are to inspect, seize and destroy goods suspected and proved to be counterfeits. Under Section 2 of the Merchandise Marks Regulation Act 2008, counterfeit is defined as '.....protected goods are imitated in such manner and to such degree that those goods are

²⁷ Millula and Freedom, footnote 24.

identical or substantially similar copies of the protected goods.....”Under Regulation 34, the owner of the goods seized or detained as suspected counterfeit goods may within one month of the notice of detention or seizure, put up a claim in writing for their restoration by the Chief Inspector. Where no claim is made within the period stipulated, the goods shall be forfeited and shall be disposed of as the Chief Inspector may determine. Under Regulation 51, a person dissatisfied with a decision of the Chief Inspector may appeal to the FCT.

There has been criticism that the Merchandise Act and the FCC are concerned largely with goods imported into the country and not goods manufactured or sold locally. The locally produced goods are shielded from foreign competition whenever a local competitor files a complaint²⁸.

According to the current legal framework, consumers cannot submit an application to the Chief Inspector, as they are not owners of Intellectual Property Rights (IPR). According to United Nations Conference and Trade and Development (UNCTAD), this is a clear anomaly, and the law should have provided for consumer complaints where there is reasonable suspicion of harmful counterfeit, such as infant powdered milk²⁹.

Competition Cases

A total of 14 competition cases were handled by the Commission, out of which four have been concluded; six (6) are pending hearing on the dates that will be determined by the Commission; three (3) are appeals and two (2) are still under investigation. The cases range from beer, banking, outdoor advertising, cement, gas, edible oil, milk and cigarette sub-sectors of the economy.

To give a few examples of cases handled by FCC, in one case (Case 2 of 2009) the FCC ordered Tanzania Breweries Limited to pay 5 percent of its turnover as a fine of about Tsh27billion for misusing its market power. Fines have also been meted out against the Tanzania Cigarette Company Limited, which acquired a competitor without prior authorisation of the FCC. Another fine was imposed on East African Breweries Limited for offloading its shares in Tanzania Breweries Limited without the authorisation of the FCC³⁰.

However, it has been suggested that FCC has decided very few Competition cases. Only two cases were concluded in 2007-08 and two more in 2011-12. The Citizens and Consumers would not feel comfortable with this rate of disposal. If the FCC takes quick decisions and effective ones then the consumers will feel motivated to approach FCC.

Turning to the few cases on consumer protection, in the case of Ministry of industry and Trade vs Bonite Bottlers Ltd, the matter was heard at the Trade Practice Commission, which

²⁸ UNCTAD, 2012.

²⁹ *Ibid.*

³⁰ *Ibid.*

found that Bonite Bottlers the manufacturers of bottled Kilimanjaro drinking water had a false advertisement deceiving the public that the water is from a ‘natural spring’ while in actual terms their water was from a dripped well. The Commissioner ordered Bonite Bottlers to change their advert and the advert was changed to ‘pure drinking water’ the matter did not go on appeal.

Another similar case is *Permanent Secretary Ministry of Industry and Trade v Associated Breweries LTD*. The matter brought before the Trade Practice Commissioner was that Associated Breweries had been deceiving the public that their beer is guaranteed of having no hangover and ‘no added sugar’, which was not true. The Trade Practice Commission, which is currently the FCC barred such misinformation and the order was complied with.

Competition advocacy

The FCC has been an active advocate of competition and consumer protection law. Among other initiatives, the FCC publishes a newsletter, various brochures and booklets for public dissemination. The Commission has a website and conducts outreach programmes in both English and Kiswahili. The FCC’s annual report, website, newsletter and case publications provide information to the private sector. Seminars and workshops have been held to engage trade and professional associations³¹.

The FCC is empowered to study government policies, procedures and proposals for legislation, as well as policies, procedures and programmes of the Regulatory Authorities, so as to assess their effects on competition and consumer welfare and publicise the results of such studies. It is also authorised to investigate impediments to competition, including entry into and exit from markets, in the economy, as a whole or in particular sectors, and publicise the results of such investigations.

Despite the registered achievements, implementation challenges remain as given below:

(1) *Limited competition knowledge*³².

There are no higher learning institutions that offer full-fledged competition courses in the country. A few selected post graduate programmes have started offering courses in competition, since 2011. This leaves most of the professionals in the policy and legislation making processes with limited competition knowledge, which is crucial for their work.

Apart from that, the FCC needs to recruit experienced lawyers and economists on competition issues. However, it is impossible to have experienced staff on competition matters if competition is not part of courses taught in Tanzania universities. The responsible

³¹ *Ibid.*

³² *Ibid.*

authorities are encouraged to hire experts to teach competition courses in the universities and other higher learning institutions.

(2) *FCC staff*³³

FCC has 55 staff against 72 that has been approved by the Commission. This situation limits attainment of FCC's optimal functioning. Invariably, most of the technical staff do not possess the required competition knowledge at the point of their recruitment as already mentioned there are no higher learning institutions that offer competition courses in the country. Therefore, training of technical staff is of paramount importance in ensuring proper functioning of the Commission. Unfortunately, due to financial limitations little progress is being made towards this endeavour.

(3) *Lack of sustainable funding*

FCC is still vulnerable to financial instabilities emanating from increased demand for its interventions as a result of growing economic activities. FCC is dependent on the Ministry and Authorities, such as EWURA, etc.

(4) *Lack of independent consumer associations*

Despite the fact that the FCC has registered achievements in the consumer protection front since its establishment, there remains the challenge of consumer awareness and according to the FCC, there is a need of pooling resources and expertise from all the stakeholders to carry out nation-wide consumer awareness on competition matters and consumer protection.

Fair Competition Tribunal

The Tribunal is a judicial body that is headed by a Chairman with experience as a high court judge. There are six other members of the Tribunal, who are recruited on the same qualifications as the FCC Commissioners. Tribunal selection is restrictive and its members work on part time basis. The Tribunal currently has six members made up of lawyers, engineers, economists, public administration. The majority of them are lawyers.

Functions of FCT

The FCT's function is to hear and to determine appeals and applications that arise from decisions and orders made by the FCC and Regulatory Authorities, Tanzania Communications Regulatory Authority (TCRA), Energy and Water Utilities Regulatory Authority (EWURA), Surface and Marine Transport Authority (SUMATRA) and Tanzania Civil Aviation Authority (TCAA) as well as to enforce and execute its orders. In discharging these functions, the Tribunal is vested with certain powers similar to those of the High Court of Tanzania. Such powers include:

- Confirm, reverse or vary the decision appealed against

³³ *Ibid.*

- Remit the proceedings to the body of first instance with such directions as may be appropriate
- Order the body of first instance to conduct fresh proceedings and
- Make any necessary incidental or consequential orders, such as compensation for the loss suffered, prohibition orders, punitive sanctions, such as fines and declaratory orders.

Furthermore, the Tribunal can also hear appeals on procedural decisions made by the Commission. This may occur if companies feel they were not fairly treated during an inquiry. These appeals are judged on the basis of the fairness of the procedures used and their legality.

Challenges: Financial and human resources

According to the FCT, there are no adequate resources to deal with the FCT mandate. As compared to the FCC, FCT has very few staff and has only six professionals. Lack of financial resources, in addition, impacts on training and lack of exposure for the professional staff. The disadvantage of lack of adequate and timely disbursed funding is that programmes are not implemented and cases might not be heard. It is obvious that unless the FCT is fully funded and staffed on a continuous basis, it cannot serve as a forum for regulatory appeals.

The funded budget of the FCT comes from the Government and regulated sectors. Of this, 65 percent comes from the regulated sectors, 30 percent from the Government and 5 percent from operations fees, such as registration of cases. According to the FCT, there is a funding deficit of about 50 percent. In addition, disbursements are not timely and at times they are below what is expected or promised. Also, the Government's contribution has a ceiling and the ceiling is coming down. As for the Regulatory Authorities, the process of setting their contribution is through a participatory and *pro rata* basis (process between FCT and the regulatory authorities). However, these bodies do not provide their contributions as agreed and additionally their contributions are not timely. The Tribunal is forced to go through informal channels to have discussions with the Regulatory Authorities on this matter.

One complaint was that in the discussions while making the budget, the Regulatory Authorities at times were sending staff who were later claimed not to have the authority to agree on a budget. A proposed change of the law suggested is to make the attendance of Managing Directors of the Regulatory Bodies mandatory during budget discussions.

