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THE FAIR COMPETITION ACT,
(CAP. 285)

REGULATIONS

THE FAIR COMPETITION (ABUSE OF DOMINANT POSITION) REGULATIONS, 2026

ARRANGEMENT OF REGULATIONS

PART I
PRELIMINARY PROVISIONS

Regulation *Title*

PART II
DOMINANT POSITION AND FORMS OF ABUSE OF DOMINANT POSITION

THE FAIR COMPETITION ACT,
(CAP. 285)

REGULATIONS

(*Made under Section 99*)

THE FAIR COMPETITION (ABUSE OF DOMINANT POSITION) REGULATIONS, 2026

PART I
PRELIMINARY PROVISIONS

Citation

1. These Regulations may be cited as the Fair Competition (Abuse of Dominant Position) Regulations, 2026.

Interpretation

2. In these Regulations, unless the context requires otherwise -

"bundling" means the way products are offered and priced by the dominant firms whereby, in case of pure bundling, products are only sold jointly in fixed proportions, in the case of mixed bundling, a malt-product rebate, the products are also made available separately, but the sum of the price when sold separately is higher than the bundled price;

"essential facility" means any infrastructure, resource, raw material or service that is critical for the functioning of a particular market, which cannot reasonably be duplicated and is necessary for competition or operation within that market;

"predatory pricing" means a price exclusionary tactic where a dominant firm deliberately sets prices lower than its costs in order to drive out equally efficient competitors; and

"tying" means the situation where a customer that purchases one product is required also to purchase another product from the dominant firm.

PART II
DOMINANT POSITION AND FORMS OF ABUSE OF DOMINANT POSITION

Dominant position

3. The Commission shall determine whether a person has a dominant position in a market by considering the following factors:

(a) a person's market shares in a relevant market, severally or jointly in relation to its competitors exceeding forty percent for a significant period of time;

(b) the extent to which the person's consumers, customers or suppliers are reliant on its's goods or services, which may reduce competitive pressure;

(c) the extent of the person's ability to set prices or other terms of sale independently of its competitors;

(d) the ability of large customers to effectively counterbalance a person's dominance by switching to credible alternatives within a reasonable period of time;

(e) competition from imported goods or services;

(f) the person's control over or privileged access to essential input or facility; or

(g) barriers to entry or expansion including-

(i) economies of scale;

(i) prohibitive transport costs; or

(ii) Government's regulation or technological advantages leading to high technical entry barriers or high capital costs of entry.

Assessment of market

4. The Commission shall consider the following in assessing the relevant market:
(a) product market; and
(b) geographic market.

Abuse of dominant position

5. (1) A person shall be regarded to have abused a dominant position where-
(a) the person's dominance in the relevant market has been established; and
(b) the person engages in conduct which has the purpose, effect or likely effect of-
(i) exploiting customers; or
(ii) preventing, restricting or distorting competition.

(2) The Commission may, in determining whether a person has abused a dominant position, take into account the forms of abuse specified under the Act and any other conduct that may constitute abuse, and shall undertake the assessment accordingly.

Unfair trading conditions

6.-(1) The Commission shall consider a person to have engaged in the exploitative abuse of dominant position, if that person-
(a) extorts unfairly low prices from suppliers; or
(b) imposes other terms or conditions to the customers or suppliers which the Commission considers to be exploitative in nature.

(2) The Commission shall in determining the existence of exploitative abuse, consider the following factors:
(a) conditions that create an imbalance in the contractual relationship;
(b) conditions that restrict the ability of counterparty to operate freely in the market;
(c) condition that requires counterparty to accept contractual clauses that involves excessive, unnecessary or unreasonable obligations;
(d) conditions that mandate burdensome financial commitment, exclusivity or long term contract that restrict business flexibility;

(e) condition that imposes different conditions on equivalent transactions without objective justifications;

(f) conditions that give a dominant person ability to unilaterally altering key terms in a manner that disadvantages counterparty;

(g) whether a person has a market power to charge its customers unfairly high prices;

(h) whether the market is characterized by high barriers to entry;

(i) whether the price reasonably relates to the economic value of the product or service supplied or, in other terms, which fails to comply with the principle of proportionality; and

(j) whether there is relative justifiable relationship between the selling price of the product in question with its costs of production.

(3) Where complete and sufficient cost data is not available, evidence of unfair pricing may be established by reference to price differences for the same or similar products across different geographic markets.

Predatory pricing

7. The Commission shall declare the existence of predatory pricing unless there is reasonable economic justification, where in the relevant market,-

(a) prices are below costs for a sustained period;

(b) a person has a dominant position;

(c) there is evidence of a person to sustain loss over significant period of time; and

(d) there is likelihood of recouping losses through future price increase or other restrictive conduct.

