

State Aid in Relation to Services of General Interest: An Examination of Tanzanian Competition Law

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Abstract:- This study evaluates the influence of state aid granted to providers of services of general interest. It looks at how state aid affects competition in Tanzania. The study employed a descriptive design. Simple random sampling and purposive sampling were used to obtain data from respondents. A self-administered questionnaire and interview were used to collect primary data. Data was analysed using descriptive and narrative approaches.

Findings of this study revealed that state aid gives economic advantages to specific firms, discourage investment and may create dominance leading to distortion of domestic and interstate competition between firms. This being the case state aid is normally prohibited. However, it has been further observed that state aid is necessary to serve particular marginalised community, address market failure and that it is only prohibited under community competition laws if it does not constitute compensation. In addition, the study further discovered that the East African Competition Act, 2006, which came into force in 2014, regulates state subsidies whose economic consequences affect other member states irrespective of whether all member states have enacted comprehensive competition laws and established institutions to that effect. It is the economic effect of state subsidies that affect interstate market.

It has been recommended that states should only aid undertakings on services of general interest to the extent that does not affect other firms operating in the same market for profit making; also should assist the small and medium-sized enterprises according to the law. There should be established state aid rules to regulate aid awards to undertaking for avoidance of overreliance on rules established on other jurisdiction.

I. INTRODUCTION

Tanzania like other nations is obliged to ensure the availability of services of general interest to its citizens as basic needs for an immaculate and secure living. These services depend on public State aid which finances the operations of service providers. Such services would otherwise be inaccessible in the market without public intervention. This has called for regulation of provision of such services to promote competition. Although the government of Tanzania regulates state aid, in the form of

state subsidies, under the East African Community Competition Act¹ and has in place the Competition Act and sector legislation to regulate the provision of public services in transport, energy and utilities, communications and air transportation;² There still exist imperfect competition.

Studies that have been carried out in Tanzania and elsewhere have concentrated on effects of dominance in the market. Only a few studies have been carried out to evaluate the effect of state aid in competition. Sector regulated industries rely on State subsidies and are often characterized by lack of competition in production or supply of services and have ability to raise prices.³ The problem which this study investigates is whether or not State subsidies rendered to providers of Services of General Interest affect competition in the market.

➤ *Background to the Problem*

State authorities have been mandated to subsidize provision of essential services necessary for the entire population to access. Such services, popularly known as services of general interest, cannot be supplied by the market at affordable conditions without public intervention to offset the additional cost. State intervention in terms of aid or subsidies, as it is known in the competition legislation of Tanzania,⁴ may distort the market if not properly regulated. State aid regulation ensures that access to public services is compatible to avoid distortion of competition in trade and commerce.

Services of General Interest (SGI) are services that public authorities classify as being of general interest and, therefore, subject to specific public service obligations.⁵ The

¹ Part V of the East African Community Competition Act, 2006.

² RingoW.Tenga, Op.cit.

³ United Nations Conference on Trade and Development: Model Law on Competition (2010)- Chapter VII.

⁴ Section 3 of the Fair Competition Act, 2003.

⁵ Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and The Committee of the Regions, "A Quality Framework for Services of General Interest in Europe" 20.12.2011 COM(2011) 900 final. Also Available at: <https://ec.europa.eu/info/topics/single-market/services->

term covers both services of economic interest and non-economic services. Services of economic interest (SGEI) include economic activities that deliver outcomes in the overall public good that would not be supplied by the market without public intervention.⁶ Non-economic services embrace social services of general interest (SSGI). These are normally provided to vulnerable citizens, based on principles of solidarity and equal access.⁷

State aid exists where a state favours certain undertakings or the production of certain goods.⁸The concept of state aid is traced back to the development of European Union in 1947 under the General Agreement on Tariffs and Trade (GATT).⁹

State aid rules become evident on ‘subsidies and aids granted by States’ under Art.4 (c) of the Treaty of Paris.¹⁰ In 1957 the Treaty of Rome established the European Economic Community (EEC) and classified state aid as state intervention that distorted competition. The current EC rules regulating state aid is founded under articles 107 to 109¹¹ which explicitly prohibit state aid which distorts or threatens to distort competition by favouring certain undertakings or production of certain goods. The Treaty recognizes both actions in which state aid is not permitted and actions that can be done within the legal limits. The rationale was to avoid favouring certain companies that conduct normal commercial business through provision of financial support or lesser taxation.

