IN THE FAIR COMPETITION TRIBUNAL

AT DAR ES SALAAM

BEFORE:

RAZIA H. SHEIKH, JUDGE/CHAIRMAN

PROF. JOSEPH M. L. KIRONDE, MEMBER

DR. MALIMA M. P. BUNDARA, MEMBER

TRIBUNAL APPEAL NO. 4 OF 2010

TANZANIA BREWERIES LTD.....APPELLANT

VERSUS

SERENGETI BREWERIES LTD.....1ST RESPONDENT

FAIR COMPETITION COMMISSION.....2ND RESPONDENT

COCA COLA KWANZA LTD.....INTERVENER

And

TRIBUNAL APPEAL NO. 5 OF 2010

TANZANIA BREWERIES LTD.....APPELLANT

VERSUS

FAIR COMPETITION COMMISSION.....RESPONDENT

COCA COLA KWANZA LTD.....INTERVENER

18/08/2011

RULING

The appellant **TANZANIA BREWERIES LTD (TBL**) is aggrieved by the decision of the **FAIR COMPETITION COMMISSION (FCC)** in Complaint No.2 of 2009 made on 21/5/2010 and has filed two appeals in this Tribunal against the whole of the aforesaid decision by FCC.

The brief background to the aforesaid appeals is that:

On 17/9/2009, **SERENGETI BREWERIES LTD (SBL)** lodged a complaint before the Fair Competition Commission against the appellant about unfair trade practices allegedly restricting/harming competition in the beer industry. Following investigation and hearing of the complaint, FCC decided, *inter alia*, as follows:

"i. That pursuant to Sections 60(1) and 78(1)(f) of the Fair Competition Act, 2003, and Rule 41 of the Fair Competition Procedure Rules, 2009, Tanzania Breweries Limited is ordered to pay a fine of 5 percent of its turnover for the year of their latest audited accounts for the offences of entering into anti-competitive branding agreements with outlet owners and removing SBL posters and signage.

ii. That all branding agreements between TBL and the outlets owners are hereby declared null and void.

iii. That pursuant to Section 58(1) and (3) TBL is hereby ordered to immediately refrain from removing its competitor's POS materials at the outlets and entering into anti-competitive branding agreements with outlet owners."

Being aggrieved with the above decision the appellant filed 2 appeals with identical grounds of appeal on the following grounds, *inter alia*:

1. The Fair Competition Commission (FCC) erred in law and/or in fact by failing to act in accordance with the principles of natural justice and procedural fairness, including failing to act independently and impartially, failing to have due regard to the presumption of innocence; failing to respect the rights of defence; failing to conduct its investigation and/or make its decision fairly, reasonably and objectively, failing to evaluate the evidence fairly, reasonably and objectively; failing to give TBL a reasonable opportunity to be heard; failing adequately to state the reasons for the factual findings, legal assessments and orders made in the decision; and failing to comply with the rules, procedures and other statutory requirements applicable to the FCC as an

investigatory and adjudicatory authority in competition matters and such non-compliance materially affected the decision and may have resulted in a miscarriage of justice.

2. The proceedings and the decision of the FCC are a nullity because the FCC was not properly constituted when it determined the matter".

The sequence of the steps taken by the appellant are as follows:

A Notice of Appeal was filed on 27/5/2010 which named SERENGETI BREWERIES LIMITED as the respondent and on 25/6/2010 a Memorandum of Appeal naming SERENGETI BREWERIES LIMITED as the respondent was duly lodged in this Tribunal which was numbered Appeal No.4 of 2010. On the same date the appellant lodged another appeal in this Tribunal numbered Appeal No. 5 of 2010 against the decision by FCC with FCC as the respondent.

On 13/12/2010, upon application being made on behalf of the appellant, this Tribunal granted the appellant leave to add Fair Competition Commission as a respondent in Appeal No.4 of 2010 and accordingly an amended Memorandum of Appeal was duly lodged in this Tribunal on 17/12/2010 and FCC was joined as a second respondent.

FCC has taken objection to Appeal No.4 on the following grounds:

1. *That the amended memorandum of appeal is bad in law for non-compliance with the provisions of the Fair Competition Act No. 8 of 2003, the Fair Competition Commission Procedure Rules 2010 and the Fair Competition Tribunal Rules, 2006;*

2. *That the appeal is sub-judice before this Tribunal;*

3. *That the purported appeal is bad in law for mis-joinder of parties;*

4. *That the purported order relied on in amending the memorandum of appeal contravenes the principles of natural justice.*

In appeal no.5 of 2010 the respondent (FCC) has raised the following grounds of objection:

1. *That the Notice of Appeal and the Memorandum of Appeal are both defective for impleading the Fair Competition Commission (FCC) as a Respondent for the reason that the FCC is already a necessary and statutory party, as per FCT Rules 7(5), 31 & 32 and FCC Rules 74 (4-6), in a similar and duplicate appeal, to wit,* ***Tanzanian Breweries Ltd vs. Serengeti Breweries Ltd****, - Appeal No. 4 of 2010, and*

hence this Appeal is bad for duplicity, and is simply vexatious, frivolous an abuse of process.

2. *That, in the alternative, the Notice of Appeal has no effect and should be struck out as the appellant has failed to commence an appeal within time as required by the FCT Rules and hence all the consequential steps followed by the Appellant are null and void.*

The respondent shall move the Honourable Tribunal to strike out the notice of appeal and dismiss the memorandum of appeal with costs. Or, ***in the alternative consolidate the two appeals with consequential costs to be borne by the appellant.*** *(emphasis by the Tribunal).*

It should be noted that we herein set out the background only to the extent necessary to explain the context and determine the issues indentified in the preliminary points reproduced above. The Tribunal is not at this stage concerned with making any findings on the underlying merits of the case.

At the outset we deem it necessary to emphasize that both the appeals, No.4 and 5 of 2010 aforesaid arise from the same decision made by FCC and involve exactly the same/similar issues. Furthermore, since FCC has raised preliminary points of law against both the appeals on similar grounds and since learned

counsel for the appellant in his arguments and the FCC in its Preliminary Objection and Reply to the Memorandum of Appeal (Appeal No. 5 of 2010) have made it clear that they have no objection to the two appeals being consolidated, it is our view after reading the grounds of objection and hearing arguments presented by the respective learned counsel that it will be prudent and convenient to consolidate the two appeals pursuant to rule 20 of the Fair Competition Tribunal Rules, 2006 G.N No. 189 of 2006 (the FCT Rules). In the exercise of this Tribunal's discretion under rule 20 of the FCT Rules we accordingly order that these two appeals numbered 4 and 5 of 2010 be and are hereby joined/consolidated. Accordingly the preliminary points of objection raised by FCC against the two appeals, which have been already argued separately, will be considered together in this ruling although it will be convenient to indicate which appeal the respective grounds of objection relate to.