Furthermore, FCT has recommended that in defining the budget, it is also important for audited accounts to be presented as this would assist the parties to determine a fair amount. Another suggestion from FCT is that when it comes to the government contribution, it is important to have a forum for discussion between the involved parties. In addition, the Government is encouraged to raise the ceiling as the current ceiling is too low. It has been pointed out that the line Ministry (Industry and Trade) for FCT has 16 parastatals, such as

Tanzania Bureau of Standards (TBS), Export Processing Zones Authority (EPZA), etc. and currently more funding goes to EPZA (about more than 65 percent of budget and FCT seems to be low down the chain). The Ministry, however, according to FCT, implements the priorities of the Central Government and competition matters seem not to be considered a priority.

The relationship between FCT and the Regulatory Authorities as it appears from discussions depending on the individuals (management) and understanding by the Regulatory Authority of the role played by FCT. One Regulatory Authority that was mentioned is that FCT has no problem with its TCRA. This can be inferred to mean that the relations with the other authorities were either not good or was not worth mentioning. The solution offered is that the government needs to stress and emphasise the role played by FCT. It should be pointed out that this could be difficult as FCT and Regulatory Authorities might have different line Ministries i.e. as already mentioned, for the FCT the line Ministry is Industry and Trade. For example, Energy and Water Utilities Regulatory Authority (EWURA), the line ministry is Ministry of Water while for SUMATRA the parent ministry is the Ministry of Transport, etc.

Independence of FCT

According to FCT, there is no interference from the Minister of Industry and Trade (line ministry). As a public institution, the FCT is supervised by the Ministry. This is to make sure that the institution carries out its mandate as prescribed in its national programmes. It is stressed that the Minister gives directives in terms of operations and not adjudication of cases and, therefore, the tribunal is independent when adjudicating cases.

National Consumer Advocacy Council

Section 92 of the Act creates the National Consumer Advocacy Council which has no enforcement powers but merely advocacy functions. The Council does not only advocate for consumers affected under the FCA, but those directly or indirectly affected by the activities of the sector regulators. It is a conduit through which consumers channel their grievances and plays a consultative and information dissemination role. The Council's functions are enumerated, under Section 93 of the Act and it provides that the Council should:

1. Represent the interests of consumers by making submissions, providing views and information to the Commission and consulting with the Commission, Regulatory Authorities and government ministries;
2. Receive and disseminate information and views on matters of interest to the consumers;
3. Establish regional and sector consumer committees and consult with them;

4. Consult with industry, government and other consumer groups on matters of interest to consumers.

According to Section 95.-(I), the funds of the Council shall comprise of such sums as may be appropriated by Parliament and grants, donations, bequests or other contributions. While FCC and FCT are partly funded by sector regulators, the Council is excluded from this source of funding.

4. Assessment of the Implications of Monopolies on Competition

The economy is still highly regulated, especially at sectoral-level. For example, there is still a large presence of marketing boards for most of the commercial crops and the major sectors still regulated include the sugar industry. The commercial crops for which minimum prices are fixed by crop authorities is coffee, cotton, cashew and tobacco and for example the crop marketing boards have the responsibility of regulating and setting prices and distribution dynamics for major cash crops, such as coffee, cotton, cashew nuts and tobacco.

Moreover, they are legally empowered to fix crop prices through minimum price-setting arrangements annually. The marketing boards are also entrusted with quality-control and inspection before commodities are marketed or exported. They provide extension officers, finance research, and issue licenses and permits for the purchase and marketing of local and export commodities. As in other countries, the agricultural sector attracts a great deal of political interventions that may conflict with competition policy³⁴. There are also sectors, which are under a legal monopoly including utilities namely water supply and sewerage services and electricity and fixed line telephone system is also regulated. However, monopolies and regulation of certain sectors are allowed for the following reasons:

- Greater efficiency in production or distribution
- Greater efficiency in the allocation of resources
- Technical or economic progress
- Protection of the environment

1. The sugar industry

The sugar industry is regulated by a Board that registers sugar cane growers, issues licenses or permits for export and import of sugar and monitors the basis or method of pricing, selling and purchases of sugarcane. The Government has privatised the Kilombero Sugar Company Ltd. which is the largest of the four sugar factories in Tanzania. Under the terms of the share sale agreement, the investor is protected by being exempted from payment of import duties. The exemption granted to the investor is a barrier to entry and poses anti-competitive behaviour to existing firms.

2. The tobacco industry

The structure of the tobacco industry is made up of many small scale growers numbering about 40,000 grouped under more than 2,000 primary co-operative societies. The tobacco sector suffers from significant barriers from trade entry.

³⁴ *Ibid.*

The reasons for the above protection is the emphasis on public interest considerations, especially those that are considered public goods, which are considered long term interests as opposed to short term interests, which might be pursued by the government of the day, i.e. protect farmers by guaranteeing fixed incomes. In the infrastructures and utilities sector, which are natural monopolies, it is considered that competition would not be ideal as by necessity, the services might usually be provided by a single firm in a given location, which would require huge investments. Therefore, these are costs that can be recovered only by operating at a profit until the specific investment is recouped. Examples are energy and water supply networks where the establishment of more than one network for each product would be more expensive than a single network.

5. Interface between Sectoral Regulators and Competition Authorities

FCC's role in competition issues

The FCC does not have the jurisdiction to deal with competition issues in sectors where there is a sector-specific regulator. Under section 96 of the Act, four key sector regulators namely TCAA, SUMATRA, EWURA and TCRA have the exclusive mandate to deal with competition matters within their jurisdictions, and it is not obligatory that they seek guidance or advice from the FCC. The regulators have the discretion whether or not to consult with the FCC and where there is a competition issue in a regulated sector, the FCC can submit its perspective to the Minister of Trade and Industry, who has the discretion to take such submissions further and there, is no appeal against the Minister's decision.

With regard to relationship with regulated sectors, FCC has provided expert opinion to SUMATRA, EWURA, TCAA and presented papers to TCRA. In one example, the FCC overruled Tanzania's National Roads Agency (TANROADS), which challenged the FCC's jurisdiction, over its exclusionary issuance of permits to outdoor firms to install billboards and gantries in road reserves countrywide. The FCC expressed satisfaction, *inter alia*, that the alleged conduct of the respondent (TANROADS), which erected barriers for potential entrants and ousted competitors from outdoor advertising business, was purely a competition issue to be determined by the FCC.

According to the FCC, TANROADS engaged in trade and hence falls, under the provision of section 6(1) of the FCA; TANROADS was a 'State body', not the 'State', and therefore, was not subject to exemption, under section 6(2) of the Act; the permits issued by the Respondent had a commercial value and did not fall under section 6(3) (b) (ii) and (iii) of the Act; and section 96 of the Act clearly provided that it applied to all persons in all sectors of the economy and consequently, the FCC annulled the exclusive contracts³⁵.

Turning to FCT, in an interesting case of *John Mpuya versus Celtel Tanzania Ltd*, the appellant was dissatisfied with the decision of TCRA and decided to appeal to FCT. The appellant argued that Celtel had sabotaged his Sim card. His phone displayed that his Sim card was rejected and despite calling Celtel's Customer Care number several times, he was not assisted and advised to travel to Dar-es-Salaam to visit Celtel Head Office. After visiting the head office he was told that his number had been sold to another customer. Mpuya went to the Authority and lodged a complaint regarding Celtel's acts. TCRA wrote to Celtel seeking an explanation and Celtel replied that what happened was inadvertent and that the

³⁵ Quoted from Mlulla and Freedom, footnote 27.

action was ‘without malice and the whole episode was handled in a most professional manner upon being reported’.

Upon receipt of Celtel letter, TCRA notified the appellant that it could not determine the complaint because it was ‘frivolous or vexatious’. Thereafter, Mpuya referred the matter to FCT. The FCT was of the opinion that Celtel was negligent and careless and that Celtel did not take prompt action and Customer Care 100 did not provide any assistance. This case illustrates that consumers have recourse if not satisfied with the regulatory authorities’ decisions. That a consumer managed to win in this case against Celtel and TCRA is in remarkable and shows to an extent that the system is working.

On the face of it, there seems to be no antagonism between FCC and regulated sectors. This is because it is perceived that FCC regulates competition in trade in goods while the regulated sectors regulate competition in services. But behind the scenes, according to the private sector and a consumer association there is a lot of tension and protection of turfs. The concern of business is that there seems to be a gap between law and theory. Thereby in theory the law is clear in the mandate given to different agencies, however, the reality in implementation is different.

