

FAIR COMPETITION (AMENDMENT) ACT, 2005

BILL SUPPLIMENT No.5 OF 20TH FEBREUARY 2015

MATRIX INDICATING JUSTIFICATIONS OF THE PROPOSED AMENDMENTS IN THE BILL

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
....	S.1(1)	Title of the Act This Act may be cited as the <u>Fair</u> Competition Act, 2003.	The term “fair” in the name of the Commission and the Act is never used in respect of ‘competition” and the usage by Tanzania was a drafting aberration.	To change the name of the Act so as to read - “Competition and Consumer Protection Act, 2003”.	In the competition nomenclature, the term “Fair” is used together and in conjunction with the term ‘Trade or Trading”. The case of removal of the term “Fair” is established as follows- The Business Dictionary (online) defines “fair competition” as competition based on the factors of price, quality, and service; not on the abuse of near-monopoly powers, competitor bashing, predatory pricing, etc. Therefore, the use of term “fair” in the name of the Act or Commission in Tanzania would be a misnomer and reduce it to the functions of the defunct Price	(i) Among more than 100 Members of International Competition Network, it is only Tanzania using “Fair Competition”. (ii) Seven institutions are using the word “Fair” but relating it to trade – “Fair Trade Commission of Barbados”; Jamaica Fair Trade Commission (same for Japan, Korea, Taiwan). (iii) Most are Competition Commissions; Competition authorities or Competition agencies. (iv) Name of the Act in most cases is “Competition Act” (India, Kenya, RSA,

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					Commission; that is not the position under the Fair Competition Act, 2003.	Pakistan, UK, or “Competition and Consumer Protection Act” (Zambia, Australia).
2		Name of the institution Fair Competition Commission	The name of the institution does not reflect that it also deals with Consumer protection matters.	To change the name of the institution to “(Fair) Competition and Consumer Protection Commission ”.	The FCA is divided into two main parts – the Competition part and the Consumer part. It is important that the consumer part is reflected in the name of the institution as well.	
3	S. 1(1)	Title of the Act This Act may be cited as the Fair Competition Act, 2003.	The title of the Act does not reflect the part dealing with Consumer.	To change the name of the Act to “(Fair) Competition and Consumer Protection Act ”.	The FCA is divided into two main parts – the Competition part and the Consumer part. It is important that the Consumer part is reflected in the title of the Act as well.	In Zambia, Kenya, Malawi and Australia where their competition law includes consumer protection provisions, the title of the Act is “ Competition and Consumer Protection Act ”
4(a)	S. 2	Definition of Tribunal “Fair Competition Tribunal”	The title of the Act does not reflect that the Tribunal deals with appeals.	To change the definition of “Tribunal” to “(Fair) Competition Appeals Tribunal ”.	Since the Tribunal hears and determines appeals from fair Competition Commission and Regulatory authorities (EWURA, SUMATRA, TCAA and TICRA), the word “Appeal” should be reflected in the name of the Tribunal.	Same position in UK.
4(b)	S. 2	Definition of “aids to trade” Not provided in the Act.		To define the phrase “aids to trade” to mean “services such	It is important to define the phrase “aids to trade” because the phrase is used to	Same position in Zambia.

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				as banking, insurance, transport warehousing, advertisement and other related services".	define "commerce" as shown below.	
4(b)	S. 2	Definition of "Commerce" Not provided in the Act.	The term is used in the Act but the definition is not clear.	To define the word "commerce" to mean "trade and aids to trade".		In Zambia, the word "trade" is qualified by adding "or business for the production, supply or distribution of goods or the provision of any service within a market that is open to participation by other enterprises" which is the same as "aids to trade". In Australia, the Competition and Consumer Protection Act 2010 defines "Trade or Commerce" to mean "Trade or Commerce".
4(b)	S. 2	Definition of "court" Not provided in the Act		To define the word "court" to mean "court of competent jurisdiction".		
4(b)	S. 2	Interpretation of "TCAA"	"TCAA" is used in the Act but its interpretation is not provided.	To add - "TCAA" means the Tanzania Civil Aviation Authority.	For clarity.	

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4(b)	S. 2	Interpretation of “TCRA”	“TCRA” is used in the Act but its interpretation is not provided.	To add - “TCRA” means the Tanzania Communications Regulatory Authority		
4(c)	S.2	Definition of “Consumer” Provides- “Consumer” includes any person who purchases or offers to purchase goods or services otherwise than for the purpose of resale but does not include a person who purchases any goods or services for the purpose of using them in the production or manufacture of any goods or articles for sale.	The definition does not include protecting third parties from defective products and services hence limit the Commission’s efforts in protecting the class omitted by the definition.	To amend the definition to include third parties. Third parties are “any user or beneficiaries of such goods or services”.	So as to cater for protection of third parties from defective products and services.	Same position in Zambia – section 2 Competition and Consumer Protection Act 2010; India and RSA.
4(c)	S. 2	Definition of “trade” Provides- “trade” includes <u>commerce</u>	The way the word “trade” is defined in the Act creates an ambiguity because “Commerce” is broader than trade”.	To re-define the word “trade” to include buying and selling of goods and services and includes	The term is used in the FCA in a manner that confuses trade and commerce. While trade involves buying and selling of goods and services and includes wholesale, retail,	From Economics and Commerce Literature: Commerce includes trade and not the other way round.

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				wholesale, retail, import and export.	import and export; commerce includes trade and aids to trade such as banking, insurance, transport, warehousing and advertisement. We need to avoid any ambiguity that may arise in the future.	
4(c)	S. 2	Definition of Minister Provides- "Minister means the Minister for the time being responsible for the Commission"	The definition does not include Fair Competition Tribunal (FCT) and National Consumer Advocacy Council (NCAC) which are also under the Minister who is responsible for the Commission.	To re-define to the effect that the same Minister is also responsible for the FCT and NCAC.	The same Minister should also be responsible for the FCT and NCAC.	
5	S.5(6)	Dominant Position Provides- "A person has a dominant position in a market if both (a) and (b) apply: (a) acting alone, the person can profitably and materially restrain or reduce competition in that market for a	The provision does not include joint dominance; practice has revealed that some offenders do abuse markets in a joint manner which is not covered in the existing law.	To amend by adding a subsection (7) to provide for situations where two or more firms exercising dominance in a market may be cited for joint dominance (may be regarded as they have dominance jointly in that market).	To put into task some offenders which do abuse markets in a joint manner. Such a situation is not covered in the existing law.	Article 82 of the EC Treaty prohibits a conduct on the part of "one or more" undertakings that amounts to the abuse of a dominant position; a dominant position may be held collectively when two or more legally independent undertakings are linked in such a way that they adopt a common policy on the