For reasons which will emerge later in this ruling we will first deal with grounds 1, 2 and 4 raised in Appeal No.4 of 2010.

On the first ground of appeal Mr. Nyenza learned counsel for the 2nd respondent (FCC) submitted that the appeal as against the 2nd respondent is incompetent due to failure by the appellant to file a notice of appeal in respect of the 2nd respondent as required in Rule 7(1), (4) and (5) of the FCT Rules and that in the notice of appeal filed on 27/05/2010 and which is annexed to the

memorandum of Appeal the 2nd respondent does not appear as a respondent. Learned counsel asserted that the only notice of appeal lodged in this appeal was the one filed on 27/5/2010 which was not served upon the 2nd respondent. Citing the decision in the case of **Dhow Mercantile (EA) LTD & Others, Civil Appeal No. 56 of 2005 (CAT) (Dar es Salaam),** unreported, Mr. Nyenza submitted that a notice of appeal is a requisite condition of an appeal and that in the absence of a valid notice of appeal filed and served the appeal has no legs to stand on as against the 2nd respondent, notwithstanding the order by this Tribunal granting the appellant leave to join the 2nd respondent in the appeal. Mr. Nyenza asserted that the appellant ought to have sought extension of time to lodge a notice of appeal against the 2nd respondent before filing the amended memorandum of appeal joining FCC as a second respondent in the appeal.

On ground 2 learned counsel submitted that this appeal is *sub-judice* due to the pendency before the Tribunal of another appeal, Appeal No.5 of 2010, in which the appellant and the 2nd respondent (FCC) are parties. Mr. Nyenza argued that as both Appeal No. 4 of 2010 and Appeal No.5 of 2010 originate from the same decision given by FCC on 21/5/2010 and since the grounds of appeal in the two appeals are the same it was improper to join the respondent in this appeal considering that the 2nd respondent

(FCC) is already a party in Appeal No.5 of 2010 which originates from the same decision.

Ground 4 was abandoned by Mr. Nyenza towards the end of his oral submission and is accordingly hereby marked abandoned.

In response to the submission on ground 1 Mr. Ng'maryo learned counsel for the 1st respondent (SBL) submitted that the notice of appeal was filed within the time required by law, that the institution of a notice of appeal is what initiates the appellate process, and that the 2nd respondent having been joined in a properly initiated appeal and there being already in place a valid appeal it was not necessary to file a fresh notice of appeal naming FCC as the 2nd respondent or to serve it upon FCC before joining FCC as a 2nd respondent in the appeal.

On ground 2 Mr. Ng'maryo basically argued that this appeal having been filed before Appeal No.5 of 2010 cannot be said to be *sub-judice.*

Countering Mr. Nyenza's arguments on ground 3, Mr. Ng'maryo basically submitted that FCC was properly joined as a 2nd respondent in Appeal No.4 of 2010. He argued that as the 2nd respondent was joined in pursuance of an order made by this Tribunal the appellant cannot be faulted.

Dr. Tenga learned counsel for the appellant on his part, in response to ground 1 of the preliminary grounds of objection

submitted that the Dhow Mercantile case is not applicable, that in the Dhow Mercantile case there was no notice of appeal in place as the notice of appeal was struck out and thereafter the appellant did not file a fresh notice of appeal. He argued that, unlike the position in the Dhow Mercantile case, in Appeal No.4 of 2010 there is a continuing notice of appeal and therefore there was no requirement to file a fresh notice of appeal in respect of FCC prior to joining it as a 2nd respondent.

Dr. Tenga asserted that an appeal is commenced by filing a notice of appeal and instituted by the lodging of a memorandum and record of appeal, that once an appeal is instituted the consequent proceedings including the joinder of parties including interveners are in the discretion of the Tribunal. Dr. Tenga further submitted that while at the commencement of an appeal it is a requirement to name the respondent in the notice of appeal, there is no provision in our rules (FCT Rules) requiring the filing of an amended or fresh notice of appeal when joining subsequent respondents/interveners who were not named as respondents in the notice of appeal filed in the Tribunal before instituting the appeal.

In response to ground No.2 Dr. Tenga, while not disputing that the 2 appeals arise from the same decision, was clearly supportive of Mr. Ng'maryo's view that the *sub-judice* argument is inapplicable in the instant matter since this appeal was filed

earlier than Appeal No.5 of 2010 in which the 2nd respondent is the sole respondent.

Mr. Nyange learned counsel for the intervener COCA COLA KWANZA LTD fully associated with the submissions made by Mr. Ng'maryo and Dr. Tenga on the preliminary grounds of objection raised by the 2nd respondent.

We have carefully considered the arguments advanced by the respective learned counsel for and against the grounds of objection.

At the outset we deem it necessary to put on record that Dr. Tenga in his submission in reply on ground 2 (the plea of *sub-judice)* and Mr. Nyenza in his rejoinder had also argued the issue of the propriety and necessity of impleading FCC as a party in an appeal from its own decision and in their arguments both learned counsel relied on, inter alia, rules 7(5) of the FCT Rules and Rules 75(4), (5) and (6) of the Fair Competition Commission Procedure Rules, 2010 G.N. No. 254 of 2010 (FCC Rules). However, it is our considered opinion that these arguments are irrelevant as far as ground No. 2 of the preliminary objections is concerned and we will accordingly for the time being disregard the arguments advanced by the respective learned counsel on whether or not it is proper to join FCC as a party/respondent in an appeal emanating from its own decision.

As regards the 1st ground of objection about the failure by the appellant to give the statutory notice to FCC it is not disputed that the notice of appeal filed on 27/12/2010 was lodged within the time prescribed in the FCT Rules, and that in the notice only the 1st respondent (SBL) was named as a respondent. Nor is it disputed that the second respondent (FCC) was added later upon an order made by this Tribunal for joining FCC as a 2nd respondent in Appeal No. 4 of 2010.