In addition, 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, there is lack of cooperation as agencies are engaged in turf wars as already mentioned. An example given by one source is that although Tanzania has the legislation and institutions to protect consumers and foster competition, there are areas, such as counterfeit goods and fake drugs that the bodies charged with protecting consumers have failed and that this is alarming because some of these goods are dangerous to consumers and have been disqualified by World Health Organisation (WHO). It has been suggested that the solution is for civil societies to forge partnerships to tackle the problem as consumer protection is almost zero in this area.

Inter-face between EWURA and FCC/FCT

There are three authorities with both investigatory and punitive powers to apply penalties and sanctions for example to anti-competitive and manipulative practices in the natural gas sector. These are the EWURA, the FCC and FCT. The law does not exactly specify what it deems to be harmful competition outright; rather, it requires the FCC and FCT, as expert bodies, to analyse the impact of companies, taking into consideration current and expected infringements. Acquisition of shares in the energy sector is subject to the provisions of the FCA in respect of the following activities:

- Formation of cartels
- Barriers to entry and exit
- Abuse of dominant position and market power
- Formation of mergers and acquisitions for anti-competitive purposes
- Attempts to control prices

- the creation of artificial shortages of products or services and
- other restrictive trade practices as defined in the FCA, with the intention to contravene the principles of fair competition or impede the functioning of a free market for energy products within the country.

On the other part, the EWURA Act establishes EWURA to regulate the issuance, renewal and revocation of the relevant licences, determine the rates and charges of the services as well as monitor the performance of investments and the quality and efficiency of the services in respect of the Regulated Services. ‘Regulated Services’ refers to the services supplied in the electricity, petroleum, natural gas, water and sewage sectors³⁶. Therefore, there is clear demarcation of responsibilities of FCC and EWURA.

TCRA’s interface with their bodies

Tanzania Communications Regulatory Authority (TCRA) confers the authority with exclusive jurisdiction in its regulated areas. Under Article 6 (1) of the TCRA, the functions of the Authority shall be amongst others, to issue, renew and cancel licences. FCC is required to liaise with TCRA under Section 65(5) FCA Act and the section provides that where, in the course of performing its functions under the Act, the FCA, encounters any matter related to electronic or postal communications, it shall request the written advice of the TCRA on such matter and upon receiving such request the TCRA shall have the power to provide the Fair Competition Authority with such advice. The TCRA Act has clear demarcation of duties and for example Section 29 (2) states:

“The Authority shall on infrastructure sharing, regulate-in liaison with the Tanzania Civil Aviation Authority established, under Tanzania Civil Aviation Act the establishment of broadcasting stations so as to prevent harmful interference with aircraft navigation systems.”

According to Section 41 of TCRA, a person shall not contravene a provision of the Fair Competition Act 2003, or the Bureau of Standards Act 1975. Further, under sub-section 2 of the same section, where the Commission is of the opinion that any conduct required, authorised or approved by the Authority would be in breach of the Fair Competition Act, 2003 the Commission shall report the matter to the Minister. Further, where the Minister receives a report from the Commission, under sub-section (2), he may direct the Authority to take necessary steps to ensure that the conduct described by the Commission is not required, authorised or approved by the Authority. For example, on suspension or cancellation of postal licence, Section 40 (2) provides that any person aggrieved by the decision of the Authority, under the section may appeal to the Fair Competition Tribunal.

³⁶ Charles R B Rwechungura and Kamanga W Kapinga, Tanzania, 2012, <http://www.crbafricalegal.com/docs/GR2012%20Tanzania.pdf>

The Authority under Section 19 (1) is urged in carrying out its functions and exercising its powers to take into account whether the conditions for effective competition exist in the market or whether in exercise of its functions competition is likely to be decreased. Section 19 (2) is very clear on demarcation of duties and it provides:

“The Authority shall deal with all, competition issues, which may arise in the course of the discharge of its functions, and may investigate and report on those issues and making appropriate recommendations to the Tanzania Bureau of Standards, the Commission or any other relevant authority in relation to:

- any contravention of the Fair Competition Act 2003, the Tanzania Bureau of Standards Act 1975, or any other written law
- actual or potential competition in any market for regulated services and
- any detriments likely to result to the members of the public

SUMATRA, FCC/FCT and other Authorities

The Authority is vested with powers of dealing with all competition issues, which may arise in the course of the discharge of its functions, and may investigate and report on those issues. Similar to the other Authorities, SUMATRA is tasked with making appropriate recommendations to the Tanzania Bureau of Standards, the Commission or any other relevant authority in relation to:

- any contravention of the Fair Competition Act 1994, the Tanzania Bureau of Standards Act 1975, or any other written law
- actual or potential competition in any market for regulated services and
- any detriments likely to result to the members of the public.

Any party who is aggrieved by the decision of the Board may prefer an appeal to the Fair Competition Tribunal on grounds stipulated in the Act and this applies to other Authorities as well.

Independence of the Sectoral Authorities and other bodies

Independence of regulators and other authorities charged with consumer protection and regulation competition is a *sine qua non*. Independence serves to reassure private investors that they will be accorded fair and predictable treatment free from politicised environment and politicised decision making. SUMATRA and EWURA, etc. provide for adequate independence and provide mechanisms for holding regulators accountable. Those mechanisms include defined terms of office without assurance of reappointment, requiring the agencies to file regular reports, imposing fiscal controls for the expenditure of agency funds, conducting periodic audits of the agency, having multiple members rather than a single individual taking decisions. In addition, there are provisions to enable the formulation and enforcement of codes of ethics and conduct; general law prohibiting various forms of

corruption and providing a means of appealing regulatory decisions. Perhaps of great importance is that should regulators fail to remain within the parameters prescribed, appellate bodies will strike down the offending regulatory actions.

The independence which is emphasised in principle is independence in resources to run business, independence in decision making, independence in thinking and acting. The independence of the Regulator can be gauged through for example SUMATRA Act in section 6(1) (1) wherein it is provided that:

“In addition to the preceding provisions of this section, the Minister may from time to time as occasion necessitates it, give to the Authority directions of a specific or general character on specific issues other than in relation to the discharge of the regulatory function...”

But sub-section (5) of section 6 provides instances where the Minister might give a direction provides “any direction given by the Minister in accordance with subsection (4) of this section shall be in writing and shall be published in the Government Gazette”.

The line Ministers, therefore, are inhibited even in cases where they have general powers, in order to secure independence of the regulator. Also, by requiring the Minister to give directions in writing lessens undue influence from the Ministry to the Regulators. An example is given below for EWURA, which would also apply to the other regulated sectors.

Table 6: Ministerial and EWURA's Regulatory and Rule-making Powers³⁷

Ministerial Regulations	EWURA Rules
<ul style="list-style-type: none"> • Ensure that electricity supplies are sufficient to meet expected demand. • Protect the public from the dangers arising from the generation, transmission or supply of electricity, or from the installation, • Maintenance of any electrical equipment • Promote access to electricity in rural areas in accordance with the Rural Energy Act • Promote research and the development of, new technologies relating to electricity supply 	<ul style="list-style-type: none"> • Regulate the activities of licensees. • Determine tariffs and fees • Standardise accounting and reporting procedures • Set standards for customer service • Ensure non-discriminatory access to transmission or distribution facilities designated for common carriage. • Prescribe the operation and management of the transmission and distribution system (the grid code) • Prescribe how electricity is traded (market rules) • Ensure that technical and safety standards are monitored • Govern the inspection of licensees' accounts and premises • Determine terms and conditions for the granting of licences

³⁷<http://www.gsb.uct.ac.za/files/Tanzania.pdf>

Some commentators³⁸ are of the opinion that despite providing for many legal means of holding regulators accountable, the role of the ‘assigned minister’ like in SUMATRA, EWURA and TCRA, etc. is far more extensive than is customarily found in international practice. The argument for extensive powers of the Minister is that the Minister must be able to intervene in order to ensure accountability, responsibility and adherence to national policy. The second is that the substantive expertise of the Ministry needs to be put to use in the regulation of the sector. The third reason given is that it is customary for Tanzania for every agency to be within the portfolio of a ministry in order to ensure direct accountability to Parliament, where the Minister serves as a member and can directly report and respond to enquiries³⁹. To give an example Section 5 (5) and Section 4 (6) of SUMATRA provide for the intervention of the Attorney General (AG) in any suit or matter instituted against the agency. These provisions raise the potential for significant interference with regulatory independence by the AG. Also, Section 7 (3) and Section 6 (3) of SUMATRA limits the ability of the regulator to award or cancel a major or exclusive license having a term of five or more years without prior consultation with the Minister and the relevant sector Minister. Depending on how ‘consultation’ is defined this could have major consequences for regulatory independence.