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		significant period of time; and (b) the person's share of the relevant market exceeds 35 percent".				market. Same position in Zambia.
6	S. 6	Application Provides- "This Act shall apply to Mainland Tanzania, state bodies and local government bodies in so far as they engage in <u>trade</u> ".	The provision refers to the word "trade" – which according to proposed definition will not cover "aids to trade".	To replace the word "trade" with "trade or commerce" in the whole section.	So as to capture trade and aids to trade. We have proposed the definition of "trade" to include buying and selling of goods and services and includes wholesale, retail, import and export and definition of "aids to trade" to include services such as banks, insurance, transport warehousing and advertisement. NB- Section 6 will be substituted (by schedule of amendments) to capture the proposal.	
7	S.7	Extra territorial jurisdiction The Act shall apply to conduct outside Tanzania: (a) by a citizen of Tanzania or a person	The needless long section and by its specificity as provided in the Act, it may not cover certain acts that should be covered and hence it will not be possible	To add a new paragraph (e), a general one, so as to cover other conducts which are not mentioned in the provisions -" by any person in relation to any other conduct and	So as to cover all such conducts.	In UK the provisions are quite general; section 2 of the Competition Act 1998 refers to agreements which may affect trade within UK and section 18 refers to conduct which amounts to abuse of dominance in UK (these are prohibited)

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		<p>ordinarily resident in Tanzania;</p> <p>(b) By a body corporate incorporated in Tanzania or carrying on business within Tanzania;</p> <p>(c) by any person in relation to the supply or acquisition of goods or services by that person into or within Tanzania;</p> <p>or</p> <p>(d) by any person in relation to the acquisition of shares or other assets outside Tanzania resulting in the change of control of business, part of a business or an asset of a business, in Tanzania.</p>	to deal with such acts.	transactions outside mainland Tanzania that affect competition within Tanzania”.		<p>Likewise in RSA, the provision is general; s.3 of Competition Act 1998 provides “This Act shall apply to all economic activity within, or having an effect within, the Republic, except</p> <p>And, the EAC Competition Act, 2006 provides at section 4 that “The Act shall apply to all economic activities and sectors having cross-border effect”.</p>
8	S.8(7)	Creates offence for anticompetitive agreements:	The provision imposes unnecessary burden on the plaintiff and therefore making it	To delete the words “intentionally or negligently”.	A person who contravenes the provisions of Section 8 should be liable for committing an offence whether or not the contravention was intentional	The words “intentionally or negligently” are not applicable in RSA. Same position in Kenya and in EAC Competition Act, 2006.

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		8(7) Provides: "Any person who <u>intentionally or negligently</u> acts in contravention of the provision of this section commits an offence under this Act".	difficult for the Commission to convict.		or negligent otherwise it will seem to imply that the plaintiff must prove intentionality or negligence. That would impose an unwise and unusual burden on the plaintiff (strict liability offences).	
9(a)	S. 9(1)	<p>Prohibited agreements</p> <p>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 by competitors; or (c) output restrictions between competitors; (d) collusive bidding or tendering".</p>	The provision omits market division, probably by mistake and thus making it difficult for the Commission when fighting against these very dangerous prohibited agreements known as "cartels".	To add a paragraph to provide for allocation of markets or customers.	To have all the areas on prohibited agreements covered by the Act.	<p>In Zambia, section 9(1)(b) of Competition and Consumer Protection Act 2010 provides "division of markets by allocating customers, suppliers or territories specific types of goods or services.</p> <p>In Kenya – the Competition law provides for agreements to allocate territories or markets for the disposal of goods.</p> <p>Same position in section 4(1)(b)(ii) of RSA Competition Act" and Section 5(2)(c) EAC Competition Act 2006.</p>
9(b)	9(1)	N/A		To add a paragraph 2(d) to define		

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				“allocation of markets” to mean to divide a market between competitors so as to limit the right to do business within a defined geographical territory, a defined product category, or to certain specified customers with result of eliminating or restraining competition between competitors.		
9(c)	S. 9(4)	Creates offence for prohibited agreements. It provides- “Any person who <u>intentionally or negligently acts</u> in contravention of the provisions of this section, commits an offence, under this Act”.	The provision imposes unnecessary burden on the plaintiff and therefore making it difficult for the Commission to convict.	To delete the words “intentionally or negligently”.	It will seem to imply that the plaintiff must prove intentionality or negligence. That would impose an unwise and unusual burden on the plaintiff (strict liability).	The words “intentionally or negligently” are not applicable in RSA. Same position in Kenya and in EAC Competition Act 2006
10		Leniency agreement/program Not provided for	The Act does not provide for a leniency	To add a new provision (s. 9A) to provide for a	We do believe that in Tanzania there is a good number of cartels. Introducing	International Competition Network recommends having leniency programs

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			<p>agreement/program which helps to increase detecting cartels and thus making it difficult for the Commission to fight against this very dangerous offence in competition - cartel.</p>	<p>leniency agreement/program.</p> <p>“The Commission may execute a leniency program reducing applicable penalty to a person who engages in anti-competitive conducts as long as that person effectively cooperates during investigation and subsequent administrative measures undertaken in relation to such anti-competitive conduct”.</p>	<p>leniency agreements will help us-</p> <ul style="list-style-type: none"> (i) uncover conspiracies that would otherwise go undetected, (ii) destabilize existing cartels (ii) act as a deterrent effect to entering into cartel arrangements. <p>According to International Competition Network, the leniency programs-</p> <ul style="list-style-type: none"> (i) elicit confessions and direct evidence about other participants. (ii) The evidence can be obtained more quickly, and at lower direct cost, compared to other methods of investigation, leading to prompt and efficient resolution of cases. 	<p>as a tool to fight against cartels. More than 50 jurisdictions have introduced leniency programs i.e. USA, Canada, European Union, RSA, Brazil, Zambia etc. In virtually every jurisdiction that has a leniency program, the first cartel participant to report the cartel conduct before an investigation has begun and meets the other qualifying criteria of the jurisdiction’s program, will receive full immunity from prosecution.</p> <p>In Brazil for example, where leniency program was introduced in 2000, approximately 15 leniency agreements were signed from 2003 and others are currently being negotiated. The fine for cartel in Brazil ranges from 1 to 30% of its pre-tax total turnover; managers and other executives that took part in cartel are fined 10 – 50% of</p>

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					<p>(iii) The parties who provide information are promised lower fines, <u>shorter sentences</u>, less restrictive orders, or even complete leniency.</p> <p>According to ICN, Leniency programs have been developed in order to encourage violators to confess and implicate their co-conspirators with first-hand, direct 'insider' evidence that provides proof of conduct parties want to conceal.</p>	<p>the fine imposed to the firm. The challenge has been how to treat companies and their executives who lose the race for full immunity but are still in a position to offer timely and valuable cooperation. Various jurisdictions have overcome this challenge by giving such companies a reduction in fine pursuant to a leniency programme.</p>
11(a)	S. 10(2) &(3)	<p>Provides-</p> <p>(2) "If the Commission has granted an exemption under section 12 for an agreement, conduct of a person in making or giving effect to that agreement is not prohibited by this section during the period of the exemption."</p>	<p>Sub-section (2) is explaining the obvious – no value addition.</p>	<p>To delete s.10 (2)&(3).</p> <p>Sub-section (3) to be reflected in the new subsection (2) (should show that even if it is only one of the number of object of the conduct by using the word "or")</p>	<p>It has no value addition.</p>	