Margin squeeze

8. The Commission shall declare the existence of a margin squeeze in the relevant market, unless there is reasonable justification, where -

(a) a person is in a dominant position;

(b) access to the essential input or facility held by the dominant person in the upstream market is essential in the downstream market;

(c) there is no equivalent alternative input or facility enabling a non-integrated person to operate downstream;

(d) the price that the dominant person charge in the downstream market does not allow an efficient competitor similar to the dominant person to trade profitably in the downstream market; and

(e) the conduct has object, effect or likely effect of exploiting customers or appreciably prevents, restricts or distorts competition,

Provided that, it shall not be necessary to demonstrate a dominant position on the downstream market.

Cross subsidization

9. The Commission shall declare the existence of cross subsidization in the relevant market, where in a relevant market-

(a) a person is in a dominant position in at least one market;

(b) there is evidence on existence of costs shifting of goods, market or services to another;

(c) there is evidence on existence of predatory pricing or price which is below average avoidance costs;

(d) it has been established that there is harm to consumers;

(e) there is an impediment of market entry or the ability of smaller competitors to survive; and

(f) there is the conduct which its object, effect or likely to appreciably prevents, restricts or distorts competition.

Refusal to deal

10. The Commission shall declare the existence of refusal to deal in the relevant market unless there is reasonable economic justification, where-

(a) a person is in a dominant position;

(b) a dominant person denies to deal and such denial is not justified; and

(c) the said denial has the object, effect or likely effect to exploit customers or appreciably prevents, restricts or distorts competition.

Denial of access to essential facility or input

11.(1) The Commission shall declare the existence of denial of access to essential facility or input in the relevant market unless there is reasonable economic justification, where-

(a) a person is in a dominant position;
(b) there is a facility or input which is indispensable for competitors to compete effectively;
(c) the facility or input cannot be reasonably duplicated or substituted due to high costs, technical infeasibility or any other barriers;
(d) the facility or input is controlled by a dominant firm with the ability to restrict access;
(e) there is no viable alternative to the facility or input; and
(f) a dominant person denies access and such denial is not justified in the context of operational requirements.

Tying and bundling

12.-(1) The Commission shall declare the existence of tying and bundling in a relevant market unless there is reasonable economic justification, where-

(a) there are two separate relevant markets for each product;
(b) a person is in a dominant position at least in one market;
(c) there is evidence of tying or bundling;
(d) the person leaves no choice to customers regarding the bundled or tied products; and
(e) the tying or bundling practice restricts competition on the market of the tied or bundled product without sufficient efficiencies to compensate for the competitive infringement.

Price discrimination

13.-(1) The Commission shall declare the existence of price discrimination in the relevant market unless there is reasonable economic justification, where-

(a) a person is in a dominant position;
(b) a dominant person has ability to segment the markets or customers according to their ability to pay;

(c) the price of the same product or service is different across market segment or different customers with no cost justification;
(d) the product or service is the same;
(e) a dominant person is able to control arbitrage; and
(f) there is the conduct which its object, effect or likely to exploit customers or appreciably prevents, restricts or distorts competition.

Loyalty discount or rebates

14. The Commission shall declare the existence of loyalty discount and rebate in the relevant market unless there is reasonable economic justification, where-
(a) a person offering loyalty discount or rebate holds a dominant position;
(b) the nature of the discount or rebate scheme applicable has exclusionary effect; and
(c) the conduct has object, effect or likely effect to appreciably prevent, restrict or distort competition.

Abuse of intellectual property right

15. The Commission shall declare the existence of abuse of intellectual property right in the relevant market, unless there is reasonable economic justification, where -
(a) the holder refuses to license the intellectual property right without justification, especially where the refusal forecloses competition;
(b) the licensing terms or loyalty rates are unreasonably high and disproportionate to the value of the intellectual property right;
(c) licensing terms applies unequally to different parties without a legitimate reason, favouring some competitors over others;
(d) the intellectual property right holder requires licensees to accept additional unnecessary licenses or conditions;
(e) the firm is engaged in practices like creating "patent thickets" or filing patents strategically to block competitors;

(f) the intellectual property right holder initiated legal proceedings solely to harass competitors or delay their entry into the market; and
(g) the conduct has object, effect or likely effect to appreciably prevent, restrict or distort competition,

Making agreements subject to unrelated supplementary conditions

16.-(1) The Commission shall declare the existence of unrelated supplementary condition in the agreement, unless there is reasonable economic justification, where in the relevant market -
(a) a person is in a dominant position;
(b) there is an agreement with unrelated supplementary condition to the subject matter; and
(c) acceptance of the unrelated supplementary condition be a precondition in entering into the agreement,

(2) For purposes of this regulation, a condition shall be deemed to be supplementary if it imposes an obligation, requirement or restriction on one party unrelated to the core subject of the agreement.

Dodoma,
………………., 2026

JUDITH SALVIO KAPINGA
Minister for Industries and Trade