Upon careful consideration of the respective arguments we agree entirely with Mr. Ng'maryo and Dr. Tenga that as the notice of appeal which initiated Appeal No.4 of 2010 was filed within time, and as at the time FCC was joined as a 2nd respondent there was already in place a properly lodged appeal there was no requirement to file a fresh notice or amended notice of appeal naming FCC as a respondent or to serve the notice aforesaid to FCC. The requirement to name the respondent in the notice of appeal and to serve a copy thereof to the respondent provided in rules 7(3) (b) and (4) respectively of the FCT Rules is only applicable at the commencement of an appeal. There is no such requirement where a party is made a respondent to the appeal subsequently upon an order made by the Tribunal nor is there in the FCT Rules any rule requiring the filing of an amended/fresh notice of appeal when adding as respondents parties who were not named as respondents in the notice of appeal initiating the appeal process.

We agree entirely with Dr. Tenga that the Dhow Mercantile (E.A) Ltd case cited by Mr. Nyenza is clearly distinguishable and inapplicable as in that case there was no notice of appeal in place as upon the appeal in question being struck out the notice of appeal itself was also struck out. In the instant case there is no dispute that there is still a notice of appeal in existence which forms the basis of Appeal No.4 of 2010 in this consolidated appeal and all the necessary documents prescribed in rule 7 of the FCT Rules for commencement of an appeal are still undoubtedly in place. Accordingly ground No.1 of the preliminary grounds of objections raised in Appeal No.4 of 2010 is hereby overruled.

As regards ground 2 we will say without further ado that the *sub-judice* rule provided for in section 8 of the Civil Procedure Code Act No. 49 of 1966 on which the objection seems to be grounded is not applicable to proceedings before this Tribunal in the light of rule 20 of the FCT rules 2006 which reads as follows:

> "20. Where two or more proceedings are pending in respect of the same decision or which involve the same or similar issues, the Tribunal may, on its own motion, or upon application by any of the parties, order that the proceedings or any particular issue or matter raised in the proceedings be consolidated or heard together".

As stated hereinabove the 2 appeals have been consolidated and the preliminary objection being, in our view, misconceived in the light of rule 20 of the FCT Rules, is hereby overruled.

It is convenient at this point to consider ground 2 of the grounds of preliminary objection, which was raised as an alternative to ground 1 of the preliminary objections in Appeal No. 5 of 2010, relating to the competency of Appeal No.5 of 2010. As regards this ground we will say without further ado that as the two appeals have been consolidated this ground of objection has been overtaken by events. In the light of the conclusions we have reached on ground 1 of Appeal No.4 of 2010, we are of the view that there is no need for us to rule on the arguments presented by the respective learned counsel on ground 2 (raised in the alternative to ground 1 in Appeal No.5 of 2010) challenging the competency of the aforesaid appeal and we will, with respect, accordingly disregard the aforesaid arguments presented by learned counsel on this point.

Ground 3 of Appeal No.4 of 2010 and ground 1 of Appeal No.5 of 2010 which are the remaining grounds will be dealt with and addressed simultaneously in this ruling as the issue raised in both grounds of objection is whether or not it was proper to make FCC a respondent in an appeal before this Tribunal and/or join FCC as a second respondent in an appeal before this Tribunal arising from a decision made by FCC.

In support of the grounds of objection challenging the propriety of joining FCC as a respondent in an appeal arising from its decision, Mr. Nyenza citing the case of **Peter Mushi V. The Minister for Land Housing and Urban Development 1984 TLR 64 (CA),** asserted that FCC was wrongly joined as a respondent on appeal as it was not a party to the proceeding from which the appeals arise.

On this issue Mr. Ndanu the Director of Compliance of FCC who had accompanied Mr. Nyenza at the hearing of both appeals submitted that the appeals are improper as the decision appealed from was made by FCC as an adjudicator upon a complaint submitted by SBL. He argued that as the appeals arise from the decision of FCC, FCC having acted as the adjudicator was wrongly made a respondent.

In response Dr. Tenga distinguishing the Mushi case cited by Mr. Nyenza submitted that FCC is not a court, that the proceedings before FCC was not a trial and that it was an investigation which resulted in FCC condemning the appellant. He further asserted that the Peter Mushi case is irrelevant and inapplicable to this appeal and that the preliminary objections are frivolous. Dr. Tenga submitted that ground 1 in Appeal No.5 of 2010 is a clear statement by FCC that it is a necessary party in an Appeal before the Tribunal. He contended that in similar jurisdictions it is the practice to join the regulatory authority in appeals before the

competition tribunal originating from its own decisions and that the FCC being an investigatory body with quasi judicial functions is an interested party in its own decision and must be made a respondent in an appeal against its decision. Dr. Tenga contended that this position is supported by the provisions of rules 31 and 32 of the FCT Rules and rule 75 (4), (5) and (6) of the FCC Rules 2010 in which, he asserted, it is implicit that FCC is an interested party and in which it is expressly provided that the Director of Compliance must appear and represent FCC in any appeal before the Tribunal, since FCC is best placed to defend its decision. Dr. Tenga basically argued that as FCC had in ground 1 of its grounds of objections in Appeal No.5 of 2010 stated that FCC is a necessary and statutory party in appeal no.4 of 2010, FCC is clearly conceding that it ought to be joined as a respondent in an appeal arising from its own decision.

Upon being ordered by this Tribunal the appellant had filed a list of additional authorities from the United Kingdom (UK) and the European Union(EU) to support the arguments on this issue of the propriety of impleading FCC as a respondent in a similar situation, that is in an appeal arising from a decision made by a competition authority.

In additional submissions presented at a later date on 25/3/2011, Mr. Fayaz Bhojani learned counsel who had appeared with Dr. Tenga on behalf of the appellant submitted that in the UK the

Office of Fair Trading (the OFT) and in Europe the European Commission are the authorities equivalent to FCC and that the decisions of the respective competition authorities are challenged in the Competition Appeal Tribunal in UK and the General Court in Luxembourg respectively, which are tribunals equivalent to this Tribunal. Mr. Bhojani cited a number of cases in which, according to him, the Office of Fair Trading (the OFT) is without exception the respondent in appeals on competition issues arising from its own decision. According to Mr. Bhojani it is immaterial whether the OFT acted as an investigator in the matter or whether it acted upon a complaint submitted to it, that the OFT, the competition authority is always the respondent in an appeal arising from its decision and that in the United Kingdom (UK) the complainant is not even made a respondent and can only join on appeal as an intervener.

Mr. Bhojani further submitted that the position in the European Union (EU) is similar to that in U.K and that the European Commission (the competition authority) is always the respondent in an appeal against a decision made by it, the only difference being that while the appellant is called "applicant" the Commission is called "defendant" instead of a respondent. He argued that as our laws are similar to those obtaining in U.K and E.U the cases relied upon by the appellant's counsel are persuasive and FCC must be made a respondent in an appeal from a decision made by it. He further submitted that the U.K

Competition Appeal Tribunal Rules are similar to the FCT Rules, particularly rule 13(b) of the U.K rules requiring the Registrar of the Tribunal to send a copy of the notice of appeal to the competition authority/respondent which, he asserted, is similar to rule 7(5) of the FCT Rules.