Interviews with the private sector indicate that the Regulatory Authorities, FCC or FCT cannot be said to be 100 percent independent. It is not only the Minister that gives instructions but also instructions come from the Permanent Secretaries (PS) and the PSs are very powerful. It has been pointed out, for example, that there is lobbying to take away jurisdiction from FCC to TCRA because it is claimed, that TCRA issues are technical and FCC cannot understand them thus warranting the move. This is because it is perceived that FCC fines are high compared to TCRA.

Case of EWURA and oil companies

An interesting case between *EWURA* and a number of oil companies that included *BP Tanzania Ltd, Engen Petroleum, Oilcom (T)* and *Camel Oil* is discussed below.

On 2/08/2011, EWURA issued a Public Notice⁴⁰ setting out cap prices for both retail and wholesale products that were to be effective from 3/08/2011. After heated objections from the Oil Majors to the new cap prices, EWURA issued a new price formula amending the cap prices and issued new prices. Also, EWURA ordered the above mentioned Oil Companies to amongst other actions immediately resume operations and supply other retail outlets and stop any action or inaction that resulted in artificial shortage of petroleum products.

³⁸ Brown, Ashley, “Analysis of the Energy and Water Utilities Regulatory Act and the Surface and Marine Transport Regulatory Act”, 2010.

³⁹ *Infra*.

⁴⁰ Reference PPR/08-1/11

The Oil Companies were aggrieved by the decision of EWURA and decided to refer the matter to FCT. Their contention *inter alia* was that EWURA erred in law and in fact by failing to take into account both the consumer and investor interests. Also, interestingly, EWURA was accused of failing to promote effective competition and economic efficiency as the prices issued were so low that they left no room for competition and such an arrangement was tantamount to price fixing. The most interesting argument was that EWURA had acted upon the direction of the then Minister of Finance⁴¹.

Counsel for the Oil Companies argued that under the provisions of Section 5 read together with Section 6, 7 and 8 of the EWURA Act, EWURA is required to be an independent regulatory body, which must discharge its regulatory functions without political intervention. In principle, the companies were complaining and contending that EWURA's pricing formula was arrived at as a result of political manipulation and pressure and consequently, EWURA failed to discharge its duties as an independent regulator and furthermore that the pricing formula was not correctly calculated and considered.

In its judgment, the Tribunal dismissed the charges by the Oil Companies. According to the Tribunal, the companies were given adequate opportunity to be heard and their objections to the cap prices were taken into account. The Tribunal was also of the view that the contention that the cap prices would adversely harm competition was without merit; the pricing template only set cap prices and there was room for price variation; the regulator had set the cap prices and the suppliers were at liberty to sell at any price favourable to them and were free to sell at lower prices or different prices in order to be more competitive and that in arriving at the new pricing formula EWURA had considered all factors including the consumer, government and investor interests. The stakeholders were deemed to have been given sufficient opportunity and a balance was arrived at such as the interests of government in the promotion of economic efficiency and the protection of the interests of consumers and efficient suppliers and the promotion of the availability of the regulated services to all.

On the question of independence and political pressure it was held the arguments were misconceived and ought to be disregarded. There was no evidence to support the allegation of government pressure for EWURA to review the pricing formula. And to quote⁴²:

“...The information quoted from the Minister's speech is neither binding nor in our view sufficient proof of a directive issued to EWURA, especially considering the fact that the Ministry of Finance is not the sector Minister for EWURA. Similarly, the involvement of the experts of the Ministry of Energy, the Ministry of Finance and TPDC (Tanzania Development Cooperation) in the technical team that prepared the

⁴¹ The Minister of Finance had in June 2011 in a speech made before parliament announced the government's intention to effect major changes in taxes charged on petroleum products including lowering excise duties.

⁴² The Decision of FCC in Complaint No. 2 of 2009 of 21/05/2010.

matrix deliberated.....is not in our view, sufficient evidence that the respondent acted under political influence”.

The Tribunal was of the opinion that even if EWURA had initiated the review after hearing the Minister’s views as presented in Parliament, the issue would be whether EWURA had acted without complying with the relevant statutory requirements, in particular sections 6, 17 and 19 and according to the Tribunal, it had done so.

6. Cross-sectional Perceptions on Competition

While observing the market, according to some private sector individuals that were interviewed, there appeared to be a fixing of prices in the cement, beer, construction industries, soft drinks and sugar industries. A concern has thus been raised regarding the existence of cartels in some sectors of the economy. The problem seems to be in the sub-sector organisations of these specific sectors. The suspicion is that these sub-sectors collude in price-fixing and carving out of market share. In comparison, looking at aluminum and other industries there is competition and the Government is encouraged to increase competition in the industries mentioned above by giving incentives to new players.

According to one civil society source, the success of competition policy depends in part on participation and information provision from consumers and businesses. If the FCC, for example, is to be able to identify important obstacles to competition and hence, to the economic growth that exists in the Tanzanian economy, it will not be able to rely solely on the analysis of economic data or information provided by the public sector alone. Consumers and businesses are directly affected and thus have the experience and knowledge of the markets. For example, where competition is restricted and innovation is held back. It is, therefore, the civil society, etc. that possess an important source of information.

In addition, the Government action as well as FCC need to be scaled up to protect consumers. One of the suggestions made is that punishment should be sufficiently severe to deter unscrupulous business people. The only problem that has been mentioned is that these unscrupulous people are well connected to the government and that the institutions charged with protecting consumers cannot take any action against them. An example given is the importation of counterfeit petrol, which even after an outcry from the public the concerned individual managed to offload his petrol and sell to consumers causing untold damage to consumers' vehicles.

Consumer awareness

While Tanzania has consumer protection laws, consumers are not aware of their existence. There is a perception that consumers are not protected and to quote one of them, "We are deceived of so many things by sellers, such as comfort, reliability and personal safety". This is irrespective of the fact that consumer protection laws prohibit certain conducts, which is harmful to the consumers'.⁴³ It has been suggested that Tanzania should increase the level of consumer awareness by providing public education and increasing the accessibility of legislation that protect consumers by simplifying and translating them into Kiswahili.

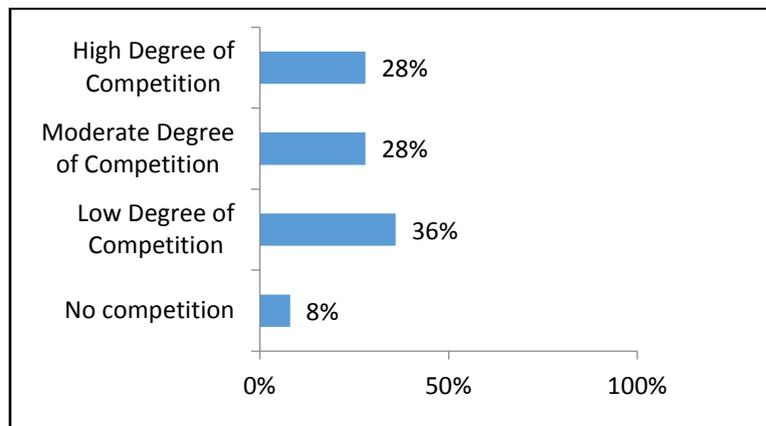
⁴³ Bernard Eliot Kihyo, "Why do Countries Adopt Competition Law"-Tanzania Case Study, undated.

Perception survey on competition

Turning to perception, a perception survey was conducted aiming at business, civil society and consumers through questionnaires on anti-competitive practices, degree of competition and its level of impact in the country, etc.

