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ACT SUPPLEMENT

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THE FAIR COMPETITION (AMENDMENT) ACT, 2024

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THE UNITED REPUBLIC OF TANZANIA



NO. 13 OF 2024

I ASSENT

SAMIA SULUHU HASSAN

President[2nd October, 2024]

An Act to amend the Fair Competition Act with a view of making better provisions for its effective implementation.

ENACTED by the Parliament of the United Republic of Tanzania.

Short title

Cap. 285

1. This Act may be cited as the Fair Competition (Amendment) Act, 2024 and shall be read as one with the Fair Competition Act, hereinafter referred to as “the principal Act”.

General
amendmen
ts

2. The principal Act is amended generally, by-

(a) deleting the words “court of competent jurisdiction” and “court” appearing in sections 25, 28, 33, 38, 39, 40, 41, 42, 43, 44, 47 and 59 and substituting for them the word “Commission”; and

(b) deleting the words “intentionally or negligently” appearing in sections 8, 9, 10 and 11.

Amendme
nt of
section 2

3. The principal Act is amended in section 2, by-

(a) deleting the definition of the term “consumer” and substituting for it the following:

““consumer” means a person who purchases or offers to purchase goods or services or a person who uses such goods or services with the approval of the buyer but does not include a person who purchases goods or services for the purpose of resale or using them in the production or manufacture of any goods or articles for sale;” and

(b) adding in its appropriate alphabetical order, the following:

““essential facility” means an infrastructure or resource that cannot reasonably be duplicated, and without access to which, competitors cannot reasonably provide goods or services to their customers;

“cross subsidisation” means an internal transfer within an entity of profits resulting from one line of business to less profitable line of business;

“loyalty discount and rebate” means a discount offered on a condition that the customer engages in a loyal purchasing behavior by repeatedly purchasing goods or services from the same supplier and refraining to purchase from other suppliers;

“margin squeeze” means a pricing practice where the margin between the price at which a vertically integrated firm, which is dominant in an input market, sells a downstream product, and the price for which it sells the key input to competitors does not allow downstream competitors to compete effectively;

“re-sale price or condition maintenance” means an agreement between a supplier and a re-seller whose object or effect or likely

effect is, directly or indirectly, to fix a minimum selling price or condition to be used by the re-seller when re-selling goods or services to customers; and

“vertical agreement” means an agreement between persons each of which operates, for the purpose of the agreement, at a different level of the production or distribution chain and relates to the conditions under which the parties may purchase, sell or re-sell certain goods or services;”.

Amendme
nt of
section 5

4. The principal Act is amended in section 5(6), by-
- (a) deleting the words “the person” appearing in paragraph (a) and substituting for them the words “or with another person”; and
 - (b) deleting paragraph (b) and substituting for it the following:
“(b) the person’s shares in the relevant market, severally or jointly, exceeds forty percent.”.

Amendme
nt of
section 8

5. The principal Act is amended in section 8(3) by deleting figure “35” appearing in paragraph (a) and substituting for it the word “forty”.

Amendme
nt of
section 9

6. The principal Act is amended in section 9-
- (a) in subsection (1), by-
 - (i) deleting the word “or” appearing in paragraph (b);
 - (ii) adding immediately after paragraph (a) the following:
“(b) output restrictions between competitors;
(c) allocation of market or customer;”;
and
 - (iii) renaming paragraphs (b) and (c) as paragraphs (d) and (e) respectively;
 - (b) in subsection (2), by-

- (i) deleting a full stop appearing in paragraph (d)(ii) and replacing for it a semi colon and the word “and”; and

- (ii) adding immediately after paragraph (d) the following:

“(e) “allocation of market or customer” means the allocation of a market or customer among competitors so as to limit the choice of doing business within a defined geographical territory, a defined product category or certain specified customers.”.

Addition
of section
9A

7. The principal Act is amended by adding immediately after section 9 the following:

“Leniency
programme

9A.-(1) The Commission may operate a leniency programme by reducing or exonerating a penalty applicable to a person who engages in agreements prohibited under section 9, where such person voluntarily discloses the existence of the agreement and co-operates with the Commission in the investigation of the prohibited practice.

(2) The leniency programme shall be as prescribed in the rules.”.

Amendme
nt of
section 10

8. The principal Act is amended in section 10-

- (a) in subsection (1) by inserting between the words “to” and “appreciably”, the words “exploit customers or”; and
- (b) by adding immediately after subsection (4), the following-

“(5) Abuse of dominant position under this section includes-

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

- (b) limiting or restricting production, market outlets or market access, innovation, investment, distribution, technical development or technological progress to the prejudice of consumers;
- (c) predatory pricing;
- (d) margin squeeze;
- (e) cross subsidisation;
- (f) refusal to deal;
- (g) denial of access to an essential facility;
- (h) tying and bundling;
- (i) discrimination in price or trading conditions to the prejudice of suppliers or consumers;
- (j) loyalty discount and rebates that harm competition;
- (k) abuse of an intellectual property right; and
- (l) making agreements subject to acceptance of supplementary conditions which by their nature have no connection with the subject matter.”.

Addition
of section
10A

9. The principal Act is amended by adding immediately after section 10 the following:

“Prohibition of
vertical
agreement

10A.-(1) A person shall not make or give effect to an agreement which involves-

- (a) re-sale prices or conditions maintenance;
- (b) foreclosing customers or competitors from access to sources of supply or from access to outlets; or
- (c) restricting movement of

goods or services between different geographical areas.

(2) Notwithstanding subsection (1)(a), a person may recommend a minimum re-sale price to the reseller of goods or services if-

(a) the supplier or producer makes it clear to the re-seller that the recommendation is not binding; and

(b) the product has a price stated on it and the words "recommended price" appear next to the stated price.