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		(3) "For the purposes of sub-section (1), an object is the object of conduct if it is a significant object of the conduct even if it is only one of a number of objects"				
11(a)	S.10(3)	<p>List of offences on abuse of dominant position</p> <p>Not provided for.</p>	<p>The Act does not provide for list of offences on abuse of dominant position and thus brings confusion to members of public in understanding the offences under this provision.</p>	<p>To add offences on abuse of dominant position.</p> <p>Offences on abuse of dominance are such as imposing unfairly high or low prices, limiting production to prejudice consumers, discriminate between consumers, predatory pricing, price squeezing, cross subsidization, refusal to deal, refusal of access to an essential facility, tying</p>	<p>It is quite important to itemize offences on abuse of dominant position; this will make the public understand what kind of offences FCC is dealing with regarding abuse of dominance. In practice FCC has been receiving complaints regarding persons who have evaded paying duties to the TRA; the complainants are demanding that FCC should investigate such complaints.</p>	<p>The same is provided for under sections 8, 9,&10 EAC Competition law ; sections 8 & 9 RSA Competition Act and section 46 Competition and Consumer protection Act 2010 Australia.</p>

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				arrangements, fixing resale prices, restricting movement of goods or any other such related conducts.		
11(b)				Re-numbering subsection (4) as subsection (3)		
11(c)	S. 10(4)	Creates an offence for misuse of market power. Provides- “Any person who <u>intentionally or negligently</u> acts in contravention of the provisions of this section, commits an offence”.	The provision imposes unnecessary burden on the plaintiff and therefore making it difficult for the Commission to convict.	To delete the words “intentionally or negligently”.	A person who contravenes the provisions of section 10 should be liable for committing an offence whether or not the contravention was intentional or negligent (strict liability).	The words “intentionally or negligently” are not applicable in RSA. Same position in Kenya, Zambia; RSA (s. 8 Competition Act) and s. 8 EAC Competition Act, 2006.
12(a)	11(2)	Provides: “A merger is notifiable under this section if it involves turnover or assets above threshold amounts the Commission shall	Practice has revealed that the period of 5 days provided in FCC Rules 2013 to decide on completeness of the	To add a sub-section to provide for a period of 14 days to decide on completeness of filing.	To give the technical experts enough time.	ICN recommends the total period for attending a merger should not exceed six months; in this case in our jurisdiction the total period before extensions will

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		specify from time to time by Order in the <i>Gazette</i> , calculated in the manner prescribed in the Order”.	filed documents for merger application is too short.			be four months which is within.
12(b)				Re-numbering subsections (3), (4), (5) and (6) as subsections (4), (5), (6), and (7).		
12(c)(i)	11(3)	Provides: “If, within <u>14 days</u> after receipt of a notification of a merger under subsection (2), the Commission determines that the proposed merger should be examined, the merger shall be prohibited for a period of 90 days thereafter for such further period as the Commission determines under subsection (4)...”	Practice has revealed that the period of 14 days provided under s. 11(3) is too short.	To replace “14 days” with “30 days”.	To give the technical experts enough time.	International Competition Network recommends that the period for merger examination (analysis) should not exceed six months – the total period before extensions will be four and a half months which is less than 6 months.

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12(c)(ii)	11	<p>Merger factors</p> <p>Not provided for.</p>	<p>The Act does not provide for Merger factors and hence does not bring awareness to members of the public and especially those notifying mergers to the Commission.</p>	<p>To add a new subsection (7) to provide for “merger factors” and circumstances for merger exemption (as provided under s. 13(1)).</p> <p>Merger factors are such as the actual potential level of import in the market, barriers to entry, level of concentration, degree of countervailing power, whether the merger will result in increase of prices or profit margins, extent of substitutes, efficiencies etc.</p>	<p>It is important to state the “merger factors” in the Act so that members of the public can know what FCC is doing when examining the merger as provided for under section 11(3). Furthermore, this will help in the process of analyzing the merger and also will enable the Commission to be more focused in making decisions.</p>	<p>Same position in Australia (s. 50(3) of Competition and Consumer Protection Act 2010), RSA (s. 12A), UK and EAC Competition law (s. 13).</p>
12(c)(ii)		<p>What happens after merger analysis</p> <p>Not provided for</p>	<p>The Act does not provide for what the Commission do or what happens after the examination of the merger for</p>	<p>Add a new subsection (10) to provide for what happens after the examination of the merger.</p>	<p>This is provided for in Rule 42(13) FCC Procedure Rules, 2013 but we think it is more proper to appear in the main Act so that members of Public</p>	<p>Same position as s. 14 RSA Competition Act.</p>

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			members of public to know.	After merger analysis, the Commission may approve the merger; approve the merger subject to conditions; prohibit implementation of the merger; or may grant an exemption to the merger for a period not exceeding one year.	can know what follows after examination of the merger.	
12(c)(ii)		<p>A situation where the Commission can review its own decision where the decision was based on incorrect information or deceit</p> <p>Not provided for</p>	The Act does not provide for a situation where the Commission can review its own decision with regard to merger approval where the decision was based on incorrect information, deceit or the firm breached some conditions attached to the approval.	To add a new subsection (11) to allow the Commission to review its own decision with regard to merger approval.	The same is provided for under Rule 48(1) FCC Rules 2013 – it is important that this Rule have basis from the main Act because it give powers to the Commission.	The same position as provided for under s. 15 RSA Competition Act and s. 80AC Competition and Consumer protection Act Australia.
12(c)(ii)	S. 11(6)	Provides – “Any person who intentionally or negligently acts in contravention of the provisions of this	The sub-section 11(6) is too general and thus makes it difficult for the	To add a new subsection (12) to provide for all offences with regard to merger.	It is important to provide in this part all offences regarding a merger for clarity and for better implementation. Such offences range from failure to	Same position in EU; Article 14(2) Council Regulation (EC) No. 139/2004 (The Merger Regulation) and in RSA s. 59 Competition Act.

