FCC Issues Injunctive Order, Several Provisional Findings

By Staff Reporter

THE Fair Competition Commission (FCC) has issued one injunctive order and several provisional findings to various firms for infringement of the Fair Competition Act (No 8 of 2003).

Following instructions of the 47th Meeting of the Commission dated 10th October, 2013, the FCC did on 17th October, 2013 issue an Order requiring Mabibo Beer Wines and Spirits to stop restricting and threatening other firms from practicing parallel importation of Windhoek beer, forthwith.

The Commission has also issued three preliminary findings to Tanga Fresh Limited and Murzah Soap and Detergents Limited. All the three preliminary findings were issued n 10th October, 2013.

The Provisional Findings labelled Docket FCC/Comp. No. 2 of 2012, and which was served to Murzah Soap Detergents Limited indicated that the firm had acquired the assets of a Tanga based competitor, Sabuni Detergents Limited, the Manufacturer of FOMA Detergents, without seeking and obtaining clearance from the FCC.

Another Provisional Findings labelled Docket FCC/Comp. No. 1A of 2012, was served to Tanga Fresh Limited. These provisional findings indicated that the FCC had learned independently that Tanga Fresh Limited (the Respondent) had acquired the assets of its competitor, International Food Processors Limited. The latter used to buy fresh milk in Tanga Region. The merger transaction was effected without obtaining clearance from FCC.

The third provisional findings, labeled Docket FCC/Comp. No. 1B of 2012, were also served to Tanga Fresh Limited indicating that the respondent had acquired the assets of Morani Dairy Company Limited, a respondent’s competitor without prior clearance from FCC.

All three firms to whom Provisional Findings were sent had infringed Section 11(2) of the Fair Competition Act (No. 8 of 2003), which required firms not to consummate mergers and acquisitions before getting clearance from the FCC. They were all required to respond to the provisional findings within fourteen (14) days after the first publication of the provisional findings.

Provisional Findings were issued to the respondents pursuant to rules 10(9) and 19(7) of the Fair Competition Procedural Rules, 2013 in respect of the infringement of the provisions of the Fair Competition Act, 2003.

FCC Takes Part in ICN’s Cartel Investigation Workshop

By Joshua Msoma, Senior Consumer Protection Officer

THE FCC took part in the 2013 International Competition Network (ICN) workshop on effective cartel enforcement, which was held in Cape Town, South Africa from 15th to 18th October, 2013. The 2013 workshop’s theme was “Tackling Road Blocks to Effective Cartel Enforcement”.

FCC was represented by four experts; the Director of Compliance, Dr. Deo Nangela, and three Senior investigation officers namely; Chester Kapinga, Selina Mloge and Laiton Mhesa.

The session explored avenues for using Information and Communication Technologies in addressing challenges created by cartels. Real-World Techniques for effective cartel enforcement were discussed in the workshop. These included an array of alternative means for cartel detection; case prioritization; tackling challenges posed by inadequacy of financial and other resources; application of leniency policy in the developing countries’ competition agencies. Similarly, building political support for cartel enforcement; building effective cartel enforcement teams; relationship between lawyers and competition agencies were amongst issues discussed at length.

Alternative Dispute Resolution (ADR) in cartels; structuring an investigation; international cooperation in cartel enforcement among anti-trust agencies; tackling barriers to effective information sharing, waivers and challenges; searches, raids and inspections; and prosecuting cartels based on circumstantial evidence were also embodied in the training session.

The workshop also featured discussions on fast-tracking settlement processes, individual liability, corporate...
FCC Continues The Fight Against Counterfeit Goods

By Magdalena Utouh, Head of Counterfeit Surveillance

In the period between October to December, 2013 the Chief Inspector of the Merchandise Marks Act (the Director General of FCC), carried out investigations and dawn raids in various parts of the country following complaints lodged by brand-owners and their representatives in respect of NOKIA, TECHNO, NIVEA, KONYAGI and LIPER, brands.