In 2012 the European Commission modernized the state aid rules to require the Commission, among other things, to avoid technicalities when examining allegations concerning

potential aid in order to deliver timely decisions within the relevant business.¹²

In East Africa, the East African Community Competition Act¹³ provides for partner states’ subsidies under Part V of the Act. It allows a member state to provide subsidies to undertakings if it deems fit for public interest but with notification to relevant authorities who determine whether the subsidies are compatible as exemptions or illegal.¹⁴

Tanzania protects and regulates services of general interest through pieces of legislation, policy statements and regulations. The Fair Competition Act,¹⁵ established a Fair Competition Commission (FCC), a Fair Competition Tribunal (FCT) and a National Consumer Advocacy Council (NCAC). There are also sector-specific regulators established under specific statutes. In the transport sector there has been established the Surface and Marine Transport Regulatory Authority (SUMATRA),¹⁶ in the energy and utilities sector there has been established the Energy and Water Utilities Regulatory Authority (EWURA),¹⁷ in the communications sector there has been established the Telecommunications Regulatory Authority (TCRA),¹⁸ and in the air transportation there is the Tanzania Civil Aviation Authority (TCAA).¹⁹ These authorities have been established to provide a robust oversight of the market²⁰ and to ensure that provision of services of general interest does not distort competition. Provision of services by these authorities notwithstanding, citizens still lack the choice of quality, substitute and timely essential services and facilities. State aid may thus be aimed at protection of consumers.

general-interest_en, Accessed on 5th January, 2018, at 11:06 hrs.

⁶ *Ibid.*

⁷ https://ec.europa.eu/info/topics/single-market/services-general-interest_en, Accessed on 5th January, 2018, at 11:06 hrs.

⁸ Claus-Dieter Ehlermann and Martin Goyette, “The Interface between EU State Aid Control and the WTO Disciplines on Subsidies”, *EU state aid versus WTO disciplines* on subsidies – estal 4|2006, p. 695; Available at

https://www.wilmerhale.com/uploadedFiles/WilmerHale_Shared_Content/Files/Editorial/Publication/Ehlermann_Goyette.pdf, Accessed on 3rd March, 2018, at 16:00 hrs.

⁹ Art. 16 General Agreement on Tariffs and Trade[1947].

¹⁰ Treaty of Paris of 1951.

¹¹ The Treaty on the Functioning of European Union in 2007, formally article 87-89 of the Treaty establishing the European Community.

¹² EU Modernization of the State Aid Rules, COM (2012) 209, issued on 8th May, 2012.

¹³ The East African Community Competition Act, 2006.

¹⁴ Section 16 and 17 of the East African Community Competition Act, 2006.

¹⁵ The Fair Competition Act, No.8 of 2003.Which replaced the Fair Trade Practices Act of 1994.

¹⁶ The Surface and Marine Transport Authority Act, 2001 [Cap. 413]

¹⁷ The Energy & Water Utilities Regulatory Authority, 2001 [Act No. 11 of 2001].

¹⁸ The Tanzania Communications Regulatory Authority Act, 2003 [Act No. 12 of 2003].

¹⁹ The Tanzania Civil Aviation Authority Act, 2003 [Act No. 10 of 2003].

²⁰ RingoW.Tenga, Consumer Protection Model and the Tanzania Legal Compliance Framework-With some Reference to the Communication Sector, Tanzania Revenue Authority Workshop, June, 2009, p.2.