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		section, commits an offence under this Act”.	Commission to implement.	.	notify the merger; implementing the merger which has been prohibited by the Commission; breaching merger conditions and implementing the merger without the approval of the Commission	
12(c)(ii)		Punishment for breach of merger conditions. Not provided for		To add a new subsection (13) providing for punishment for breach of merger conditions which is proposed to be 1.5% of annual turnover.	We are of the view that punishment for breach of merger conditions should be different from the rest (which are taken care by the general penalty (under s. 60; i.e., 5-10 percent annual turnover) because that fine is not commensurate to the offence –too high.	Same position in EU; Article 14(2) Council Regulation (EC) No. 139/2004 (The Merger Regulation) and in RSA s. 59 Competition Act.
12(c)(ii)	11(6)	Provides- “Any person who <u>intentionally or negligently</u> acts in contravention of the provisions of this section, commits an offence under this Act”.	The provision imposes unnecessary burden on the plaintiff and therefore making it difficult for the Commission to convict.	To delete the words “intentionally or negligently”.	A person who contravenes the provisions of section 11(6) should be liable for committing an offence whether or not the contravention was intentional or negligent (strict liability).	The words “intentionally or negligently” are not applicable in RSA. Same position in Kenya, Same position in Zambia, RSA (s. 8 Competition Act) and s. 8 EAC Competition Act, 2006.

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13	Part II	S. 9; Prohibition of agreements. S.10; Misuse of market power. S. 11; Mergers and acquisition. S. 12; Exemption of agreements.	Flow of events is not maintained under this Part.	To amend to maintain flow of events in a manner that “Prohibition of certain agreements” should be followed by “exemption of agreements”, then “misuse of market power” and finally “mergers and acquisition”. Amend Part II by re-arranging section 12 as 10; section 10 as 11 and section 11 as section 12.	To maintain flow of events.	
14	13	Provides for exemption of mergers		To be deleted. (Contents have been inserted in new subsections (8) and (9) in amendment of section 11.	There is no need to have exemption for mergers as a separate provision because this has been included in the merger analysis.	Same position in EAC, RSA and UK.
15	25	Jurisdiction of Commission to s. 25 Provides- That s. 25 is under jurisdiction of the Court	The word “court” is referred to in this provision (s. 25(2), s. 25(4)(a); and s. 25 (4)(b)). As a result of this, the Commission	To replace “court” with “Commission or court” in section 25.	For the Commission to handle consumer matters as well. (Cabinet directive requires FCC to be seen protecting the consumer).	

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			has not been able to implement the provision.			
16	25	Price display Not provided for.	The Act does not provide for protection of consumers against businesses who do not display price. This makes it difficult for the Commission in handling consumer complaints based on price display.	To add a provision (30A) to provide that a supplier shall not display any goods for sale without displaying their prices. Further, define "price" to mean a charge of any description.	It is important that a price is displayed for the consumer to see and make a decision.	Same position in Zambia – section 51 Competition and Consumer Protection Act 2010.
16		Prohibition of disclaimer Not provided for.	The Act does not provide for protection of consumers against disclaimer notices such as "Parking at owner risk". This makes it difficult for the Commission in handling consumer complaints based on such disclaimer notices.	To add a new provision (30B) to the effect that a supplier shall not display any sign or notice that purports to disclaim any liability.	It is important that the consumer is protected against such notices.	Same position in Zambia – section 48 Competition and Consumer Protection Act 2010 and RSA.
16		Offences Not provided for		To add a new provision (30C) to provide for punishment	For deterrence.	

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				<p>on non display of price and display of a disclaimer.</p> <p>For a natural person with Annual turnover from TZS 50m to a fine not less than 500,000 and not exceeding TZS 5m.</p> <p>For a body corporate, to a fine not less than TZS 6m and not exceeding TZS 10m.</p>		
17	33	<p>Jurisdiction of Commission to s. 33</p> <p>Provides- That s. 33 is under jurisdiction of the Court only</p>	<p>The words referred are “a court of competent jurisdiction”; “court”; “judgment”. As a result of this, the Commission has not been able to implement the provision.</p>	<p>To replace “court of competent jurisdiction” with “Commission or court”; “court” with “Commission or court”; and “judgment” with “order or judgment” in section 33.</p>	<p>For the Commission to handle consumer matters as well. (Cabinet directive requires FCC to be seen protecting the consumer).</p>	
18	S. 36	<p>Registration of Consumer Contracts</p> <p>Provides that Standard Form Contracts shall be Registered with the Commission.</p>	<p>The Section does not include review of the terms and conditions of the Contracts which is</p>	<p>To amend the section to the effect that it includes review of the terms and conditions of a Standard Form Contracts.</p>	<p>It is important that the consumer is protected against the standard form contracts which most of the time they contain terms not understood by the consumers – the letters may be so small for the</p>	<p>Same position as in UK and South Korea.</p>

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			the actual purpose of the registration.	By inserting the words “reviewed and” immediately before the word “registered”.	consumer to read and make a rational decision.	
		<p>Offences and fines regarding Standard Form Contracts</p> <p>Not provided for.</p>	The law does not create offences and fines (the offences being: non-submission of Standard Form Contracts for Review; use of an unauthorized variation of registered Standard Form Contract terms); and use of “unfair contractual terms” or use of “unfair contractual terms” by a person with dominant position in the market.	<p>(a) To add a provision to the effect that it creates offences of:</p> <p>(i) non-submission of Standard Form Contracts for Review;</p> <p>(ii) use of an unauthorized variation of registered Standard Form Contract terms; and</p> <p>(iii) use of “unfair contractual terms”.</p> <p>Proposed fines for the above offences to be not less than TZS 500,000 and not more than shillings 5m for a natural person (with annual turnover from 50m); and not less than TZS 6m but not</p>	It is important that the consumer is protected against the standard form contracts which most of the time they contain terms not understood by the consumers – the letters may be so small for the consumer to read and make a rational decision.	<p>(i) Same position as in UK and South Korea.</p> <p>(ii) In South Korea, fine for use of “unfair contract terms” for a person with dominant position in the market is approximately USD 100,000.00 (TZS.200,000,000/= approximately).</p>

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				<p>exceeding TZS 10m for a body corporate.</p> <p>(b) To add an offence of “use of unfair contractual terms” by a person with dominant position in the market. Proposed fine to be not less than TZS 50m but not exceeding TZS 80m or 0.5 percent of that person’s annual turnover.</p>		
19		<p>Meaning of unfair terms of consumer contracts</p> <p>Not provided for.</p>	<p>The Act does not provide for protection of consumers against unfair terms of consumer contracts or transactions such as “Terms and conditions apply”, “goods once sold are not returnable” etc.</p>	<p>To add a provision (36A) to cater for this shortcoming. It is proposed that the provision shall provide- (i) the contract or a term of the contract shall be regarded as unfair if it causes a significant imbalance in the parties’ rights and obligations arising under the contract, to the detriment of the consumer.</p>	<p>Important for enforcement purposes.</p>	<p>Same position in Zambia – section 54 Competition and Consumer Protection Act 2010; RSA, India.</p>

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
				(ii) such contracts shall be unenforceable against the consumer (iii) the contract shall bind the parties if it is capable of being enforced without the unfair term".		
20(a)	38(1)	The closing statement of section 38(1) reads- "he <u>has little</u> to compensate the consumer...."		To replace the words "has little" with "he is liable".	Error correction.	
20(b), 21,22,23,24,25, 26 & 27.	38(1), 39(1), 40(1), 41(1), 42(1), 42(4), 43(1), 44(b), & 47(3).	Jurisdiction of Commission to the provisions. Provides- That the provisions are under jurisdiction of the Court only	The words referred are " a court of competent jurisdiction "; " court ". As a result of this, the Commission has not been able to implement the provision.	To replace "court of competent jurisdiction" with "Commission or court" and "court" with "Commission or court" in the provisions.	For the Commission to handle consumer matters as well. (Cabinet directive requires FCC to be seen protecting the consumer). So as to give the consumer an alternative avenue of getting redress. At the Commission (being an administrative Tribunal) the process is faster and cheaper compared to court of law.	In most of the countries consumer matters are handled by ADR – Zambia, RSA, Malawi, Australia, UK etc.
28	50	Reference is made to "Act No. 3 of 1975" in the marginal note	Reference is made to a repealed law	To replace "Act No. 3 of 1975" with "Cap 130".		