In response by way of rejoinder, Mr. Nyenza submitted firstly, that the EU authorities relied upon by learned counsel for the appellant are not relevant to our jurisdiction since EU is a union of countries with different legal systems and that the authorities would have been relevant if the matter had been before the East African Court of Justice instead of this Tribunal which hears appeals on competition issues arising in Tanzania only. Secondly, he contended that the U.K legal system is also not relevant as in UK there are two laws governing competition matters, one, the Competition Act 1998 and two, the Enterprises Act 2002, which is not the case in this country where competition matters are governed only by the Fair Competition Act, 2003. He asserted that the case of **Terry Brannigan V. OFT, Competition Appeal Tribunal Case No.1073/2/1/06** listed in the appellant's list of additional authorities is distinguishable and inapplicable, that it arises from a decision made by the OFT in its role as an investigator and that in this appeal the OFT was made a party on appeal against its decision refusing to investigate a complaint made by Terry (appellant). He added that similarly in the case of **Cityhook Ltd V. OFT and Alcatel Submarine**

Networks Ltd & Others, Case 1071/2/1/06 the OFT was on appeal made a respondent because it decided to close an investigation and that it was not a decision made by the OFT as an adjudicator upon a complaint made to it.

It is Mr. Nyenza's contention that where FCC initiates a complaint then it may be a party/respondent upon an appeal being filed from its decision whereas where FCC acts as an adjudicator upon a complaint submitted by another person FCC cannot be made a party/respondent in an appeal arising from a decision made by FCC after hearing the complaint. In support of this argument he relied on **section 69(1) and (2) of the Fair Competition Act.**

As regards rules 7(5), 31 and 32 of the FCT Rules learned counsel was emphatic that FCC is served and notified of the filing of an appeal only so that it can assist the Tribunal by submitting reports and/or for purposes of staying the execution of its decision. Mr. Nyenza further asserted that rule 75(4), (5) and (6) of the FCC Rules 2010 are applicable only to an appeal arising from a decision made by FCC as an investigator of a complaint not as an adjudicator of a complaint submitted to it by another party.

Mr. Nyange learned counsel for the Intervener Coca Cola Kwanza Ltd was again fully supportive of the submissions presented by Mr. Ng'maryo and Dr. Tenga on this issue.

We have carefully considered the arguments advanced by the respective learned counsel together with the authorities relied upon by them within the context of the relevant statutory framework.

The Fair Competition Act No.8 of 2003 (FC Act) came into force on 14/5/2004. The object of this Act as provided in section 3 of the Act is to enhance the welfare of the people of Tanzania as a whole by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct throughout Tanzania in order to:

"(a) increase efficiency in the production, distribution and supply of goods and services;

(b) promote innovation;

(c) maximize the efficient allocation of resources; and

(d) **protect consumers".** (emphasis by Tribunal)

Sections 5(2), (3), (4) and (6); 61(1); 62 (1) – (4); 65 (1) and (2); 68(1) and (2) and 69 of the FC Act provide:-

> S.5.-(2) "Competition" means competition in a market in Tanzania and refers to the process whereby two or more persons:

(a) supply or attempt to supply the same or substitutable goods or services to the persons in the same relevant geographical market; or

(b) acquire or attempt to acquire the same or substitutable goods or services from the persons in the same relevant geographical market.

(3) A person is a "competitor" of another person if they are in competition with each other or would, but for an agreement to which the two persons are parties, be likely to be in competition with each other.

(4) "Market" means a market in Tanzania or a part of Tanzania and refers to the range of reasonable possibilities for substitution in supply or demand between particular kinds of goods or services and between suppliers or acquirers, or potential suppliers or acquirers, of those goods or services.

(6) 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 significant period of time; and

(b) the person's share of the relevant market exceeds 35 per cent.

S.61.-(1) Any person that has a pecuniary and material grievance arising from a decision of the Commission:

(a) to grant or refuse to grant an exemption under section 12 or 13;

(b) to make or not to make a compliance order under section 58; or

(c) to make or not to make a compensatory order under section 59,

may appeal to the Tribunal for review of the decision within 28 days after notification or publication of the decision.

(2) An appeal under sub-section (1) shall be by way of a rehearing.

(3) Any person that has a pecuniary and material grievance arising from a decision of the Commission other than a decision referred to in sub-section (1) may appeal to the Tribunal for review of the decision within

28 days after the notification or publication of the decision.

(4) The grounds for an appeal under sub-section (3) shall be that:

(a) the decision made was not based on evidence produced;

(b) there was an error in law;

(c) the procedures and other statutory requirements applicable to the Commission were not complied with and non-compliance materially affected the determination;

(d) the Commission did not have power to make the determination.

(5) On an appeal under this section the Tribunal shall make a determination affirming, setting aside or varying the decision of the Commission or it may direct the Commission to reconsider the matter or specified parts of the matter to which the appeal relates.

(6) In reconsidering a matter referred back to it under sub-section (5), the Commission shall have regard to the Tribunal's reasons for giving the direction.

S. 62.-(1) There is hereby established a Commission to be known as the Fair Competition Commission.

(2) The Commission shall be independent and shall perform its functions and exercise its powers independently and impartially without fear or favour.

(3) The Commission shall be a body corporate with perpetual succession and subject to this Act, shall-

(a) be capable of suing and being sued in its corporate name;

(b) be capable of acquiring, holding and disposing of real and personal property;

(c) have power to exercise and perform the powers and functions conferred on it by or under this Act;

(d) have power to do and suffer all such other acts and things a body corporate may by law do and suffer.

(4) Subject to the provisions of this Act, the Commission shall have power to do all things necessary to enable it to perform its functions and duties.

S. 65.-(1) The Commission shall administer this Act and develop and promote Policies for enhancing competition and consumer welfare.