II. HISTORICAL OVERVIEW

In 1961 Tanzania inherited a market economy which prevailed up to 1967 when the country embarked upon nationalization policy under the Arusha Declaration. The Declaration promulgated the policy of socialism and self-reliance. Following the Declaration all major means of production were nationalized. The aim behind the measures that were taken was to ensure that Tanzanians benefitted from their resources. Private ownership of means of production including industries was discouraged.²¹ To foster this aim Tanzania enacted many pieces of legislation to relinquish the state control through structural reforms including the Price Regulation Act²² however the state continued to play a decisive role in how had to be conducted in the country.²³

By mid-1980's Tanzania relinquished state control by embarking on liberalization of economy which entailed privatization and deregulation under the regime of His Excellence Ali Hassan Mwinyi who opened the doors for private investors. Liberalization of the economy necessitated taking steps to control anti-competitive practices in order to protect both the consumer and the economy.

In line with liberalization and nursing competition in 1989 the Price Regulations Act of 1973 was repealed. This step was one of the major reforms that were undertaken after the decline of the economy in 1980's. Subsequently, a taskforce was established in 1990's to probe on the weaknesses of the economy and advice on how to regain and develop the country's economy.²⁴ The team came up with recommendations among others to enact the Fair Trade Practices Act.²⁵

The Fair Trade Practices Act of 1994 was the first Competition law which outlawed anti-competitive agreements, mergers and acquisitions and abuse of dominance. Among its weaknesses was to confer enormous powers to the minister including the power to fix prices. The Act further lacked territorial application which would enhance economic efficiency. Due to these shortfalls Tanzania repealed the Fair Trade Practices Act and replaced it with the Fair Competition Act.²⁶ This Act has been passed

to regulate anti-competitive practices by prohibiting anti-competitive agreements, abuse of dominance and controlling mergers and acquisitions. Proper enforcement of the Act would protect consumers. Indeed, provision of state aid would also assist in protection of consumers.²⁷

In the East African Community, state aid is regulated under the East African Community Competition Act.²⁸ Despite efforts to enhance fair competition, provision of state aid to specific undertakings distorts competition.

❖ *Legal Framework on State Aid in Relation to services of General Interest*

The government as a trustee of its citizens is required to ensure provision of essential services necessary for the survival of its citizens. Competition laws and institutions, among others, ensure that providers of services of general interest adhere to fair competition and consumer protection.

A. The Constitution of the United Republic of Tanzania of 1977

The Constitution of the United Republic of Tanzania, by necessary implication, permits state subsidies and aid to providers of basic goods and services. Article 14 of the Constitution of the United Republic of Tanzania provides for right to life. This implies that, every person has the right to good health. In order to have good health a person needs quality food and other basic necessities. This, in turn, requires protection of consumers against goods and products which are hazardous to health. To this end, the state funds providers of services related to health, utilities, education and economic empowerment of the citizenry as the basic responsibility of the state to ensure quality goods and services in a fair market.²⁹ These rights complement each other.

B. The Fair Competition Act³⁰

The Fair Competition Act of 2003, prevents anti-competitive agreements, abuse of dominance or market power and controls mergers and acquisitions with the aim of protecting consumers. It regulates all sectors of the economy except specified sectors.³¹ Section 3 of the Act provide for justification of state aid. The Act further establishes institutions vested with power to enforce competition laws, namely the Fair Competition Commission, the National Consumer Advocacy Council and the Fair Competition Tribunal which entertains appeals from regulatory bodies and the Fair Competition Commission.

²¹ Eliamini Laitaika, "Legal and Institutional Aspect of Fair Competition in Tanzania," Open University Law Journal, Vol.5. No.1: 58-68, 2014, p.58.

²² The Price Regulation Act, 1973.

²³ United Nations Conference on Trade and Development (UNCTAD), "Voluntary Peer Review of Competition Law and Policy: United Republic of Tanzania Overview, United Nations New York and Geneva, 2012, p.3.

²⁴ Eliamini Laitaika, p. 59.

²⁵ The Fair Trade Practices Act of 1994.

²⁶ No. 8 of 2003.