(3) A person who contravenes subsection (1) commits an offence."

Amendme
nt of
section 11

10. The principal Act is amended in section 11(1) by deleting the words "creates or strengthens a position of dominance" and substituting for them the words "substantially lessens competition".

Addition
of section
11A

11. The principal Act is amended by adding immediately after section 11 the following:

"Merger resulting
from substantial
public benefits

11A.-(1) The Commission may approve a merger prohibited under section 11(1) upon satisfaction that the proposed merger is likely to result into substantial benefits to the public which would outweigh any detriment caused by the proposed merger on preventing, restraining or distorting competition.

(2) In determining the substantial public benefits under subsection (1), the Commission shall consider the following factors:

(a) the extent to which the proposed merger shall

- contribute to the greater efficiency in the allocation of resources;
- (b) the extent to which the proposed merger would, or is likely to, promote technical or economic progress and the transfer of skills, or otherwise improve the production or distribution of goods or the provision of services in Mainland Tanzania;
- (c) the extent to which, the target firm faces actual or imminent financial failure and the proposed merger offers the least anti-competitive alternative use of the assets of the business;
- (d) the extent to which the proposed merger shall boost exports from Mainland Tanzania or employment in Mainland Tanzania;
- (e) the extent to which the proposed merger shall affect a particular industrial sector or region;
- (f) the extent to which the proposed merger may affect the ability of national industries to compete in regional and international markets; and
- (g) the extent to which the proposed merger may affect the ability of small businesses to become competitive.”.

Amendme
nt of
section 13

12. The principal Act is amended in section 13(1)(a) by deleting the phrase “is likely to create or strengthens a position of dominance” and substituting for it, the phrase “substantially lessens competition”.

Amendme
nt of
section 33

13. The principal Act is amended in section 33 by deleting the words “judgment”, “judgement”, “a judgement” and “the judgement” wherever they appear and substituting for the them the words “an order”.

Amendme
nt of
section 58

14. The principal Act is amended in section 58, by-

- (a) deleting the words “(other than under Part VI or VII)” appearing in subsections (1) and (6);
- (b) deleting the words “at any time within ten years after the acquisition” appearing in the opening phrase of subsection (5);
- (c) deleting the word “court” appearing in subsection (11) and substituting for it the words “judicial or *quasi-judicial* body”; and
- (d) deleting subsection (12).

Amendme
nt of
section 59

15. The principal Act is amended in section 59, by-

- (a) deleting the words “(other than under Part VI or VII)” appearing in subsection (1);
- (b) deleting subsection (6); and
- (c) renumbering subsection (7) as subsection (6).

Amendme
nt of
section 60

16. The principal Act is amended in section 60, by-

- (a) deleting the words “(other than under Part VI, Part VII or section 58, 59 or 88)” appearing in subsection (1);
- (b) adding immediately after subsection (1), the following:

“(2) Notwithstanding the provisions of sections 58 and 59, the Commission may impose the following fine against a person who commits an offence under Parts VI and VII:

(a) in case of a body corporate, a fine of

not less than thirty million shillings but not exceeding fifty million shillings or 3 percent of his annual turnover in the preceding year, whichever is greater; and

(b) in case of a natural person, a fine of not less than ten million shillings but not exceeding thirty million shillings or 1.5 percent of his annual turnover in the preceding year, whichever is greater.”;

(c) deleting subsections (5) and (8); and

(d) renumbering subsections (2), (3), (4), (6) and (7) as subsections (3), (4), (5), (6) and (7) respectively.

Amendme
nt of
section 61

17. The principal Act is amended in section 61 by deleting subsection (8) and substituting for it the following:

“(8) A person who is aggrieved by the decision of the Tribunal under this section may, within thirty days from the date of the decision, appeal to the Court of Appeal.”.

Amendme
nt of
section 78

18. The principal Act is amended in section 78(1) by inserting the words “the Tanzania Shipping Agencies Corporation” between the words “Aviation Authority” and “and such other” appearing in paragraph (c).

Amendme
nt of
section 83

19. The principal Act is amended in section 83-

(a) by adding immediately after subsection (4) the following:

“(5) The Chairman and three members of the Tribunal shall hold office for a period of four years and other three members shall hold office for a period of three years.”;

(b) in subsection (5), by deleting the phrase “hold office for a period not exceeding three years as specified in the instrument of his appointment and shall”; and

(c) renumbering subsections (5) and (6) as subsections

(6) and (7) respectively.

Amendme
nt of
section 84

20. The principal Act is amended in section 84(1), by-
(a) deleting subsection (1); and
(b) designating the contents of subsection (2) as section 84.

Amendme
nt of
section 85

21. The principal Act is amended in section 85 by deleting subsection (5) and substituting for it the following:

“(5) The Tribunal shall, in the discharge of its functions, have all the powers of the High Court.”.

Amendme
nt of
section 87

22. The principal Act is amended in section 87(1)(d) by adding immediately after the words “Tanzania Civil Aviation Authority”, the words “the Tanzania Shipping Agencies Corporation”.

Amendme
nt of
section 91

23. The principal Act is amended in section 91 by deleting the phrase “the order shall, unless the Tribunal otherwise orders, be stayed” and substituting for them the phrase “the Tribunal may upon application, order for stay”.

Amendme
nt of
sections 96

24. The principal Act is amended in section 96 by inserting the words “the Tanzania Shipping Agencies Act” between the words “Civil Aviation Authority” and “and sector” appearing in subsection (3).

Passed by the National Assembly on the 03rd September, 2024

NENELWA JOYCE MWIHAMBI
Clerk of the National Assembly