In respect to NOKIA brand, FCC conducted a raid in Dar es Salaam & Mwanza and seized 328 counterfeit mobile phones, 141 batteries and 15 chargers bearing NOKIA Trademark. With regard to TECHNO brand, FCC carried out raid in Mwanza and seized 25 counterfeit mobile phones. The total value of seized mobile phones and their accessories is estimated at TShs. 41.1million.

With NIVEA brand, FCC carried out operation in Dar es Salaam and seized 436 bottles of body lotion. Additionally, FCC conducted yet another raid with respect to reports of existence of counterfeit KONYAGI brand and seized 143 counterfeit bottles of spirit. FCC also seized 553 pieces of electrical appliances branded LIPER in Arusha.

All the offenders found to infringe the Merchandise Marks Act were penalized in accordance to the MMA and its regulations and the seized products are in the process of being destroyed.

All the offenders found to infringe the Merchandise Marks Act were penalized in accordance to the MMA and its regulations and the seized products are in the process of being destroyed, pending finalization of environmental friendly destruction compliance procedures.

Similarly, a total of 133 containers were seized during regular inspections at the Dar es Salaam port and Inland Container Depots (ICDs) in the same period. The seizure led of penalization of total of 115 traders for contravening the Merchandise Marks Act, 1963 as amended.

FCC also destroyed counterfeit KONYAGI spirits at Pugu Kinyamwezi with the assistance from the National Environmental Management Council (NEMC) authorized destruction agent; M/S Chilambo General Trade Company. The destroyed consignment is estimated to be worth TShs. 12,120, 000.

The Chief Inspector of MMA is empowered to deal with complaints lodged by the brand owners in respect of proliferation of counterfeit goods in the market. After inspecting and seizing the goods, the Chief Inspector may conduct summary trial under procedures laid down in the Merchandise Marks Act Regulations.

Merchandise Marks Act (1963) confers upon the Chief Inspector the power to search privately owned premises, shops and warehouses suspected to stock counterfeit products.

Editorial

Dear reader, once again we’re delighted to bring you our 12th issue of the FCC Online Newsletter. The Editorial Team would like to extend sincere gratitude to our esteemed reader for patience and trust you have had in us in preparing and bringing you the readworthy edition after lengthy preparatory exercise.

We are committed to continue bringing you accurate, informative and useful articles in our Newsletters. We are also committed to improving it as we get along.

We had a challenging three months session. During this time, we continued discharging our responsibilities as a credible market support institution, in an effective manner. We had been promoting and protecting effective competition in trade and commerce as well as consumers from unfair and misleading market conducts.

We continued applying the required procedures, policies and guidelines relating to enforcement of the Fair Competition Act (FCA) and the Merchandise Marks Act (MMA). We also continued advocating for voluntary compliance to these act to stakeholders.

Important events that had taken place at the Commission during this time include:

- The issuance of injunctive order to one respondent and three provisional findings to three respondents.
- The Chief Inspector of MMA is empowered to deal with complaints lodged by the brand owners in respect of proliferation of counterfeit goods in the market. After inspecting and seizing the goods, the Chief Inspector may conduct summary trial under procedures laid down in the Merchandise Marks Act Regulations.

All the offenders found to infringe the Merchandise Marks Act were penalized in accordance to the MMA and its regulations and the seized products are in the process of being destroyed.

The issuance of injunctive order to one respondent and three provisional findings to three respondents.

Additionally, the FCC undertook appropriate countermeasures against counterfeit goods in line with the MMA as we have elaborated in the story on that line.

There also is an article on the Application of Economic Principles in Enforcement of Competition Law. The article features another capacity building training which benefited two FCC Staff.

Highlights on approved mergers and acquisitions have also been featured in this newsletter. 6 merger applications were approved during the past three months.

Additionally, we have carried an article on the Workshop seeking to harness collaborations with non state actors in promoting ethical conducts in public service delivery. There also is an article on the Application of Economic Principles in Enforcement of Competition Law. The article features another capacity building training which benefited two FCC Staff.