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
29	53(9)	<p>Failure to comply with requirement of giving notice stating that the goods he supplied are subject to recall.</p> <p>Imposes a fine to a natural person of <u>fifty thousand and not exceeding one million shillings</u> for not giving a notice stating that the goods he supplied are subject to recall (as being dangerous or not complying with safety standards);</p> <p>For a body corporate, a fine <u>not less than one hundred thousand and not exceeding five million shillings</u>.</p>	The fines imposed are on the lower side and do not deter the offender.	To amend the provision to the effect that fines are enhanced to a tune between 500,000 to 5,000,000 TZS (for a natural person) and 6,000,000 to 10,000,000 to a body corporate in order to ensure that the deterrence effect is achieved.	For deterrence.	In RSA, the Consumer Protection Act 2008 provides that failure to give a notice is a criminal offence with a fine or imprisonment for a period not exceeding 12 months or both.
30	56(2)	<p>Failure to give notice of voluntary recall</p> <p>Imposes a fine to a natural person of fifty thousand and not exceeding one million.</p> <p>For a body corporate, a fine not less than one</p>	The fines imposed are on the lower side and do not deter the offender.	To amend the provision to the effect that fines are enhanced to a tune between 500,000 to 5,000,000 TZS (for a natural person) and 6,000,000 to 10,000,000 to a body	For deterrence.	In RSA, the Consumer Protection Act 2008 provides that failure to give a notice is a criminal offence with a fine or imprisonment for a period not exceeding 12 months or both.

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
		hundred thousand and not exceeding five million shillings.		corporate in order to ensure that the deterrence effect is achieved.		
31, 32(a)	58,59	Exemption of Parts VI and VII from compliance and compensatory orders (“Implied conditions in consumer contracts” and “Manufacturer’s obligation”).	The Commission has not been able to grant compliance or compensatory orders (e.g. refund) for consumer offences under Parts VI and VII.	To delete “(other than Parts VI and VII)”	So as to enable the Commission to grant compensatory and compliance orders for consumer offences under Parts VI and VII	
32(b)	59 (6)&(7)	Exemption of section 15, Parts VI and VII from fines in the Act (under s. 60).	Lack of fining provisions for consumer offences has made it difficult for the Commission to protect the consumer.	To delete the subsections and replace with introduction of alternative dispute resolution.	This is aimed at fast tracking settlement procedure of consumer disputes.	In most of the countries consumer matters are handled by ADR – Zambia, RSA, Malawi, Australia, UK etc.
33(a)	60(1)	Offences/penalty Provides – “Where a person commits an offence against this Act (other than under Part VI, part VII or sections 58, 59 or 88) or is involved in such an offence, the Commission may	(i) The Act does not exempt some provisions in the Act which create offences and provide for penalty and thus bring confusion; it is too general. (ii) The Act does not differentiate	(i) To amend the subsection The provision should have begun with “ <i>Unless otherwise provided under this Act.</i> ”	(i) To recognize some other provisions in the Act which provide for penalty. (ii) With regard to the fine we are of the opinion that the punishment provided under the current law is not effective and severe enough as far as cartels are concerned. An effective and severe penalty is	(i) International Competition Network recommends that punishments should be clearly stipulated in the law to avoid any ambiguity. (ii) In Brazil for example, the fine for cartel offence ranges from 1 to 30% of its pre-tax total turnover.

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
		impose on that person a fine of not less than five percent of his annual turnover and not exceeding ten percent of his annual turnover.”	punishment for cartels (which should be more severe) from other competition offences.	(ii) To amend the subsection to accommodate punishment for contravention of section 9 (cartels) which is proposed to be a fine of not less than 15 percent but do not exceed 30 percent of his annual turnover in the preceding business year.	required for cartels because cartel is, <i>“the most egregious violation of competition law”</i> . Cartels raise prices; restrict supply; reduce innovation; and can lead to artificially concentrated markets, and inefficiency. (An effective penalty is the one that takes into account the financial gains perpetrated by the offence as well as the probability of detection).	
33(b)		Fine for director, manager, or officer of a body corporate Not provided for	The Act does not provide fine for director, manager, or officer of a body corporate who commits offence.	To amend by inserting a new subsection (4) to accommodate punishment for a natural person which is proposed to be fine of up to five million shillings or imprisonment for a term of two years or to both; and in the case of violations of Section 9 (cartels), to a fine of 5 – 10% of the fine	Such person as a director, manager, or officer of a body corporate found to violate the Act has to be personally liable for deterrence.	In Brazil for example, managers and other executives that took part in cartel are fined 10 – 50% of the fine imposed to the firm.

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
				imposed to the <u>legal person</u> or to imprisonment for a term of three years or to both".		
33(c)	60(5)(6) &(7)	Exemption of section 16, 15 and Parts VI & VII from fines under s. 60.	Lack of fining provisions for consumer offences has made it difficult for the Commission to protect the consumer.	Amend by deleting subsections (5),(6)&(7) and inserting a new subsection (6) to provide fines as follows- (i) The Commission shall- On contravention of Parts III, IV,V, VIII or IX- For a natural person impose a fine not less than 10m and not exceeding 25m or 1.5% annual turnover; and for a body corporate a fine not less than25m and not exceeding 50m or 3% annual turnover; and (ii) On contravention of Parts VI or VII For a natural person impose a fine not less than	So as to enable FCC to enforce consumer protection provisions in the Act (the law provides for the offences but does not provide for fines).	The Zambia position- fine shall not exceed 10% annual turnover; the same position in RSA. In Australia fine for such offences as in Parts II, IV, V, VIII or IX – for a body corporate is \$1,100,000 and \$220 for a natural person.