(2) Without limiting sub-section (1), the Commission shall-

(a) control, manage and efficiently perform the functions of the Commission under the Act;

(b) Promote and enforce compliance with the Act;

(c) Promote Public knowledge, awareness and Understanding of the obligations, rights and Remedies under the Act and the duties, functions and activities of the Commission;

(d) make available to consumers information and guidelines relating to the obligations Of Persons under the Act and the rights and remedies available to consumers under the Act;

(e) carry out inquiries studies and research into

matters relating to competition and the Protection of the interests of consumers;

(f) study government policies, procedures and programmes, legislation and proposals for legislation so as to assess their effects on competition and consumer welfare and publicise the result of such studies;

(g) investigate impediment to competition, including entry into and exit from markets, in the economy as a whole or in particular sectors and publicise the results of such investigations;

(h) investigate policies, procedures and programmesof regulatory authorities so as to assess their effects on competition and consumer welfare and publicise the results of such studies;

(i) participate in deliberations and proceedings of government, government commissions, regulatory authorities and other bodies in relation to;

(o) make representations to government, government commissions, regulatory authorities and other bodies on matters related to competition and consumer welfare;

(k) consult with consumer bodies, regulatory authorities, business organizations and other interested persons;

(l) consult with the competition authorities of other countries;

(m) represent Tanzania at international fora concerned with matters relating to competition or the interests of consumers.

S.68.-(1) The Commission may conduct an enquiry where it considers it necessary or desirable for the purpose of carrying out its functions.

(2) The Commission shall conduct an enquiry before exercising a power to grant, revoke or vary a block exemption under section 12.

S.69.-(1) The Commission may initiate a complaint against an alleged prohibited practice.

(2) Any person may-

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(a) submit information concerning an alleged prohibited practice to the Commission, in any manner or form; or

(b) submit a complaint against an alleged prohibited practice to the Commission in the prescribed form.

The procedure governing appeals to this Tribunal is set out in the FCT Rules 2006.

Rules 7(4)(5), 31 and 32 of the FCT Rules read as follows:

> **"R.7.-(4) The appellant shall, not later than seven days after lodging a notice of appeal, serve a copy on the respondent.**
>
> **(5) Upon receipt of notice of appeal the Registrar shall within three days send a copy to the commission or the relevant regulatory body.**
>
> 31. In dealing with any appeal or application, the Tribunal may order the Commission or the relevant regulatory body to submit a report on any matter related to the proceedings.
>
> 32. The Tribunal may, in dealing with any appeal or application:

(a) confirm, reverse or vary the decision of the Commission or the relevant regulatory body;

(b) remit the proceedings to the Commission or the relevant regulatory body with such directions as may be appropriate;

(c) order the Commission or the relevant regulatory body to conduct fresh proceedings; and

(d) make any necessary incidental or consequential order.

Under rule 1 of the FCC Rules, 2010 the word "complaint" means/either:-

(a) a complaint initiated by the Commission under section 69(1);

Or

(b) a complaint that has been submitted to the Commission under section 69(2) of the Act;

Rules 10(1) and (2), 11, 12, 13, 14, 15, 17, 75(4)(5) and (6) of the FCC rules read as follows:

"10.-(1) Subject to the provisions of the Act, a person may initiate a complaint by-

(a) submitting information concerning an alleged prohibited practice to the Commission, in any manner or form; or

(b) submitting a complaint against an alleged prohibited practice to the Commission in the prescribed form FCC.1

(2) The Investigation Department shall, investigate the complaint with a view to establishing whether there is a case to answer.

11.-(1) In conducting investigation, the Investigation Department shall collect relevant facts-

(a) that will enable a preliminary assessment of the relevant markets;

(b) on the nature of competition in those markets;

And

(c) on the possible role or behavior of a person who is the subject of investigation.

(2) For the purpose of collecting and assessing the relevant facts regarding a complaint, the Investigation Department may-

(a) request and obtain economic data in writing from the main parties through a questionnaire or in a form as may be prescribed;

(b) request and obtain economic data in writing from third parties; and

(c) discuss with the main parties and with third parties their written submissions.

(3) Subject to sub-rules (1) and (2), the Investigation Department shall discuss with main parties and third parties on whether the behavior that is complained against is harmful to competition.

12.-(1) where the Investigation Department is of the opinion that there is a case to answer, the Investigation Department shall refer the matter to the Director of Compliance.

(2) Where the Director General is of the opinion that the behavior in question harms or is likely to harm

competition he shall forward the case for further investigation.

(3) Subject to sub-rule (1), the main parties shall be provided with a statement of the case setting out the facts of the case and the relevant provisions of the law alleged to have been contravened.

(4) Where it appears that the relevant behaviour does not harm or is not likely to harm competition, the parties involved shall be informed with reasons that the Commission shall not be taking any further action.

13.-(1) Where the Commission summons a person to supply information, document or evidence under section 71 of the Act, it shall-

(a) state the legal basis and the purpose of the request;

(b) specify what information is required;

(c) fix the time within which it is to be provided; and

(d) indicate the penalties provided for under the Act for not complying with a summons.

(2) In the case of legal person or association having no legal personality, their representatives shall supply the information requested on behalf of the legal person or the association concerned.

(3) A person questioned by an officer conducting an investigation shall answer each question to the best of his knowledge.

(4) The Commission may also specify the time and place at which any document is to be produced.

14.-(1) For the purpose of section 71(5) of the Act, the Chairman of the Tribunal shall issue a search warrant which shall specifically identify the premises that may be entered and searched.

(2) A warrant issued under sub-rule (1) shall remain valid until one of the following events occur:

(a) the warrant is executed;

(b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;

(c) the purpose for issuing it has lapsed; or

(d) the warrant has expired.

(3) Immediately before execution of a warrant, the officer executing the warrant shall produce his identity card and explain to the person named in the warrant the authority by which the warrant is being executed.

17.-(1) The Commission shall adopt an inquisitorial rather than adversarial procedure in conducting the hearings.

(2) Subject to sub-rule (1), the inquisitorial procedure shall be <u>considered as part of the investigation procedure that follows after the investigation is complete.</u> (emphasis by Tribunal).

(3) For the purpose of sub-rule (2) the Commission shall provide a <u>forum for presentation of any additional information or analysis with a view to facilitate the process of investigation.</u>

75.-(4) Where a case is appealed to the Tribunal, the Director of Compliance shall supervise the arrangement for presentation of the Commission's interests.

(5) The Director of Compliance shall represent the Commission in any appeal before the Tribunal.

(6) The Director of Compliance shall consult the Chairman where necessary during the period of the Tribunal proceedings in order to ensure that the Commission's case is presented in a way that accords with the decision that was made and the reasons for that decision." (emphasis by Tribunal).