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Additionally, we have carried an article on the Workshop seeking to harness collaborations with non state actors in promoting ethical conducts in public service delivery. This was an effort organised by the President’s Office, Public Service Management’s Directorat of Ethics. The session brought together non-state-actors as well as state actors from various parties and charted out a collaboration framework, principally gravitating on public awareness efforts.

Enjoy the reading of the running edition of FCC Online Newsletter.
Officer, Mr. Kitandu Paulo Ugula attended the training. Fredrick Ringo and the Senior enforcement petition experts from Fair Competition experience in the field of competition. Two com-

Katsoulacos (from Greece), intensify the nation economics and competition law around Schinkel (from Netherlands), Prof Joseph e. harrington (from USA) and Prof. Yannis S. petition economics (Prof. Maarten Pieter Competition (CIRC) and aimed at enabling in Competition and Regulation in collabora-
tion with CUTS Institute for Regulation and lawyers and economists align their under-
standing in both basic economic concepts and
competitive markets.

Similarly, experiences from different jurisdic-
tions were shared. During the sessions participants appreci-
ated the role of competition law in re-defining economics concepts such as the popularly es-

tablished methods of assisting lawyers to un-
derstand the importance of defining relevant market and assessment of possible anti-com-
petitive behavior.

Economics and law are interdependent and complementary aspects in competition dynamics. The prominent antagonistic rules: “Per-Se Illegal” and “Rule of Reasoning” ver-
sus prominently two schools of thought pop-
ularly known as “Harvard School” and “Chicago School”. The four antagonistic rules draw much of their wisdom from competition economics in term of both analysis and ra-
tional decisions towards the total welfare or consumer welfare status.

The training also covered issues of mergers and acquisitions and the need for their con-
trol to ensure they do not harm competition. It was observed that, mergers always elimi-
nate at least one independent player in the market.

The participants were also trained on Competition Policy in two-sided market (multi-sided), which are markets in which one or more or several platforms enable interact-
ations between end-users and try to get the two (or multiple) sides on board by appropriately charging each side.

The training session incorporated oligop-
oly and game theory aspects. Apart from com-
petition economics, competition laws, mergers and acquisitions, Competition Policy in two-sided market and oligopoly and game theory the training also touched on cartels is-

sue and other coordinated practices and ass-
essment of abusive unilateral conduct of dominant firms.

Participants expressed that the training had been relevant because enforcement of competi-
tion law needs lawyers to be acquainted with multi-knowledge on competition issues in a manner that enables them to integrate eco-

nomic concepts in enforcing competition law.

Lodging successive arguments on competi-
tion cases before the Commission, Tribunal and/or before the court of law requires a higher understanding edge of economics concepts, which may be advanced to assist the adjudica-
tor in deciding competition cases for the ulti-
mate objective of protecting and promoting competition policy and law in Tanzania.
Prime Minister Touts Industrial Development During Insustrial Day Celebrations

By Staff Reporter

PRIME Minister, Hon Mizengo Pinda (MP) has called on the Ministry of Industry and Trade to facilitate growth and development of Small and Medium Scale Enterpreneurs given their pivotal role in spearheading poverty eradication and economic growth undertakings.

Hon. Pinda gave the remarks to industry and SME owners on 20th November, 2013 while closing the five day exhibitions to commemorate Africa Industrial Day at the Mwalimu Nyerere Grounds along Kilwa Road in Dar es Salaam.

Mr. Pinda pointed out that SMEs offer vast employment opportunities and have great potential in poverty eradication and steadily increasing citizens’ individual incomes.

“There are currently more than three million SME factories, employing about 5.2 million Tanzanians. Similarly, they contribute 27% to GDP and account for 23.4% of the nation’s labourforce,” pointed out Mr. Pinda.

He pointed out that the fourth phase Government has taken meaningful steps towards development of industrial base, naming such efforts to include establishment and widening of the Export Processing Zones (EPZ) and Special Economic Zones (SEZ), while increasing the capacity of relevant institutions to coordinate these activities.