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
				500,000 and not exceeding 5m or 0.5% annual turnover; and for a body corporate a fine not less than 5m and not exceeding 10m or 1% annual turnover.		
33(d)				To re-number accordingly- ((4) as (5) and (8) as (7).		
34		Enforcement of Orders of the Commission Not provided for	The Act does not provide for mechanism to enforce orders of the Commission and thus making it difficult for the Commission to undertake its tasks in ensuring that the law is abided with for the benefit of the economy at large.	To add a provision (60A) on registration of orders of the Commission at the High Court for enforcement.	To enable the Commission to undertake its tasks in ensuring that the law is adhered to.	Same position in section 34 Competition Act 1998 UK whereby if businesses fail to comply with Commission's orders, they seek a High court order to enforce them. International Competition Network (ICN) recommends enforcement for non compliance.
35(a)		Intervention of the AG in any suit or matter instituted in the <u>court</u> by, or against the Commission or Tribunal.		To add subsections in section 62 to allow Intervention of the AG in any suit or matter instituted in the <u>court</u> by, or against the	So as to protect Government's interests.	

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
				Commission or Tribunal.		
35(b)	62(6)	It provides “The Commission shall be constituted by five members”	Chances of misinterpretation	To replace with “The Commission shall consist of the following members...”	To avoid misinterpretations.	
35(c)		Oath of office Not provided for.	While under section 71(3) it is provided that the Chairman, the Director General, or any member of the Commission may administer oath or affirmation; the law does not provide for oath of office for those who are to administer the oath – under normal practice an oath is administered by a person who himself has been sworn.	To add a provision to the effect that the Chairman, the Director General and members of the Commission once appointed shall take oath of office. (The Bill at s. 35(c) provides for oath of Chairman only (the oath to be administered by the President) –leaving behind the other members of Commission)	Apart from declaring that they will duly and faithfully execute the powers and trusts reposed in them as the members of the Commission, they will administer oath.	
35(d)	62(9)	Exemption of liabilities from	The provision should exempt members	To amend the provision to replace	In order to ensure impartiality and independence of the Commission, it is important	

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
		<p>members and employees.</p> <p>Provides-</p> <p><u>"No civil liability will attach to any member or employee of the Commission in his personal capacity as a result of any act or thing done in good faith in the performance or exercise..., of any function or power of the Commission".</u></p>	and employees from liability personally.	the word "civil" with "personal".	that the Members and employees of the Commission are personally protected against action that has been done or omitted to be done in good faith.	
35(e)				Re- number subsections (5),(6),(7),(8),(9),(10) and (11) as (8),(9),(10),(11),(12),(13) and (14).		
36	63	Tenure for members of the Commission.	The tenure is only provided for "the first Chairman and	To amend to provide for the fixed terms- Chairman (non-executive) - 3 years;	Best practice.	

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
			Members of the Commission”.	the DG - 4 years; three non-executive members – 3 years.		
37	64(1)(f)	Code of conduct is referred as binding the members of Commission	The law does not mention the code of conduct is referring to.	To amend to provide that the Code of conduct referred is the Code of Conduct for Members and Employees of the Commission (which is also recognizing that of Public Service).		
38	71(5)	Police officer to be accompanied by staff of the Commission It provides- “(5) Where the Commission has reason to believe that a person is in possession or control of any documents that may assist it in the performance of any of its functions, the Chairman, the Director	(i) The provision provides that it is a police officer who is to be accompanied by staff of the Commission; this is not the case. It is the staff of the Commission who is to be accompanied by a police. (ii) The provision provides that a search warrant shall	To amend by replacing subsection (5) so as to provide- (i) it is the staff of the Commission who is to be accompanied by police officer; (ii) the Chairman, the Director General or any member of the Commission, may issue a search warrant; and	We are of the opinion that to depend only on Chairman of the Tribunal in issuing the search warrant may result in inefficiency because when this person is not in the office, the search warrant will not be obtained. Commission’s power to search and seize; this is provided for in the FCC Rules 2013. We are of the opinion that the same should be	Same position as RSA, UK

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
		General or any member of the Commission, may <u>apply to the Tribunal who, acting through the Chairman, shall</u> issue a warrant authorizing any <u>police officer, accompanied by staff of the Commission dully authorized by the Chairman of the Commission</u> to enter premises to conduct a search and make copies or take extracts of documents therein”.	be issued by the Chairman of the Tribunal only; this may cause delays to the Commission in performing its duties. (iii) The provision does not show that the Commission can search and seize any item relevant to the investigation and seal premises – this may affect performance to the Commission.	(iii) the staff can search and seize any item relevant to the investigation and seal premises.	reflected in the Act because the provision is giving powers to the Commission.	
	S. 71(6)	Giving false or misleading information Provides- Any person who- (a) knowingly gives false or misleading information or evidence in purported compliance with a summons (b) without lawful excuse refuses or fails to	i). The provision does not create an offence for a person who gives false or misleading information in compliance with request of information by the Commission by a letter or special form.	To amend by replacing subsection (6) so as to- (i) cater for those who give false or misleading information when the Commission requests information by a letter or by a special form. (ii) To provide punishment for this provision; the	(i) The practice is that there is request of information by the Commission by a letter or by a special form; and request of information by use of summons. (ii) With regard to the punishment, section 60 provides for a minimum fine of 5% annual turnover. This may not be commensurate with the offence – it is too high.	Same position in EU; fine not exceeding 1% of the total turnover in the preceding business year – Article 23 Council Regulation (EC) No. 1/2003.

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
		<p>comply with a summons; under this section, commits an offence.</p> <p>BUT does not provide for punishment.</p>	<p>(ii) The provision does not provide for punishment and hence makes it difficult for the Commission to deal with those who refuse to provide information or give false information.</p>	<p>proposed punishment is fine not exceeding 1% of the total turnover in the preceding business year and in the case of a natural person, to a fine not exceeding five million Tanzanian shillings (see 33(b)).</p> <p>(iii) Amend by adding a subsection (7) to provide that search on Parts III – IX (consumer provisions) may be conducted without warrant.</p>		
		<p>Obstruction to search</p> <p>Not provided for</p>	<p>The Act does not provide for “obstruction to search” and its punishment; the persons to be searched may take advantage of such a provision and this will bring difficulties</p>	<p>To add a subsection (8) to create an offence for obstruction during search and its punishment which is proposed to be a fine not exceeding 1% annual turnover.</p>	<p>Such a provision is aimed at instilling confidence to search team and to act as deterrence for those obstructing the search.</p>	<p>Same position in EU.</p>

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
			to the Commission in performing its duties.			
39	73	For matters to be handled by Members of Commission, reference is made to “Commission” instead of “Members of the Commission”.	Brings confusion. Commission is the whole institution, including employees and members of Commission.	Amend the subsections to provide that for matters to be handled by the Members of the Commission; reference should be made to “Members of the Commission”.	So as to avoid the confusion.	
40	74	Provides- “The Commission may delegate to a member of the Commission.....”	Brings confusion. Members of the Commission are the ones to delegate to a member.	Amend to provide that the Members of the Commission are the ones to delegate to a member.	So as to avoid the confusion.	
41(a)	77(3)(a)	Decisions of mergers to appear in Public Register Not provided for. 77(3)(a) provides-	The provision does not include “decisions for notified mergers” to appear in the Public Register; this deprives the members of public	To amend the provision so as to capture decisions for notified mergers.	We are of the opinion that members of public have the right to know the reasons for Commission’s decision on notified mergers as well.	Best practice.