To begin with we must make it clear that we do not find the case of Peter Mushi heavily relied upon by learned counsel of FCC in support of their arguments on the question of the propriety of joining FCC as a respondent in an appeal arising from its own decision in competition matters particularly helpful to FCC's case. In that case there was a trial before the Customary Land Tribunal. An Appeal was preferred to the Minister for Lands by the unsuccessful party which matter later ended up in the Court of Appeal. The Court of Appeal of Tanzania held, *inter alia,* :- "Again it is noted that at the trial before the Tribunal there was only one complainant, namely Thomas Lesio and four others who were not identified, and the Minister in his judgment accordingly awarded the title to Thomas Lesio and four others. This was obviously irregular for two main reasons. First, it was clearly wrong to join on appeal a person who was not a party at the trial. Secondly,....."

In our view the Peter Mushi case cited by the learned counsel for FCC is not applicable to this appeal. It would be wrong to equate the FCC with an ordinary court or the Customary Land Tribunal or for that matter to any Tribunal. Indeed it is a misconception to liken the proceedings before FCC to a trial by a court simply because the functions and form of FCC are totally different from those of a court of law or the Customary Land Tribunal. A court has been defined by **Black's Law Dictionary, Eight Edition** as "a government body consisting of one or more judges who sit to adjudicate disputes and administer justice" while a Tribunal is defined as "a court or other adjudicatory body." On the other hand, under the provisions of the FC Act, (sections 3, 62 and 65) FCC is a regulatory body or authority established to administer the FC Act and to develop and promote competition and consumers welfare and to enforce compliance with the FC Act. It is a body corporate with powers to investigate complaints, and in the course of the investigation to hear interested parties and make decisions with the objective of promoting and enforcing compliance with the FC Act. Unlike a court, whenever FCC conducts an investigation or a hearing of a complaint leading to a decision it does so in its capacity as a regulator and in pursuance of its functions of administering the FC Act and promoting competition and enforcing compliance with the FC Act.

From the provisions reproduced hereinabove, clearly FCC is a regulatory authority with functions which are substantially

investigatory and regulatory (rule 17 of the FCC Rules). Under section 69 it may initiate a complaint or act upon a complaint submitted by any person about an alleged prohibited practice and under section 71 it has power to obtain information from any person. Under section 61 its decisions may be challenged before this Tribunal by appeal. Unlike a court FCC has an investigation department with powers to investigate complaints and during the hearing of a complaint the Commission adopts an inquisitorial procedure which is part of the investigation procedure that follows after the preliminary investigation is complete, meaning that unlike in a trial before the court the FCC continues its investigation right up to the hearing. The corollary is that the hearing itself is nothing but part of the investigation procedure. FCC has a compliance department and Director of Compliance responsible for enforcing compliance with the Act (section 75(1) and (2)). FCC is also empowered to make public inquiries (rule 70) and has an information unit (rule 64) which is responsible for, *inter alia,* acting as an intermediary in the provision of economic data; and a Research and Advocacy Division responsible for investigations and inquiries relating to impediments to competition which may exist in any economic sector etc., (rule 66); and an Economic Studies Department for maintaining a record of all ideas and proposals for new inquiries (rule 67). The Research and Advocacy Division conducts inquiries and collects

data and views of the public relating to possible impediments to competition (rule 70).

From the arguments presented by learned counsel and as stated earlier herein, in ground No.1 of the preliminary objections raised in Appeal No.5 of 2010 FCC has clearly conceded in the Reply to the Memorandum of Appeal that FCC is a necessary and statutory party in an appeal from its own decision upon an investigation or a complaint initiated by itself. Admittedly while Mr. Nyenza submitted that FCC can be joined as a respondent in an appeal from its own decision in a proceeding in which FCC initiated a complaint or investigation he was emphatic that where FCC acted upon a complaint submitted to it under section 69 (2) of the Act, upon appeal to this Tribunal, FCC cannot be made/joined as a respondent since, in Mr. Nyenza's view, FCC acted as an adjudicator in making the decision appealed from. However not surprisingly, in our view, he could not point out the provision of the law he relied upon to support his argument.

We are, with respect, unable to accede to Mr. Nyenza's and Mr. Ndanu's submissions. As stated hereinabove, the procedure governing appeals to this Tribunal is set out in the FCT Rules and to some extent in the FCC Rules. Rule 7(3) of the FCT Rules does not state who a respondent is in an appeal before the Tribunal. However rule 7(5) of the FCT Rules read together with rule 75(4) (5) and (6) of the FCC Rules clearly contemplate that FCC being

an interested party in an appeal before the Tribunal from its own decision will be a respondent in the appeal. Indeed rule 75(5) and (6) expressly provides that the Director of Compliance shall represent the commission/FCC in any appeal before the Tribunal. No doubt the interests referred to in rule 75(4) are those which relate to the core functions of FCC which are the promotion of competition and consumer welfare and thereby the enforcement of compliance with the Act. In our view therefore it is implicit in rule 7(5) of FCT Rules read together with rule 75(4) (5) and (6) of the FCC Rules that FCC is a necessary and proper party/respondent in any appeal in this Tribunal arising from its own decision whether made upon a complaint/investigation initiated by itself under section 69(1) of the FC Act or upon a complaint submitted under section 69(2) of the Act.

Competition Law and Litigation being fairly new phenomena in this country, as stated earlier herein, we had requested learned counsel for the appellant to file a list of authorities from the UK and the European Union supporting the view that in competition litigation the competition authority which made the decision complained about or disputed must be joined as a party on appeal. We have gone through the relevant authorities (statutes and case law) obtaining in UK and the European Union and relied upon learned counsel for the appellant.

It seems to us that in U.K in all competition cases decided by the Competition Appeal Tribunal (which is equivalent to this Tribunal), the Office of Fair Trading and the Competition Commission (the competition authorities established under the Enterprises Act 2002 and the Competition Act 1998 respectively) have always been joined as parties on appeal before the Competition Appeal Tribunal regardless of whether or not they initiated proceedings *suo motu* or acted upon a complaint. Indeed even in the Terry Brannigan V. OFT and Cityhook V. OFT cases which Mr. Nyenza tried to distinguish in his arguments as decisions made during investigation, the competition authority had acted upon complaints submitted to it, and in our view it is immaterial that the decision was to close the investigation of the complaint.

In the UK Competition Commission Appeal Tribunal case **of Aberdeen Journals Ltd v. Director General of Fair Trading, Case No. 1005/1/1/01** briefly the facts are that:- Following an investigation of a complaint submitted by Aberdeen Journals Ltd, publisher of the free weekly Aberdeen & District Independent (the Independent), the Director General of Fair Trading (now called the Office of Fair Trading) made a decision which was appealed against to the Tribunal. On appeal, the Director General of Fair Trading was made a respondent. Upon application in writing Aberdeen Independent was granted permission to intervene in support of the Director General of Fair Trading (respondent).