²⁷ Section 3 of the Act, provide for justification of state aid.

²⁸ The East African Community Competition Act, 2006.

²⁹ Article 11, 14 and 18 of the Constitution of the United Republic of Tanzania of 1977 as amended.

³⁰ No. 8 of 2003.

³¹ Section 96 of the Act.

C. *The Energy Subsidy Policy*³²

The policy provides for energy subsidies which are granted by the government to minimize the cost of energy production which may allow setting of affordable prices to customers. The policy establishes rules to guide both the government and other sector undertakings when making decisions on where to allocate resources based on specific areas of priority.

D. *The Energy and Water Utilities Regulatory Authority Act*³³

The Act, among others, regulates electricity prices or tariffs. It approves Tariff (D1) which is intended to benefit consumers using less than 75 kWh per month. The government compensates the reduction incurred by TANESCO in effecting such reduction rendered to marginalized customers.³⁴ TANESCO offers a fair price of 100/=Tshs per unit to customer under tariff (D1) and implement standard power purchase to small firms who produce less than 10 MW. These firms sell to TANESCO at a higher price compared to production price. The rationale is to promote investment. However the government has not compensated TANESCO since 2015.

E. *The Electricity Act*³⁵

The Electricity Act was established to facilitate and regulate electricity generation, transmission, distribution, supply and use. It provide for cross-border trade in electricity and for planning and regulation of rural electrification. To that end, cross –subsidies between customer categories have been applied.

F. *The East African Community Competition Act*³⁶

The East African Community Competition Act which came into force in 2014, regulates competition matters across the state parties. The Act requires state parties before granting subsidy or effecting merger and acquisition to notify the EACCA.³⁷

G. *The East African Community Competition Regulations*³⁸

The EACC Regulations elaborate the provisions of the EAC Competition Act. The Regulations require the EAC Competition Authority determine whether a subsidy would or would not distort or threaten competition. If it would distort

competition the Authority is enjoined to notify the partner state. If the partner state is aggrieved it may appeal to the court.

❖ *Definition of Concepts*

A. *State Aid*

State aid “is when the public organization selectively supports certain enterprises or industries, financially or by other means”.³⁹ State aid means measures granted by a state or through state resources in whatever form.⁴⁰ The same definition of state aid is stipulated under Articles 87 and 89 of the former Treaty establishing the European Community⁴¹ and Article 107 and 109 of the Treaty on the Functioning of the European Union.⁴²

The concept of State aid is wider than the concept of subsidy because it goes further than grant of donation in form of subsidies or grant, but rather concerns all measures which alleviate the undertakings cost.

The rationale behind regulation of state aid is to avoid jeopardizing the ability of undertakings to compete fairly since state aid is a potential danger on competition,⁴³ although it may be used to save a failing firm.

B. *Services of general Interest*

Services of General Interest (SGI) are services that public authorities classify as being of general interest and, therefore, subject to specific public service obligations.⁴⁴ They may cater either social or economic needs. This study has covered those services which cater for economic needs which would not be supplied without public intervention known as services of general economic interest. They include economic activities that deliver outcomes in the overall public good that would not be supplied by the market without public intervention.⁴⁵

³⁹The Eu State Aid rules and WTO Subsidies Agreement, June, 2017.

⁴⁰ Art. 16 General Agreement on Tariffs and Trade[1947].

⁴¹1993 formerly the Treaty of Rome of 1957.

⁴²(TFEU) 2009. Also see, sections 16 and 17 of The East African Community Competition Act, 2006.

⁴³ Rodger, B., and Macculloch, A., **Competition Law and Policy in the EC and UK**, 4th Edition, London and Newyork, Routledge- Cavendish, 2009, p.341.

⁴⁴ Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and The Committee of the Regions, “A Quality Framework for Services of General Interest in Europe”20.12.2011COM(2011) 900 final. Also Available at:https://ec.europa.eu/info/topics/single_market/services-general-interest_en, Accessed on 5th January, 2018, at 11:06 hrs.