1) *State of competition and anti-competitive practices*

Figure 2: State of Competition and Anti-competitive Practices



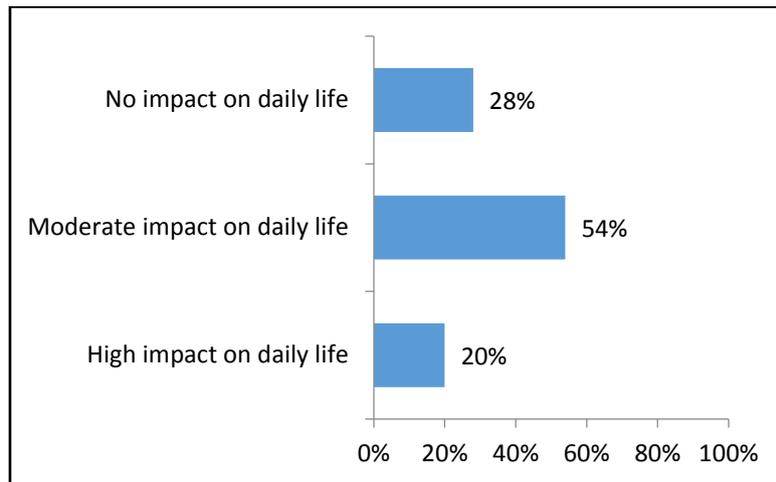
Thirty 36 percent of the of respondents (n=25) answered there is low degree of competition in the country followed by 28 percent who said there is moderate degree of competition with the same 28 percent indicating that there is high degree of competition with only 8 percent stating that there was no competition.

Reasons given by the respondents that there is high degree of competition 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.

Of the 28 percent who answered there is moderate competition, shared the 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.

2) Degree of Competition and its Impact on the Consumers

Figure 3: Degree of Competition and its Impact on the Consumers

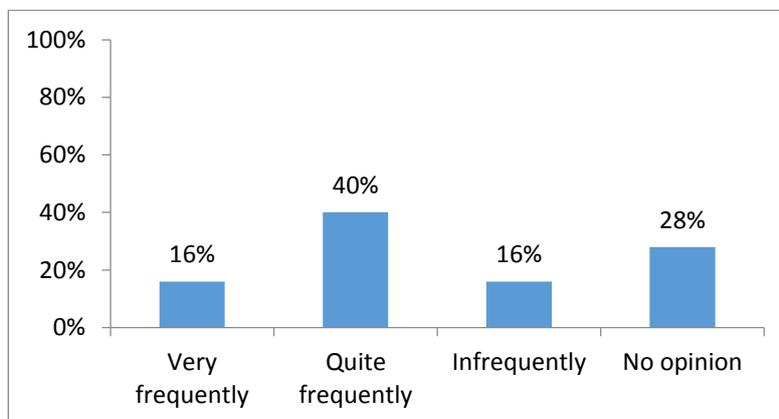


About 20 percent of the respondents (n=25) and more than half of the respondents 54 percent (n=25) were of the opinion that the degree of competition and the impact on their daily lives are moderate; while 28 percent were of the opinion there was no impact on their lives.

Reasons given by those in the high category said that there are low prices and better services on most of the 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 anti-competitive practices in the country and their harmful impacts on the consumers and the economy, as a whole.

3) *Anti-competitive practices in the country*

Figure 4: Anti-corruption Practices in the Country

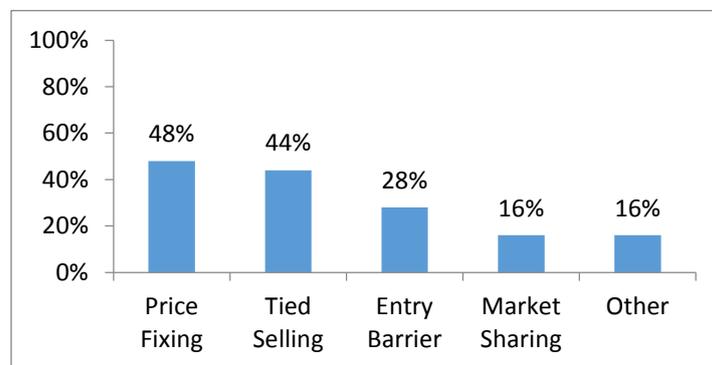


The respondents were asked as to how frequent anti-competition practices occur in the country. About 16 percent of the respondents said that anti-competitive practices happen very frequently, while 40 percent said that it happens quite frequently. Another 16 percent said that the practices appear infrequently and 28 percent having no opinion at all.

Reasons given for those who responded ‘very and quite frequently’ anti-competitive practices occurrence are almost the same, the respondents said that the existence of State Monopolies in power and water supplies harm the consumers as they have no other alternative to obtain the 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.

4) *Most common anti-competition practices in the country*

Figure 5: The Most Common Anti-competition Practices in the Country



When asked about the most common types of anti-competition 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. The respondents were asked as to why they chose price-fixing and the answer was that there were cartels on cooking gas, petrol and sugar. The respondents also added that 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 did not use internet and even their phones did 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 believed that 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.

5) Sectors characterised with anti-competition practices in the country

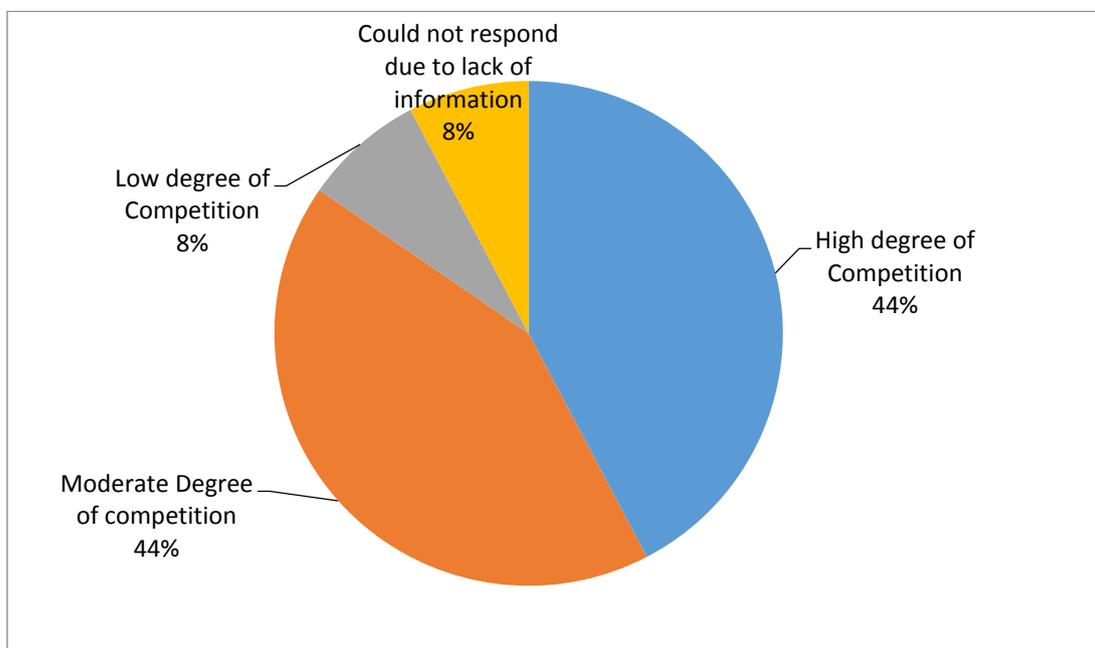
The sectors, which are characterised with anti-competition practices include:

- Power supply (reasons given are wrong billing, increased tariffs, frequent power interruption and poor services with no other alternative.
- Water supply (reasons given not limited to wrong billing, no supply of water, supply of dirty water, etc.)
- Pharmaceuticals (few importers with market dominance in importing essential drugs for cancer, blood pressure, malaria, reproductive pills, antibiotics, etc.)
- Cement, beer, construction industry, soft drinks and sugar industry players are thought to collude in price fixing and carving out of market share.