Similarly in the **cases No. 1002/2/1/01(IR); 1003/2/1/01; 1004/2/1/01 of the UK Competition Commission Appeal Tribunal Between The Institute of Independent Insurance Brokers (appellant) and The Director General of Fair Trading (respondent) supported by The General Insurance Standards Council (intervener) and Between Association of British Travel Agents Limited (Appellant) and The Director General of Fair Trading (respondent) supported by The General Insurance Standards Council (intervener)** the appeal was from a decision by the UK Competition Authority made upon a complaint submitted by the appellant. The Director General of Fair Trading (now called the Office of Fair Trading) was made the respondent.

Briefly the facts are that: On June 2000 the General Insurance Standards Council ("GISC") notified to the Director General of Fair Trading in a voluminous notification under section 14 of the Act, the Rules of the General Insurance Standards Council ("the GISC Rules"). From 26 July 2000 onwards the Institute of Independent Insurance Brokers ("The IIB") engaged in an extensive correspondence with the Director objecting to the GISC Rules and, in particular, to Rule F42. Similarly, by letters to the Director between 23 June 2000 and 4 December, 2000, the Association of British Travel Agents Limited ("ABTA"), also drew the Director's attention to its opposition to the GISC Rules, in particular Rule F42. Having examined GISC's notification under

section 13 of the Act, on 24 January, 2001 the Director adopted Decision No.98/1/2001 entitled "Notification by the General Insurance Standards Council)"the GISC Decision"). In the GISC Decision the Director decided that the GISC Rules did not infringe the Chapter I prohibition. Following this decision IIB and ABTA by separate applications applied to the Director to withdraw or vary the GISC Decision and substitute a finding that the GISC Rules infringed the Chapter I prohibition. By two decisions addressed to the IIB ("IIB Decision") and to ABTA ("the ABTA Decision"), respectively, the Director decided, pursuant to section 47(4) of the Act that no sufficient reason had been shown for him to withdraw or vary the GISC Decision. The IIB and ABTA thereupon appealed to the Competition Commission Appeal Tribunal against the IIB Decision and the ABTA Decision by separate appeals lodged on 11 June 2001 and 15th June, 2001 respectively. The Director General of Fair Trading was the respondent in both appeals which were subsequently joined.

In the UK Competition Appeal Tribunal **case No. 1017/2/1/03 between Pernod Ricard SA and Campbell Distillers Limited (appellants) V. Office of Fair Trading (OFT)** (formerly the Director General of Fair Trading) (respondent) supported by Bacardi-Martin Limited (intervener) the facts are that the appellants had submitted to the OFT separate complaints alleging that Bacardi was engaged in practices which were harmful to competition. The OFT thereupon started investigating the

complaints. Bacardi in the course of the investigation made suggestions for informal resolution of the investigation culminating with a letter formally offering certain agreed assurances to the OFT. The OFT confirmed that it was prepared to accept those assurances and was closing its investigation. The appellants appealed to the Tribunal from the decision of the OFT (notified to the appellants) closing the investigation into Pernod's complaint regarding the alleged abuse of a dominant position by Bacardi (the intervener) in breach of the relevant provision of the Competition Act 1998. In the appeal the OFT was the respondent and Bacardi was granted permission to intervene in the proceedings.

In all the UK cases relied upon by the appellant's counsel in the list of authorities the OFT, the competition authority was invariably the respondent without any exception regardless of whether or not the OFT initiated the complaint or acted upon a complaint.

It is our view that the UK Competition Appeal Tribunal Rules, 2003 clearly support the position that the competition authority and indeed the sector regulators such as the Office of Communications, Water Services Regulatory Authority *et cetra* must be joined on appeal as parties before the Tribunal in proceedings originating from their own decisions and orders.

Indeed Rule 13 of the UK Competition Appeal Tribunal Rules (UK Rules) which is in *pari materia* with rule 7(5) of the Fair Competition Tribunal Rules, 2006 provides that on receiving a notice of appeal the Registrar shall send a copy of the notice of appeal **"to the respondent who made the disputed decision".** Rule 14(1) of the same Rules further provides as follows: "**The respondent shall send to the Registrar a defence in the form required by this rule so that the defence is received within six weeks...'** It is clear from the express wordings of rules 13 and 14 of the UK Rules that the competition authority which made the decision disputed is the respondent in an appeal before the UK Competition Appeal Tribunal from its own decision and is therefore required to make a defence in the form required.

Similarly it is our view that rule 7(5) of the Fair Competition Tribunal Rules, 2006 clearly, as stated earlier herein, contemplates that FCC must be made the respondent in an appeal from the disputed decision made by it in the course of carrying out its functions of regulating competition matters under the Act. The rule requires the Registrar to send a copy of the notice of appeal to the competition commission or the relevant regulatory body within 3 days. Surely the Registrar is not required to send the notice of appeal to the commission or the relevant regulatory authority that made the disputed decision simply for them to sit on it. It is also implicit in rule 7(5) that the

notice is sent to FCC or the relevant regulatory authority that made the disputed decision so that the respective authority/authorities may prepare its/their defence(s) before the Tribunal. It is also implicit from the wording of rule 7(4) and (5) of the FCT Rules read together with rule 75(4), (5) and (6) of the FCC Rules that in any appeal before the Tribunal, whether FCC acted *suo motu* or upon a complaint, it must be joined as a party/respondent before this Tribunal and therefore must prepare its defence.

The position in the European Union seems to be very similar to the UK one on this issue as the European Commission which is the competition authority is always joined as a respondent in an appeal in competition matters to the European Court of First Instance which is equivalent to this Tribunal. In joined **Cases T-109/02, T-118/02, T-122/02, T-125/02, T-126/02, T-128/02, T-129/02, T-132/02 and T-136/02 Bollore` SA and Nine Others (applicants) V. Commission of the European Communities (defendant),** briefly the facts are that: In 1996, the Sappi paper group, owned by Sappi Ltd, provided the Commission with information and documents which gave the Commission grounds for suspecting that a secret cartel existed or had existed for fixing prices in the carbonless paper sector, in which Sappi operated as a producer.

In light of the information provided by Sappi, the Commission carried out investigations at the premises of a number of carbonless paper producers and sent requests for information to the undertakings concerned asking for particulars of their announcements of price rises, their sales volumes, customers, turnover and meetings with competitors.