⁴⁵ *Ibid.*

³² The Energy Subsidy Policy Revised Draft, December, 2013.

³³ The Energy and Water Utilities Regulatory Authority Act, Cap 414 [R.E 2002].

³⁴ Section 24(2) of the Act, review Tariff after every three years.

³⁵ The Electricity Act, No. 10 of 2008.

³⁶ The East African Community Competition Act. 2006.

³⁷ Section 11 of the Act.

³⁸ The East African Community Competition Regulations, 2010.

States have recently accorded great concern on how subsidies may be offered to public services by member states.⁴⁶ The concern has been as to how the state may fund public services such as broadcasting or transportation services. In *Altmark Case*⁴⁷ the court considered the complexity on the application of State Aid rules on Services of general economic interest. It was held that where the financial measure advance is regarded as compensation in discharging of public services then there is no State aid. In order for subsidies advanced to providers of services of general economic interest to be treated as compensation four conditions must be met:

- Clearly defined recipient or public service mandate.
- Compensation must be calculated objectively.
- No over-compensation, i.e., it must not exceed the cost for discharging the public services.
- Except for public procurement, compensation should be determined by comparison to what other economic firm in the same market would incur.

Thus some measures have been taken to avoid over-compensation by maintaining transparency and accounting systems.

III. STATE AID DESTORT COMPETITION

It has been found that state aid granted to providers of services of general interest may distort competition if the following criteria of state aid elaborated in *Belgium v. Commission*⁴⁸ exist. The criteria, based on the prohibition as per Article 107⁴⁹ and section 16⁵⁰ are shown below.

A. Assistance Granted must Constitute Aid

It has been observed under case law that assistance may distort competition if it is a state aid. For a measure to constitute state aid the following matters, as elaborated in the case of *Belgium v. Commission*⁵¹ must exist.

- *The aid should confer an economic advantage to specific undertaking or production of certain goods and services which would otherwise not be granted under the market.*

These may not only include subsidies and grants but also tax reliefs or operating aid that an undertaking as a beneficiary would have to bear. It has been noted that the government is authorized to provide assistance to certain providers of services for them to render quality services to its citizens at an affordable price.

The respondent justified the grant of subsidies to TANESCO by the government as an effort to reduce the cost which would arise from operational cost if the provider had not received such assistance. Currently clients using less than 75 kWh per month fall under Tarrif (D1) which has been approved for subsidies by the government.

Further, assistance has been granted in form of grant and tax exemption. These kinds of assistance are intended to favour users of a particular fuel like kerosene. Kerosene is an essential item by rural communities. The rationale behind this type of assistance is to promote development goals, remedy market failure and re-distribute income to poor household especially in rural areas.

- *The measure (aid) be granted by a member state or through state resources (State funding)*

It has been observed that the East African Fair Competition Act of 2006 only prohibits subsidies that distort competition. However no established rules regulating the assessment of state funding as regulated in other jurisdiction have been put in place. Under the European Union rules prohibit state resources in whatever form, whether financial or not. The Tanzania Fair Competition Act, like the EAC Competition Act, does not stipulate clear criteria for abuse of dominance for that case we rely on rules established in other jurisdiction as it was stated in *Tanzania Breweries Limited v. Serengeti Breweries Limited and Fair Competition Commission*⁵² with regard to decision from other jurisdiction, UK, EU and India there would be no hesitation to their application.”

As to what amounts to state aid was explained in the case of *Steinike and Weining v. Germany*.⁵³ It was said in this case that the concept of state aid should be widely interpreted to include public institution, regional, territorial, institutes, government entities which directly or indirectly control public administration. State resources include state funds or funds for public resources or government budget to be distributed by the government, public bodies or private bodies.

⁴⁶ Rodger, B., and Macculloch, A., p.152.

⁴⁷ Case C-280/00 *Altmark Trans GmbH v. Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747; [2003] 3 CMLR 12.