6) Assessment of the level of competition

i) Status of Competition on the Telecommunications Sector

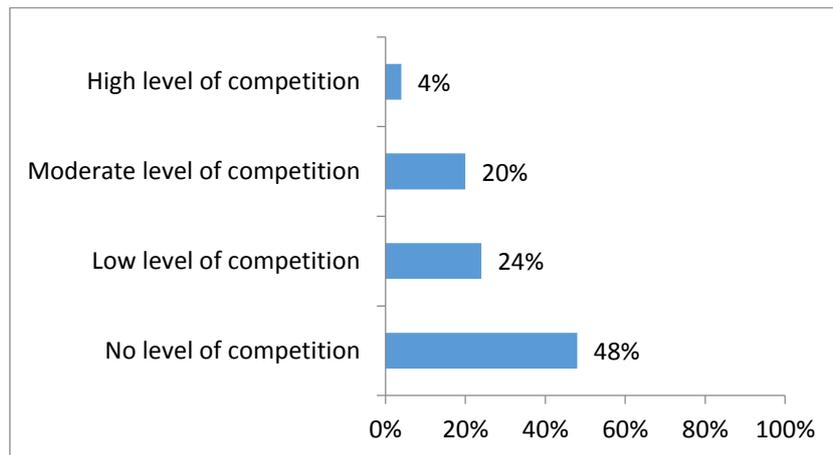
Figure 6: Status of Competition in the Telecommunications Sector



About 44 percent of the respondents states there is high degree of competition; the same number 44 percent said there is moderate level of competition. Generally, the market is characterised with good competition due to presence of several service providers offering several products in the market, such as for instance; TTCL, Vodacom, Sasatel, Tigo, Airtel, Zantel and Smart.

Only 8 percent said that there exists low competition in the telecommunication sector probably due to the notion of tied selling and in land lines and the other 8 percent said that they were not much aware about the issues and so were not in a situation to respond.

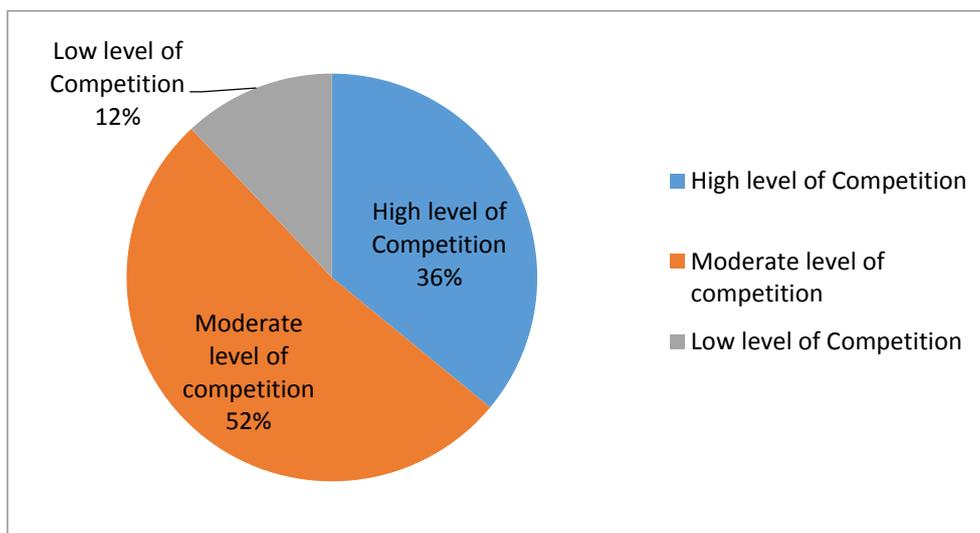
ii) *Competition in the Power Sector*



Only 4 percent responded that the power sector has high level of competition while 20 percent answered that there is moderate level of competition while 24 percent were of the opinion that there is low level of competition and 48 percent said that there is no competition at all in this sector. Reasons for the low scores is due to the monopolistic nature of the sector with the challenges consumers are facing, which include as already mentioned wrong billing, frequent power interruption, high tariffs, etc. The other 4 percent did not respond to the query.

iii) *Status on the level of competition on retail (consumer goods)*

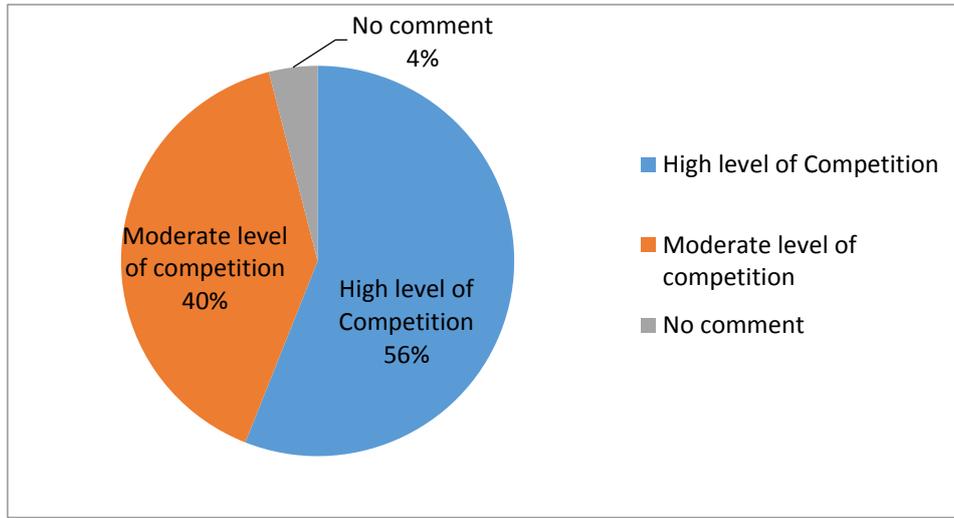
Figure 7: Level of Competition in the Retail Sector



The study revealed that 36 percent of the respondents were of the opinion that there is high-level of competition and 52 percent were of the opinion that there is moderate competition while 12 percent said there is low level of competition. There are high scores for the first two options due to presence of many players selling goods at competitive prices. However, the question of fake goods, price fixing, and entry barriers on pharmaceutical reduced the scores.

iv) Status on the level of competition on commuter transport

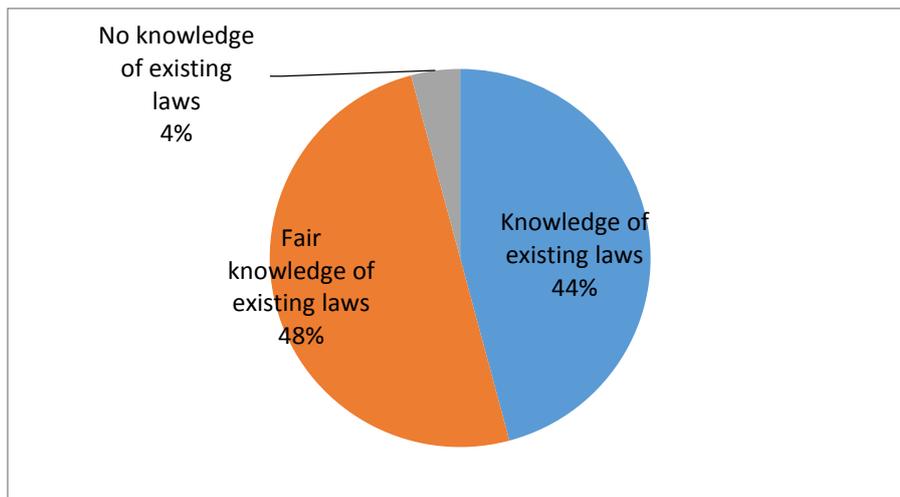
Figure 8: Level of Competition in the Transportation Sector



Regarding the transport sector, 56 percent of the respondents answered that there is high competition with 40 percent answering moderate. The reason there is high competition is due to the availability of daladala (mini buses) in Dar and taxies, Bajaj and bodaboda. While 4 percent had no comment as to whether there is competition in the transport sector.

a. Assessment of Enforcement Issues

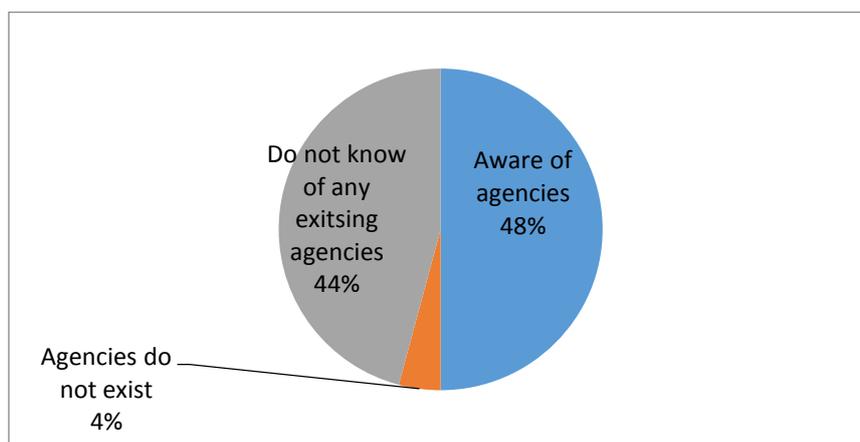
Figure 9: Knowledge of Existing Laws



When asked on their knowledge of rules, regulations or laws for checking anti- competition practices in the country, about 44 percent did know of the existing rules and others mentioned the Fair Competition Act of 2003, business licensing by local governments, Tanzania revenue authority-Taxation Acts and the like. While only 4 percent were not aware of any rules, etc. and 48 percent were somehow aware of the rules and regulations, etc.