After hearing the matter, the Commission adopted a decision. The decision finds that 11 undertakings infringed the competition law by participating in a complex of agreements and concerted practices in the sector of carbonless paper and orders them to bring the infringement to the end and to refrain from any agreements of similar nature as well as imposes fines payable within three months of notification of the decision. Nine out of eleven undertakings that were found liable appealed to the Court for annulment of the Commission's decision, annulment or reduction of fines and costs. This case clearly illustrates that in proceedings before the European Community Court relating to competition matters and applying the Community Competition Rules, the Commission of the European Communities (also known as the European Commission), the competition authority is always joined as a respondent. The only difference being that the appellant is called the "applicant" while the respondent (the Commission) is called "defendant".

Another European case relied upon by the appellant which supports its contention that the competition authority must be made a party/respondent in an appeal arising from its decision upon a complaint being submitted to the competition authority is the European Court of First Instance Case **T-327/94 SCA Holding Ltd (applicant) v. Commission of the European Communities (defendant).**

The legal framework on competition matters in the EU relevant to this issue, in principle, is substantially similar to our competition law. We therefore find the argument by Mr. Nyenza that the European Union position and case law is not applicable in this Tribunal and that it would be more relevant before the East African Court of Justice not at all persuasive. What matters, in our view, is the objective and the legal framework of the competition law, not the geographical application of the law or the political structure of the area of its application. The fact that the FC Act is only applicable to Mainland Tanzania while the European Competition Law is applicable in all the EU member states is of no consequence since all the members states aforestated have acceded by treaty to the competition law applicable in EU. Indeed the EU is not only a political union but an organization of a number of western European nations joined together in the promotion of **economic,** political and social cooperation and integration and with this objective the member states have harmonized their laws in line with the EC Treaty. We

also cannot accede to the argument that the U.K. authorities are not applicable in this Tribunal merely because in U.K. there are two competition laws. In our view what is material is that the U.K competition law as a whole is no different from our law as regards the objective of the competition law, the functions of the respective competition authorities and the limits of its/their mandate(s).

We conclude therefore that because of the nature of its functions under the FC Act, FCC is an interested party in an appeal from its own decision and therefore like other competition authorities in the UK and the European Union must be made a respondent in an appeal from its own decision so that its interests may be defended and the issues maybe fully and completely adjudicated.

Indeed in the recent decision of the **Supreme Court of India delivered on 9/9/2010 in Civil Appeal No. 7779 of 2010 (D. No. 12247 of 2010), Competition Commission of India (appellant) v. Steel Authority of India Ltd. & Another (respondents)** which this Tribunal had notice of prior to the filing of these appeals the appellant, the Competition Commission of India had itself applied to be joined as a respondent in an appeal before the Competition Tribunal arising from its own decision. The Supreme Court of India made an in-depth consideration of the issue as to whether or not the Competition Commission of India was entitled to be joined as an

appellant/respondent and ruled that the competition authority was both a proper and necessary party in an appeal before the Tribunal arising from its own decision as a regulator.

The Supreme Court interpreted section 53S(3) of the Indian Competition Act, 2002 No. 12 of 2003 as amended by the Competition (Amendment) Act, 2007, which section is in *pari materia* with rule 75(5) of the FCC Rules 2010, providing for the Commission's right to legal representation in any appeal before the Tribunal and ruled that the commission, a body corporate is expected to be a party in the proceedings before the Tribunal since it has a legal right of representation. The Supreme Court was of the strong view that absence of the commission before the Tribunal would deprive it of its right of presenting its views in the proceedings and stated that in proceedings initiated by the commission *suo motu* the commission is *dominus litis (*a necessary party) and in cases relating to complaints submitted by other parties the commission being a regulatory body would be a proper party discharging inquisitorial, regulatory as well as adjudicatory functions and its presence in an appeal before the Tribunal would be proper for the purposes of effective adjudication of issues before the Tribunal. The Court aforesaid held that the Commission is both a necessary and proper party before the Tribunal and that the interests of justice demand that for complete and effective adjudication the Commission must be

added as a necessary and proper party in an appeal before the Tribunal arising from its own decision.

Admittedly all these decisions from other jurisdictions, U.K, EU and India are not binding on this Tribunal. However, we have taken note that both the UK and European Union have advanced competition laws and vast experience in litigation on competition matters. We have no doubt that there is a lot that this Tribunal, FCC and other regulatory authorities and other interested parties/stakeholders can learn and benefit by/from the experiences. Needless to say we find the decisions relied upon by the appellant, some of which have been considered in this ruling, including the Supreme Court of India decision which we considered *suo motu,* very persuasive. We have no hesitation in applying the principles enunciated by the Supreme Court of India on the issue of the propriety of joining the competition commission as a party on appeal to the instant appeal. We are unable therefore to accede to the submission that FCC is not a necessary or proper party before the Tribunal or that it cannot be made a respondent in this Tribunal in an appeal arising from its own decision. On the contrary, the FC Act, the FCT Rules as well as the FCC Rules contemplate and even the interests of justice demand that for complete and effective adjudication FCC be added as a necessary and proper party in an appeal before this Tribunal arising from its own decision. We are fortified in our

view by the authorities from U.K., EU and India referred to herein.

In conclusion, it is our finding that FCC was properly made a respondent in the two appeals consolidated herein, Appeals No.4 and 5 of 2010. The preliminary objection against the joinder of FCC in the two appeals (consolidated) is a misconception. Indeed, with respect, there clearly seems to be a misconception on the part of learned counsel for FCC regarding the nature of the functions of FCC, the limit of its mandate and the objectives of the Act which established it.

In the event the preliminary objection regarding the impropriety of joining FCC as a respondent in an appeal before this Tribunal from its own decision (grounds No.3 of Appeal No. 4 of 2010 and ground No.1 of Appeal No. 5 of 2010) are hereby overruled and dismissed with costs.

In the circumstances FCC will henceforth also be referred to as the second respondent in this consolidated appeal.

It is so ordered.

Judge R. H. Sheikh – Chairman

Prof. J.M.L. Kironde – Member

Dr. M.M.P. Bundara – Member

Dated at Dar es Salaam this 18th day of August 2011.

Delivered/read on this 18th day of August 2011 in the presence of Dr. Tenga assisted by Mr Fayaz Bhojani learned counsel for the appellant, Dr. Tenga h.b.f. Mr. Ngwanyo learned counsel for the 1st respondent, Mr. Nyenzo assisted by Ms Fatma Magimbi learned counsel for the 2nd respondent (PPRA) and Mr. Nyange learned counsel for the Interim R. Authority

Judge R. H. Sheikh – Chairman

Prof. J.M.L. Kironde – Member

Dr. M.M.P. Bundara – Member