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
		<p>“The Commission shall promptly place on the Public Register copies of-</p> <p>(a) decisions made in respect <u>to offences committed</u> under sections 8, 9,10 and 11, decisions to grant or refuse exemptions under sections 12 and 13 and decisions to make or refuse to make orders under Part X and section 70;”</p>	<p>their right to be informed.</p>			
41(b)	S. 77(5)	<p>Exclusion of confidential documents from Public Register –</p> <p>Provides-</p> <p>“The Commission shall exclude from the Public Register any document or part of a document which is confidential within the provisions of section 74.</p>	<p>Reference is wrongly made to section 74”. Confidentiality is provided for under section 76.</p>	<p>To replace “74” with “76”.</p>	<p>Error correction.</p>	

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
42	S. 78(c)	Reference is made to EWURA, SUMATRA, <u>Tanzania Communication Regulatory Authority</u> , <u>Tanzania Civil Aviation Authority</u> in these provisions.	There is no uniformity. TCRA and TCAA have already been defined under section 2 so we have to continue using TCRA and TCAA in the text.	To replace “Tanzania Communication Regulatory Authority, and Tanzania Civil Aviation Authority” with “TCRA and TCAA” respectively.	For uniformity.	
43	81	Annual Report submission dates Provides- “Before <u>30th September</u> each year, the Commission shall prepare an Annual Report in respect of the year up to the immediately preceding 30 th June and submit it to the Minister before 30 th <u>November</u> in that year”.	The dates provided in this provision do not match with the requirements of the new Audit Act which requires submissions to the CAG before 30 th September each year.	To amend the provision so that the dates can match with the changes in the new Audit Act – this is by replacing “30 th September” with “31 st March” and also by replacing “November with June”.	To match with the changes in the Audit Act.	
44	Part XIII	Title to Part XIII provides- “FAIR COMPETITION TRIBUNAL”	The title does not reflect that the Tribunal deals with appeals.	To amend so as to read- “(FAIR) COMPETITION	Since the Tribunal hears and determines appeals from fair Competition Commission and Regulatory authorities	Same position in UK.

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
				APPEALS TRIBUNAL".	(EWURA, SUMATRA, TCAA and TICRA), the word "Appeal" should be reflected in the name of the Tribunal.	
45(a)	83(1)	<p>Establishment of the Tribunal.</p> <p>Section 83(1) provides for the Establishment of the Fair Competition Tribunal.</p>		<p>To amend the subsection to show change of name; which is proposed to be "(Fair) Competition Appeals Tribunal".</p>	<p>Since the Tribunal hears and determine appeals from the Fair Competition Commission and Regulatory Authorities (EWURA, TCRA, TCAA and SUMATRA) the word "Appeal" should be reflected in the name of the Tribunal as it is an appellate body.</p>	<p>The same position as in the UK.</p>
45(b)		<p>Disqualification from becoming a member of the Tribunal.</p> <p>Not provided for.</p>	<p>The Act does not provide for circumstances which disqualify a person from becoming a member of the Tribunal.</p>	<p>(i)To add a new subsection (3) to cater for the qualities which disqualify a person from becoming a member of the Tribunal.</p>	<p>In order to ensure impartiality and good image of the Tribunal, it is important to provide in the Act that a person shall not be a member of the Tribunal if that person is an office-bearer of any political party; or is declared bankrupt; or has been convicted of a criminal offence and sentenced to imprisonment without the option of a fine.</p>	<p>Same position in RSA and India.</p>

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
45(b)		<p>Oath of office</p> <p>Not provided for.</p>	<p>The Act does not provide for “oath of office”.</p>	<p>(i) To add a subsection (4) to the effect that Members of the Tribunal once appointed shall take oath of office.</p> <p>(ii) To add a subsection (5) to the effect that the oath referred above shall be administered to the members of the Tribunal by the President.</p>	<p>It is important to take oath of office that the members will duly and faithfully execute the powers and trusts reposed in them as Members of the Tribunal to the best of their knowledge and skills.</p>	<p>The same position in Canada. Such an oath of office is administered to members of the Tribunal before they take office.</p>
		<p>Staggering term of office for Members of the Tribunal.</p> <p>Not provided for.</p>	<p>The Act does not provide for staggering term of office for Members of Tribunal and as a result, following the end of term of office for the previous members the FCT was stalled for the whole year.</p>	<p>To introduce a subsection (6) in such a way that the term of office of Members of the Tribunal shall not end at the same time.</p>	<p>This kind of provision will ensure that the Tribunal has quorum at any material time.</p>	<p>Same is provided for in section 63(7) FCA – to cater for term of office for FCC members; ensuring that there is a quorum at any material time.</p> <p>Also the Competition Act of South Africa has a similar provision.</p>

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
45(c)				Re-number subsections (3),(4),(5) and (6) as subsections(7),(8), (9), and (10).		
46		Deputy Chairman of the Tribunal Not provided for.	The Act does not provide for appointment of a Deputy Chairman. The Tribunal has been facing difficulties whenever the office of the Chairman is vacant or he is unable to perform.	To add a new section 83A to cater for appointment of Deputy Chairman.	Such a Deputy Chairman will perform the functions of the Chairman whenever the office of the Chairman is vacant or the Chairman is for any other reason temporarily unable to perform his/her functions.	Same position in South Africa. In other jurisdictions like Canada, where the office of the Chairman is vacant, or is absent from the country or for any other reasons is unable to perform his duties, his powers and duties are exercised and performed by any senior judicial member of the Tribunal who is willing and able to act as a chairman.
46		Code of Conduct Not provided for.	The Act does not provide for enabling provision for adoption of Code of Conduct for members and staff of the Tribunal.	To add a new section 83B; which will provide for adoption of Code of Conduct for members and staff of the Tribunal.	The Code will prescribe standards of behaviour to be observed by the Members, Registrar and staff of the Tribunal.	Same position in UK.