b) Agencies to administer existing rules

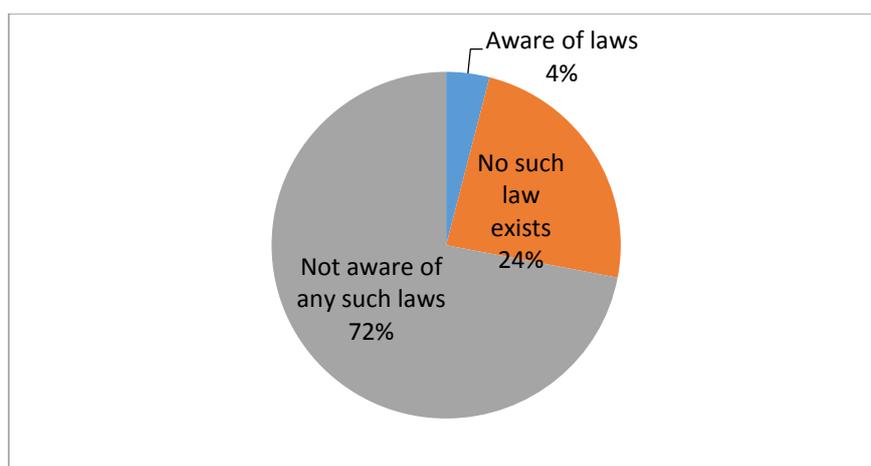
Figure 10: Awareness of Agencies to Enforce Rules



About 48 percent of the respondents mentioned that they are aware of the agencies tasked to administer such rules including the Fair Competition Commission, Local governments, Ministry of Industry and Trade, TRA, Fair Competition Tribunal and other regulatory authorities, such as EWURA, TFDA, TBS, SUMATRA etc. While 4 percent were convinced that no agencies existed to administer the rules with 44 percent answering they simply were not aware of.

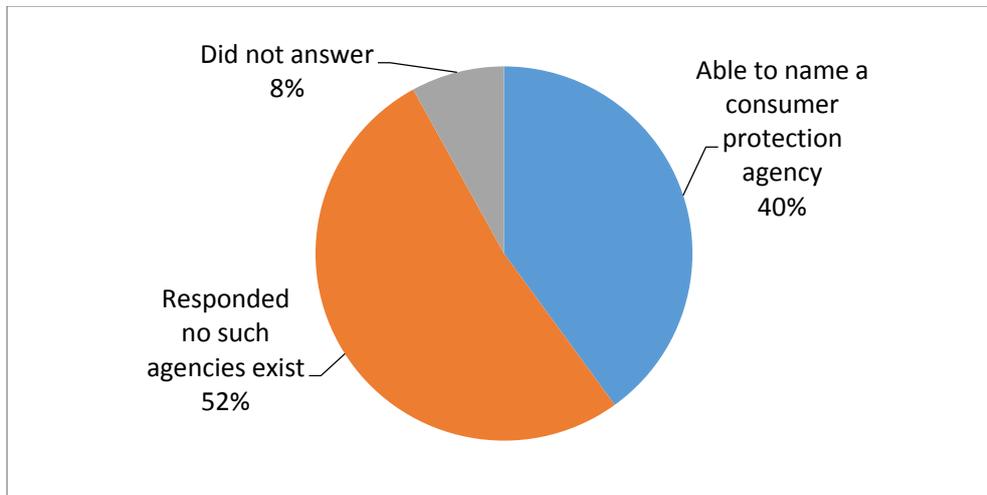
c) Awareness of Consumer Protection Laws in the Country

Figure 11: Awareness of Consumer Protection Laws



Only 4 percent were aware of consumer protection laws and mentioned the Fair Competition Act 2003, while 24 percent said there are no such laws and 72 percent being unaware of the same.

Figure 12: Ability to Name Consumer Protection Agencies



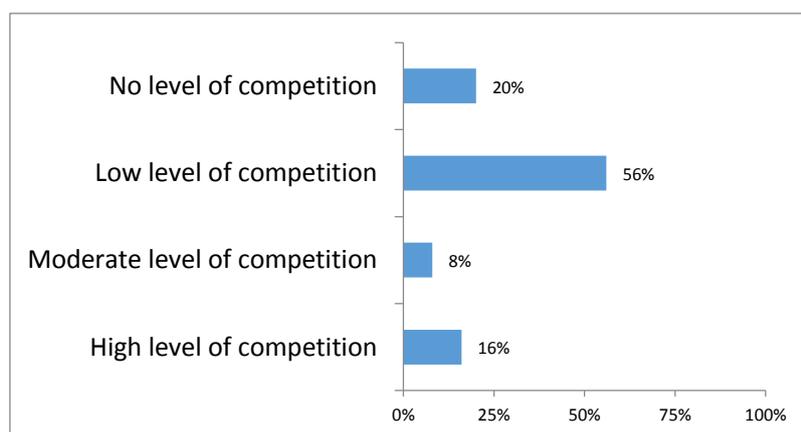
On consumer protection laws again, 40 percent were able to mention agencies for consumer protection; including local government authorities, National Consumer Advocacy Council under FCC, NGOs, such as Tanzania Consumer Advocacy Society, Chama cha Kutetea Abiria Tanzania (CHAKUATA) while 52 percent said, “There are no such agencies in Tanzania” and 8 percent did not answer to query.

The Competition Culture and Public Awareness analysis included the perception of the competition culture among various groups in Tanzania.

a) Awareness level of politicians

Competition culture among politicians was perceived to be at 16 percent, moderate at 8 percent, low by 56 percent and nil by 20 percent.

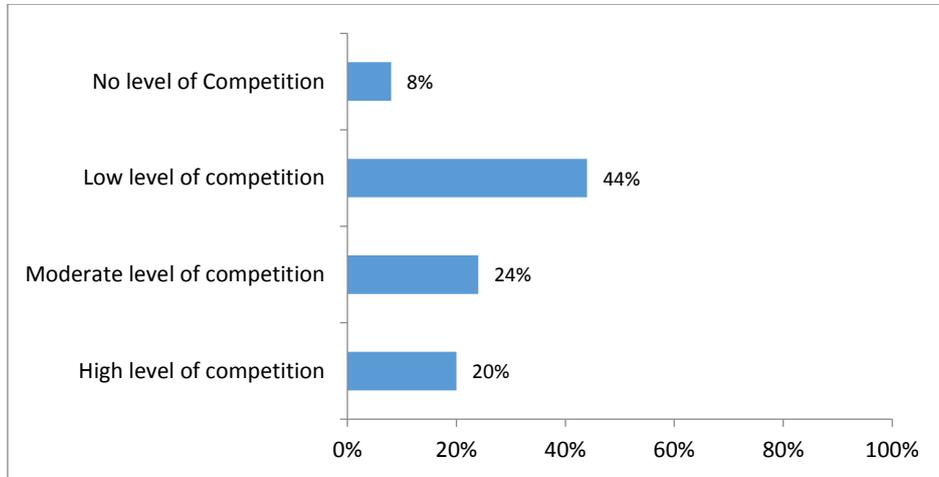
Figure 13: Degree of Competition Culture among Politicians



b) Business

The competition culture among business was perceived to be high by 20 percent, moderate by 24 percent, low by 44 percent and nil by 8 percent.

Figure 14: Degree of Competition Culture within the Business Sector



c) Consumers

Competition culture among consumers that was thought to be high was 4 percent, moderate by 8 percent, low by 16 percent and nil by 72 percent.