“These efforts ensure a substantial private sector participation in investments and trade in the market economy, characterized by higher competitiveness levels,” elaborated Hon. Pinda.

Minister for Industry and Trade, Hon. Dr. Abdallah O. Kigoda (MP) said in his welcoming remarks that Tanzania’s industrial sector grows at a comparatively low rate pegged at 9% per annum as compared with China (40%), Vietnam (20%) and India (16%).

Fair Competition Commission also participated in the said exhibitions, which ran from 16th to 20th November, 2013. Small and Medium Scale entrepreneurs as well as the general public had an opportunity of learning on competition issues, consumer protection as well as anti-counterfeit issues at FCC stall. Most visitors were interested in learning the basics of differentiating counterfeit goods from genuine ones. FCC was represented by the Senior Communications and Public Relations Officer, Mr. Frank Mdimi, and the Senior Advocacy Officer, Mr. Alex Mmbaga, during the exhibitions.

The exhibitions attracted key dignitaries including the Country Representative of the United Nations Industrial Development Organisation (UNIDO), Mr. Emmanuel Kalenzi, the Chairperson of the Confederation of Tanzania Industries (CTI), Mr. Felix Mosha and other international representatives.

FCC Receives 12 Merger Applications, Approves 6

By Staff Reporter

THE FCC has received a total of 12 merger applications between July, 2013 and December, 2013. Out of these applications 6 were approved without conditions and the rest are under different stages of determination.

Mergers approved without conditions are those involving SCPE, CSSAF & PRIF Afrivest and ETC Group (Mauritius) Limited; Apollo Acquisition Corp and Cooper Tire & Rubber Company; Prime Bank Ltd, First Merchant Bank and Premier Capital Mauritius Ltd and International Commercial Bank; HTT Infraco Ltd and Vodacom Tanzania Limited; TransUnion Africa Holdings Proprietary Ltd and Credit Reference Bureau (Holdings) Ltd; and EFFCO Solutions (T) Ltd and EFFCO (Proprietary) Ltd.

Applications whose analyses are still on-going include MMG Exploration Holdings Ltd and IMX Resources Ltd; Untrac Holding Ltd and Delta Holding Group; Mauritius Union Assurance Cy Ltd and Phoenix Transafrika Holdings Ltd; Petrobas Oil & Gas B.V and Petrobas Tanzania Ltd; and Dutch Oak Tree Foundation and Tanga Diaries Cooperative Union and Tanga Fresh Limited.

One application filed by M/S Pavil-
FCC to Work With Non-State Actors in Public Awareness Activities

By Staff Reporter

FCC is poised to work together towards sensitizing the public on the rights and responsibilities as consumers of goods and services as well as on issues pertaining to competition and anti-counterfeit. The move follows a joint meeting between State actors and Non Community Based Organisations (CBOs) and Non Government Organisations (NGOs), which was held at Hilax Hotel in Morogoro from 4th to 6th December, 2013.

The meeting, which was organized by the Directorate of Ethics in the President’s Office, Public Service Management, sought to establish the working collaborations with non state actors (Non Government and Community Based Organisations-NGOs & CBOs) in enhancing ethical compliance amongst state service offering entities.

The four day session was officiated by the Deputy Permanent Secretary in the President’s Office, Public Service Management, Mr. Hab Mkwizu.

In his speech, Mr. Mkwizu called for increased non-state actors’ participation in enhancing efficient and client focused public service delivery.

“Complying to laws, regulations, procedures and guidelines relating to ethical conduct in public service delivery, is a mandatory attribute in public service delivery frameworks”, stressed Mr. Mkwizu, adding that, it is worthwhile enhancing general public’s understanding on their rights and responsibilities in order to demand efficient and effective public services from various state bodies and agencies.

“President’s Office, Public Service Management had carefully chosen representative sectors in 2013/2014 namely; Health, Education, Trade and Transportation, because they have been at the centre of public outcry for perceived lack of or inadequacy of desirable ethical conduct, and they may significantly affect the growth and progress of our nation should its actors consistently exhibit unethical conducts”, added Mr. Mkwizu.