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
46		<p>Removal from Office</p> <p>Not provided for.</p>	<p>The Act does not provide for removal and grounds for removal of a Member from office.</p>	<p>To add a provision 83C to cater for removal and grounds for removal of a member from office.</p>	<p>It is important to have grounds for removal from office. These can either be serious misconduct, permanent incapacity, failing to attend at least three consecutive sessions of the Tribunal without good cause, acquiring financial or other interest likely to adversely affect prejudicially his functions, abuse of his position as to render his continuance in office prejudicial or engaging in any activity that may undermine the integrity of the Tribunal, etc.</p>	<p>Same position in RSA and India.</p>
46		<p>Cessation from office</p> <p>Not provided for.</p>	<p>The Act does not provide for cessation from office by Chairman and Members of the Tribunal.</p>	<p>To add a new provision 83D to provide for cessation from office by Chairman and Members of the Tribunal.</p>	<p>Justification of having such provision is that it will apply when the Chairman or member of the Tribunal acquires a status which disqualifies him from being a Chairman or member which will be provided under "Removal from office".</p>	<p>Same position in India.</p>

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
47	84	Appeals from the FCT Provides- The decision of the Tribunal on appeals under this section shall be final.	This provision has brought some fear that there will not be appeal to the Court of Appeal.	To add insert a new subsection (3) to provide that appeals on point of law shall lie to the Court of Appeal.	The decision of Tribunal is final on technical matters only; whoever is not satisfied with the decision of the Tribunal may appeal to the Court of Appeal on points of law only. Appeal is a constitutional right.	This is best practice. The same position in the UK.
48	85(c)	Reference is made to EWURA, SUMATRA, <u>Tanzania Communication Regulatory Authority</u> , <u>Tanzania Civil Aviation Authority</u> in these provisions.	There is no uniformity. TCRA and TCAA have already been defined under section 2 so we have to continue using TCRA and TCAA in the text.	To replace "Tanzania Communication Regulatory Authority, and Tanzania Civil Aviation Authority" with "TCRA and TCAA" respectively.	For uniformity.	
49	86(b)	Oath of office for the Registrar.	The Act does not provide for "oath of office for Registrar".	(i) Insert a subsection (2) to the effect that Registrar, before assuming office shall take oath of office. (ii) Insert a subsection (3) to the effect that the oath referred above shall be administered to the	It is important to take oath of office that the Registrar will duly and faithfully execute the best of their knowledge and skills.	Same position in Canada.

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
				Registrar by Chief Justice.		
		<p>Administrative functions of the Tribunal,</p> <p>Not provided for.</p>	<p>The Act conspicuously shows that the Chairman and Members of the Tribunal are vested with adjudicative function. The same is silent on the administrative functions of the Tribunal.</p>	<p>(i) Insert a subsection (4) to provide that the Registrar shall perform all administrative functions of the Tribunal as provided for under this Act.</p> <p>(ii) Insert a subsection (5) to provide that the Registrar shall, consult with the Chairman before convening meetings with a view to discussing matters affecting the Tribunal.</p> <p>(iii) Insert a subsection (6) to provide that meetings shall be convened on quarterly basis.</p>	<p>Research conducted on this matter has shown that the established practice in other jurisdictions is to separate adjudicative functions of the Members of the Tribunal from administrative functions. Members do not perform any administrative functions of the Tribunal. Administrative functions of the Tribunal are performed by the Registrar of the Tribunal who is the Accounting Officer of the Tribunal. There is a clear separation of powers – that is, adjudicative powers vested with the Chairman and Members and administrative powers vested with the Registrar of the Tribunal.</p> <p>Indeed, the Registrar is required to report to the</p>	<p>The same position as in Canada and International Criminal Tribunal for Rwanda as it then was. Similarly in Tanzania, the practice is the same with the Tax Appeal Board.</p>

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
					Permanent Secretary on the performance and operations of the Tribunal by submitting monthly, quarterly and annual reports.	
		Delegation of Registrar's powers Not provided for.		Insert a subsection (7) to provide for delegation of Registrar's powers when not in the office.	Such a provision will enable the Registrar to delegate his powers and duties when he is not in the office.	
50		Immunity for acts done in good faith. Not provided for.	The Act does not provide for immunity for acts done in good faith.	To add a new section 86A which will provide for immunity for acts done in good faith. The immunity to extend to suit, prosecution or other legal proceedings.	In order to ensure impartiality and independence of the Tribunal, it is important for the Chairman, Members, Registrar, officers and employees of the Tribunal to be protected against action that has been done or omitted to be done in good faith.	Same position in India and RSA.
50		Conflict and disclosure of interest Not provided for.		Add a new provision 86B to provide for requirement for a member of Tribunal to disclose any conflict of	This will enable the Tribunal to perform its adjudicative functions without bias.	The same position in South Africa, India and UK.

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
				interest to the Chairman and withdraw from any further involvement in that hearing. Further that a Member who contravenes the above shall be disqualified from being a member of the Tribunal.		
51	87	Annual Report Not provided for.	The Act does not provide for preparation of annual report and its submission to the Minister.	To add a new provision to cater for preparation of annual report and its submission to the Minister.	This will enable the Minister to know the performance of the Tribunal.	
52		Seal of the Tribunal Not provided for.	The Act does not provide for Seal of the Tribunal.	To add a new section 91A which will provide for “Seal of the Tribunal, its custody and affixation”.	It is important to have a provision in the Act providing that Seal of the Tribunal should be kept under the custody of the Registrar. Also the affixation of the Seal of the Tribunal on any document shall be authenticated by the signature of the Chairman or Registrar,	Same position in Canada, India, South Africa and the UK. In Tanzania, the same position is provided for in the Tax Revenue Appeals Act, 2000 which establishes Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal.

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
53	96(3)	Reference is made to EWURA, SUMATRA, <u>Tanzania Communication Regulatory Authority</u> , <u>Tanzania Civil Aviation Authority</u> in these provisions.	There is no uniformity. TCRA and TCAA have already been defined under section 2 so we have to continue using TCRA and TCAA in the text.	To replace “Tanzania Communication Regulatory Authority, and Tanzania Civil Aviation Authority” with “TCRA and TCAA” respectively.	For uniformity.	
54(a)& (b)	Paragraph 1(1)(c) Second Schedule	Provides: A person appointed as Director General shall satisfy the <u>Board</u> that he is unlikely to have a conflict of interest under <u>section 11</u> .	(i) The word “Board” is used in the provision but the Act does not recognize the word. (ii) Reference is wrongly made to section 11.	(i) To amend to replace the word “Board” with “Minister”. (ii) To amend to replace section 11 with section 66 – error correction.	(i) It is the ‘Appointing authority’ which is of the opinion that a person appointed as Director General is well suited to perform the functions of Director General and not the “Board”. (ii) Conflict of interest is provided for under section 66.	
54(c)	Paragraph 1(1)(e) Second Schedule	Provides: ” A person appointed as the Director –General shall be in the opinion of the <u>Board</u> otherwise well suited to perform the functions and duties of Director-General	The word “Board” is used in the provision but the Act does not recognize the word.	To amend to replace the word “Board” with “Minister”.		

Section in the Bill	Section in FCA	Current position	Shortcomings	Proposed amendment as agreed	Rationale	Practice/experience in other jurisdictions
		Completely and honestly”.				
54(d)	Paragraph 3 Second Schedule	Provides: “The Director General shall be responsible for the day to day operations of the Commission subject to the direction of the <u>Board</u> ”.	Reference is wrongly made to the word “Board”. The right phrase is “Members of Commission”.	To amend to replace the word “Board” with “Members of Commission.		
55		Official oath Not provided for		Amend to add a third schedule to provide for the official oath.		