Figure 15: Degree of Competition Culture among the Consumers

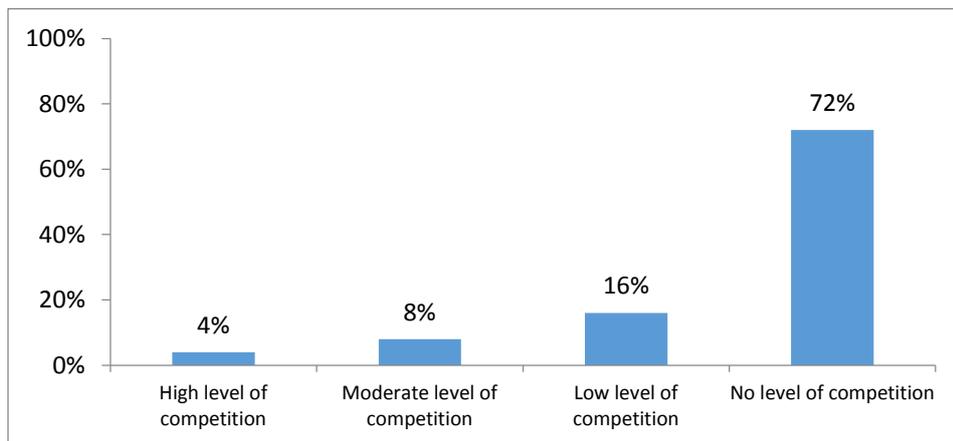
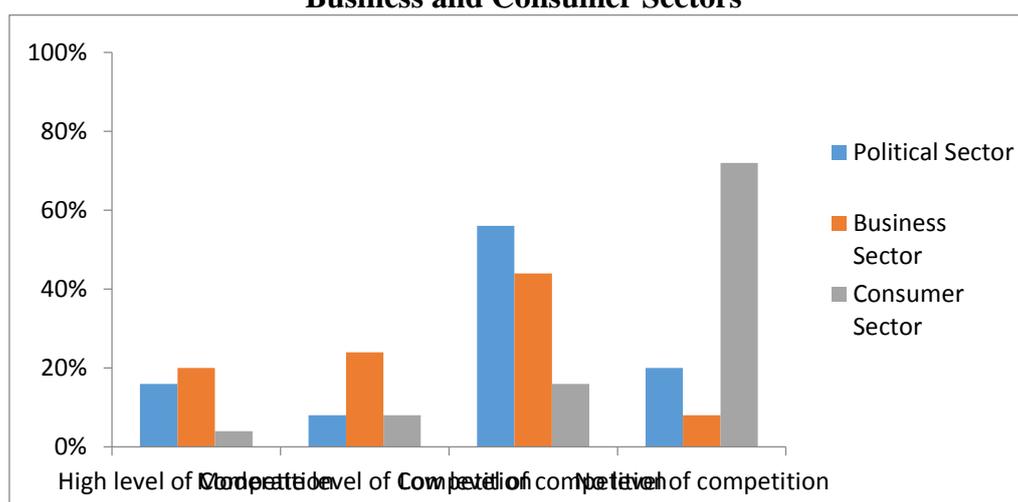


Figure 16: Degrees of Competition Culture in the Political, Business and Consumer Sectors



Perception of understanding of competition issues

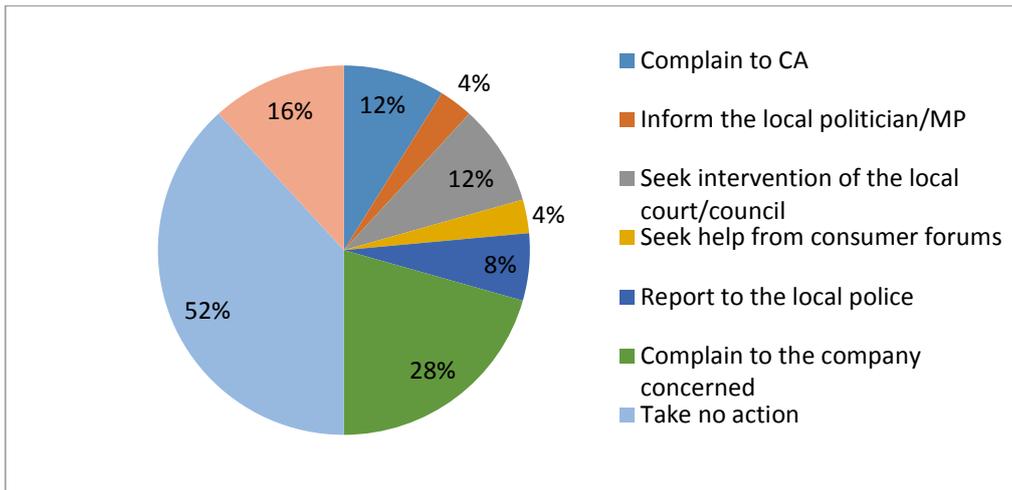
The respondents were asked about their perceptions whether competition issues are understood in the country. Generally, 12 percent of the respondents were of the perception that competition issues are well understood in the country. However, the majority of them 78 percent were of the opinion that competition issues were not understood. The reason for the big margin was that 28 percent of the respondents believed there is no political will in enforcing competition matters while 44 percent were of the opinion that competition authorities were inactive, 44 percent saying there is no publicity about competition issues, 20 percent were of the opinion that competition laws, etc. are not covered in university courses and 4 per cent explained that Tanzania had shifted from implementing Ujamaa policy and as such, they have little knowledge of free market economy polices and were convinced these “policies were full of tricks and traps”.

Assuming they encountered any anti-competitive practice in the market, the table below shows what the respondents would do.

Table 7: Action Taken if Encountering Anti-competition Practices

Action	Percentage
Complain to Competition Authority	12
Inform the local politician/member of Parliament	4
Seek intervention of the local court/council	12
Seek help from consumer forums	4
Report to the local police	8
Complain to the company concerned	28
Take no action	52
Any other (specify)	16

Figure 17: Actions Taken if Encountering Anti-competition Practices

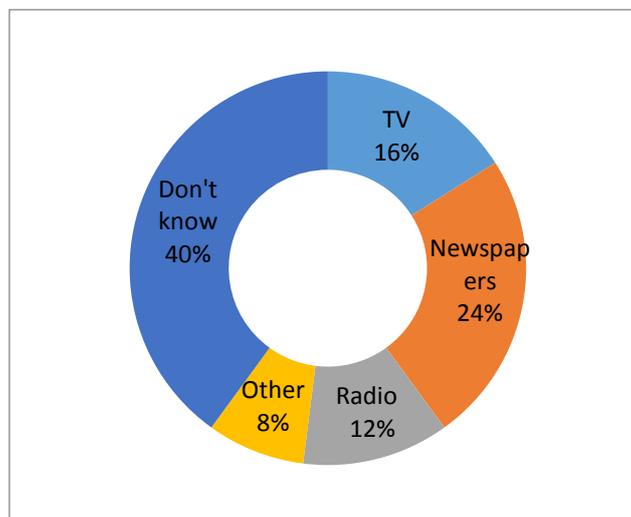


The majority of the respondents at 52 percent would not take any action as they thought that businesses are very rich and have powerful friends in government while others said they would complain to the company that was anti-competitive through customer care.

Table 8: Frequency of Reports on Competition Issues Violations in Media

Media	Percentage
TV	16
Newspapers	24
Radio	12
Others	8
Unaware	40

Figure 18: Frequency of Reports on Violations of Competition Issues in Media



On journalists' understanding of competition issues, a mere 8 percent were of the opinion that journalists have good level of understanding, while 44 percent think otherwise and 28 percent said they did not know. The reasons given by respondents is that there is no or very little coverage on competition issues and exposure of anti-competition practices by the media and that there is very little information that has been shared with the general public on the above mentioned issues.

Conclusion

It has been broadly demonstrated that although steps have been taken towards promotion of competition through the adoption of market reforms and enactment of competition laws, there is need for effort to raise awareness of the consumers on competition matters. The private sector in Tanzania is currently at an early stage of development as compared, for example, with the private sector in Kenya. This is mainly due to the history of earlier policies already mentioned that centered on socialism and public sector driven development, which led to some official hostility towards the private sector. Therefore, given the long history of underdevelopment of the private sector in Tanzania, efforts must be made to strengthen the private sector, especially on competition and consumer protection issues. It is hoped the private sector and civil society⁴⁴ organisations in the future will play an enhanced role in advocating for competition and consumer protection issues.

⁴⁴ There are a number of CSOs in Tanzania. They are engaged in four broad categories of activities: social services delivery; capacity building; advocacy and lobbying; and research and analysis.

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