He challenged heads of public service institutions to ensure that their organisations demonstrate higher ethical conducts and, whenever possible, accommodate working relationship with CBOs and NGOs in ensuring that they get correct perception audit signals to enable them adjust towards desirable direction.

FCC along with other Trade sector state actors namely Ministry of Industry and Trade, Business Registration and Licensing Agency (BRELA), Tanzania Warehouse Licensing Board (TWLB) and Weight and Measures Agency (WMA) were assigned to work with Non Government and Community Based Organisations in administering public awareness programmes on key roles legislation, rules, guidelines and procedures employed in service delivery, to enable the public know their rights and obligations and become proactive.

Awareness programme action plans for all the above-mentioned sectors have already been drawn and for the case of Trade, will involve a number of non-state actors (CBOs) namely MAADILI CENTRE and FordIA.
CONSUMER ISSUES

Summary of 2013 News in Pictures

FCC’s Senior Communications and Public Relations Officer, Mr. Frank Mdini (left) explaining to the Minister for Industry and Trade, Hon. Dr. Abduallah O. Kigoda (MP) (right) features of counterfeit mobile phone when he visited FCC stall during 37th DITF in July, 2013. 3rd left is the UNIDO Country representative, Mr. Emmanuel Kalenzia and 2nd left is the Marketing Officer from the Ministry of Industry and Trade, Ms. Magdalena Hall.

A Senior Legal Officer from the Ministry of Constitution and Legal Affairs, Ms. Mercy Mrutta making a contribution during Stakeholders workshop for Standard Form Consumer Contracts Regulations held at FCC offices on 19th July, 2013.

FCC’s Head of Investigation, Ms. Grace Freedom (left) explaining FCC activities to Members of teh Parliamentary Committee for Industry and Trade when they visited FCC Stall during 37th Dar es Salaam International Trade Fairs in July, 2013.

Officers representing the Gillette brand owner from Procter and Gamble and police officers looking at packages of counterfeit Gillette shaving blades seized after arriving at Msimbazi Police station. This followed a raid operation conducted in Kariakoo by FCC, Police Force and Procter and Gamble in September, 2013.

FCC’s Assistant Counterfeit Surveillance Officer, Mr. Mgusi Kalindimya showing one of the counterfeit Phillips tubelight seized in Kariakoo area in August, 2013.

FCC’s Assistant Counterfeit Officer, Mr. Emmanuel Ndyetabula (2nd left) conducting a raid operation in one of the shops suspected to contain counterfeit SinarLine notebooks in Kariakoo on 9th April, 2013. He is flanked by police officers who were part of the operation.
Summary of 2013 News in Pictures

FCC’s Principal Messenger, Omary Kabonge (left) receiving a Certificate of Best Employee of the Year and a cheque of TShs. 1,000,000/- from the Dar es Salaam Regional Commissioner, Said Meck Sadick (2nd from right), during May Day celebrations at Mnazi Mmoja grounds on 1st May, 2013.

A Resource Person, Ms. Hilary Jennings from the Organisation for Economic Cooperation and Development (OECD) presenting a paper during the ACF Workshop on Combating Bid Rigging in Public Procurement at the Protea Courtyard Hotel in Dar es Salaam, on 26th June, 2013.

A cross section of FCC staff taking part in the Trade Union procession along Morogoro Road during May Day celebrations on 1st May, 2013.

A cross section of FCC female staff in a group photo prior to participating in the World Women Day Celebrations on 3rd March, 2013.

Mill attendant at the MMI Steel Mill in Mikocheni, Dar es Salaam, throwing counterfeit AK Motor Vehicle spare parts in the iron smelting furnace. This was during destruction of the counterfeited AK spare parts at the mill on 10th April, 2013.

Some FCC employee following the presentation from a resource person (not in the picture) during a training of employees on labour laws on 10th September, 2013. The training preceded the inauguration of the FCC Workers Council, which took place on 11th September, 2013.