⁴⁸ Case C-5/01 *Belgium v. Commission* (‘Cockerill Sambre’)[2002] ECR I-1191. Also see, Rodger, B., and Macculloch, A., **Competition Law and Policy in the EC and UK**, 4th Edition, London and Newyork, Routledge-Cavendish, 2009, p.344.

⁴⁹ Treaty on the functioning of the European Union, 2009.

⁵⁰ The East African Community Competition Act, 2006.

⁵¹ Case C-5/01.

⁵² Tribunal Appeal No. 4 of 2010 at p. 50[Unreported].

⁵³ Court of Justice Judicial decision Cases C-78/76.

In the Tanzania Broadcasting Corporation case the principal legal counsel of TCRA asserted that “there were complaints from IPP in Tanzania which rendered the split of TBC⁵⁴ into two that is TBC1 for commercial which should not receive subsidies from the state and TBC as a public domain which receives subsidies from the government which does not distort competition.” Thus such separation helped to avoid anti competitive practices where there are more players in the same business line.

One of the interviewees, the senior economist from the FCT, asserted that where there are many players in the same line of business and when the government subsidizes one of the service providers, such subsidy distorts completion. He further expressed that the Fair Competition Act regulates only matters falling under utilities; it does not regulate service providers in other aspects like employment and gaming board.⁵⁵The Act, justifies grant of aid under section 3⁵⁶ and the Energy subsidy policy.⁵⁷

➤ *Selectivity*

This requirement may be satisfied where aid is granted to specific economic activities, sector or firms in a particular geographical area or particular nature. Respondents expressed justification on grants of aid that, specific undertakings need to be empowered for them to render services.

Services of general interest fall under selective services which the state is obliged to ensure their availability to its citizens at an affordable price. However, this may distort competition and discourage investment among enterprises.⁵⁸

There is a dearth of state aid rules to most sector regulated undertaking in Tanzania apart few regulated utilities such as the Energy and Water Utilities Regulatory Authority Act.⁵⁹ Some sector like Airline industries have no guiding rules on subsidies which leads to monopoly. State aid rules are necessary to create a fair and competitive market field.

⁵⁴ Tanzania Broadcasting Corporation.

⁵⁵ Ntully Huggins v. MIC Tanzania Limited and Tanzania Communication Regulatory Authority. Tribunal App. No.3 of 2012.

⁵⁶ Fair Competition Act of 2003.

⁵⁷ The Energy Subsidies Policy, Revised Draft, December, 2013, p.1.

⁵⁸ Neale, A.D., The antitrust Laws of the United States, A study of Competition Enforced by Law, Cambridge, Cambridge University Press, 1966.

⁵⁹ The Energy and Water Utilities Regulatory Authority Act, Cap 414 [R.E 2002].

B. Assistance must affect Trade between Member States

In case of over-capacity any amount of aid offered to providers of services may be sufficient to impact negatively on competition thus affect intra community trade. This has been prohibited as per section 16(1) the East African Fair Competition Act. Tanzania being a state party is subject to this prohibition.

According to Andreas Stargard, a competition and Antitrust practitioner, the EACCA⁶⁰ oversees competition matters in the region beyond domestic boarder irrespective of whether the partner state has in place domestic competition laws or institutions.

It has been found that Tanzania supports various companies or enterprises which have the possibility of interfering with the domestic or interstate market in areas like Airline industries and utilities such as TAZARA, TANESCO, DAWASCO, TBC, health sector, and Dares Salaam bus rapid transit. The Acting Head for anti-monopoly department at the FCC, expressed that, the question of abuse of dominance is not prohibited per se rather depend on rule of reason if the disadvantage overweighs the advantages.

An acting chief air transport officer asserted that, state aid advanced to local institutions affect competition, as they give an advantage to such undertakings which distort or interfere with smooth running of the market. Thus, where subsidy is allowed within a state, a member state may take action if such subsidy harms them, for example if it affects barrier to entry, lack of choice, high prices and division of market.

C. Distort or Threaten to Distort Competition

Courts have held that irrespective of the degree of competition in the community state aid distorts competition.⁶¹ According to the current EACCA Deputy registrar, in April this year the authority was set to conduct market inquiries to particular industries suspected of engaging in price fixing.⁶²The EACCA has to establish EAC state aid rules just as required in other jurisdiction. Any undertaking regardless of whether it receives assistance from the state or not, will be held liable if its economic consequence reach beyond the domestic boarder.

However, under the *de minimis* aid, normally the subsidy does not distort competition and the threshold does not require notification. Some member states adopt the use of Block Exemption Regulations to ensure aid grants are clear

⁶⁰ The East African Community Competition Authority [EACCA].

⁶¹ Case 730/79 Philip Morris Holland BV v. Commission [1980] ECR 2671; [1981] 2CMLR 321.

⁶² <https://africanantitrust.com/category/eac/> Accessed on 12th June, 2018 at 9:40 hrs.

and transparent. There are separate rules which may apply to electricity, agriculture, transportation and fisheries. For example in electricity industry there are exemption on subsidy extended to compensate service operation as minimum electricity Tariff to grade D1, benefiting the poor rural customer. Section 17⁶³ provides circumstances in which subsidies granted do not distort competition to include assistance to small and medium-sized enterprises.

There are undertakings like TANESCO and TAZARA which receive state subsidies and have dominance in the market. Dominance by itself is not illegal unless the firm abuses its dominance. However, the legal test is on interchangeability or substitutability of the product or service.⁶⁴ The alternative product or service need not be perfect but it must serve as optional.⁶⁵ Electricity Act,⁶⁶ centers all electricity distribution roles to TANESCO,⁶⁷ where other electric power producers are supposed to sell to TANESCO.

IV. CONCLUSION

Irrespective of the competitive nature of the market, state aid distorts competition. Funding some undertakings accords special advantage which may make them dominant and capable of suppressing other undertakings' operations in the same line of business. On the other hand state aid may promote development goals, remedy market failure and redistribute income to poor households especially in rural areas.

There is neither established state aid rules to guide the EAC subsidies in order to enhance fair competition in the interstate market nor does the Tanzanian Fair Competition Act, specifically stipulate for criteria for abuse of dominance by state aided firms.

State aid limited under *de minimis* policy does not distort competition. Such assistance when compared with other firms in similar operation does not exceed what would otherwise be incurred.

Therefore, hypothesis has been proved to be true by the fact that state aid by its nature distorts competition for it accords special advantage to certain undertaking operating in the same line of business.

⁶³ The East African Community Competition Act, 2006.

⁶⁴ Rodger, B., and Macculloch, A. p.105.

⁶⁵ Lundrup Garth (ed), *Butterworth Competition Law Handbook*, 8th Ed, Great Britain, Butterworth, 2002, p.588.

⁶⁶ The Electricity Act, No, 10 of 2008.

⁶⁷ TANESCO generates, transmit, distribute and supply

RECOMMENDATIONS

The state should provide assistance to providers of services of general interest to the extent that it does not affect other firms operating in the same market for profit making especially the small and medium-sized enterprises.

Moreover, the EACCA should establish clear and detailed guidelines on assessment of state aid prohibitions and exemption in order to enhance fair competition in the interstate market and avoid overreliance on European rules on both state aid and competition regulations.

Further, there should be established government policy to minimize the cost on all services of general interest. Separation of account should be preferred in cases where state intervention is necessary to avoid anti-competitive practices where there are more players in the same business line as in TBC and TBC1.

State aid should be abolished and if need arises be limited to avoid distortion of market; with exception to failing undertaking vital in the economy. This will create equal opportunity to the business operations and allow participation in the activities dominated by statutory sector.

Domestic competition laws should be amended to include criteria for determining abuse of dominance more specifically section 10 of the Fair Competition Act and the Electricity Act, to allow other players to enter in distribution market.

Therefore, in order to have free and fair competition, let market price alone determine allocation and distribution of resources. State aid should be granted only where there is market failure.

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