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Editor's Note June Edition

Dear Esteemed Clients, Stakeholders and Readers,

We are a few weeks into the new financial year and if there is one thing it's brought with it, it is change. Fast-moving, high-stakes, sometimes confusing change. From new tax rules reshaping the cost of doing business to tougher scrutiny on market behaviour, the legal landscape is anything but quiet.

This month, we step into the noise with two bold pieces that look beyond surface-level compliance. First, we tackle the growing tension between Intellectual Property and Competition Law. When does trademark protection cross the line into anti-competitive conduct? Can IP be used to lock out smaller players while appearing perfectly lawful on paper? We unpack how this is playing out in Tanzania and why businesses should start thinking more strategically about their IP portfolios.

Second, we focus on abuse of dominance under Section 10 of the Fair Competition Act. The Fair Competition Commission is starting to sharpen its teeth. From pricing tactics to exclusivity agreements, we explore how the law is catching up to reality, and what dominant firms should be doing to stay on the right side of it.

If you are running a business, advising one, or simply trying to make sense of how power moves in the market, you will want to read this.

As always, we write not just to inform, but to challenge, provoke, and invite dialogue. We hope this edition leaves you not only informed, but inspired to think a little deeper, and perhaps ask a few more difficult questions of your own.

We look forward to your thoughts and to shaping the legal landscape together.

Happy reading!

The Editorial Team
MWEBESA LAW GROUP

THE INVISIBLE SIEGE:
WHEN INTELLECTUAL PROPERTY BECOMES AN ECONOMIC WEAPON IN COMPETITION LAW

Inherent to the very nature of the right to license an Intellectual Property (IP) is the right for the owner of the IP to determine whether or not, and to whom to grant a license. This selective licensing power forms the bedrock of intellectual property rights (IPRs), serving as the crucial incentive mechanism that rewards creators and innovators for their ingenuity and investment. Trademarks, copyrights, patents, and other IPRs exist precisely to enable inventors to control and benefit from their creations where without such protection, the very engine of innovation risks stalling.

However, there is a slight conversion, the power to exclude, long seen as a necessary incentive can morph into a weapon to stifle competition. In practice, certain IP rights, especially trademarks, are increasingly deployed not to differentiate products, but wielded to suppress rivals rather. Nowhere is this conversion more hazardous than in developing economies like Tanzania, where the foundations of a competitive market economy are still being laid. The critical question lies in whether Tanzania's legal and regulatory framework has developed sufficiently to both nurture innovation through IP protections and effectively counter their potential anti-competitive abuses.

This article examines whether Tanzania’s current legal and regulatory framework, particularly its intersection of intellectual property & competition law adequately polices the boundary between legitimate trademark protection and anti-competitive abuse. Are our systems robust enough to distinguish innovation from obstruction? Or is reform needed to ensure trademarks serve their rightful role, as tools of progress, not instruments of exclusion?

Selectivity as Strategy

The economic rationale for protecting trademarks is clear. It stems from the unique nature of intellectual creations. Unlike physical goods, ideas and innovations possess characteristics of public goods, trademarks can be infinitely replicated at minimal cost once created. A brand logo, pharmaceutical trade dress, or software interface design can be replicated infinitely at near-zero cost without diminishing the original. This creates a classic public goods problem: if trademark owners could not prevent free-riding, the commercial incentive to invest in brand development, quality consistency, and consumer trust would collapse.

At their core, trademark laws across the globe share a fundamental principle: they grant limited exclusivity not over products or services per se, but rather over the distinctive commercial identifiers such as logos, names, and symbols, that signal their origin and quality. This allows mark owners to price their marks above marginal cost, recouping investments in brand-building while preventing consumer confusion. The system works when trademarks function as intended: as identifiers of origin and quality assurance.

Yet this carefully balanced arrangement harbors a dangerous flexibility. The same legal mechanisms that prevent counterfeiters can be weaponized to stifle legitimate competition.

Modern trademark strategies increasingly reveal a troubling divergence from first principles in various anti-competitive ways such as:

i. **Territorial fencing:** Global brands register defensive marks in emerging markets not for expansion, but to pre-empt local competitors from gaining footholds.

ii. **Sensory monopolization:** Companies trademark colours, sounds, or product shapes far beyond source identification, creating artificial scarcity in basic design elements.

iii. **Portfolio warfare:** Large firms amass trademark arsenals not for use, but as litigation leverage against smaller rivals.

As this analysis will demonstrate, the laws around trademark protection permit selective licensing , but economic reality shows how such discretion can morph into anti-competitive gatekeeping. When a beverage company trademarks every conceivable variant of a bottle shape, or a tech giant claims exclusive rights to common UI patterns, they are not preventing consumer confusion but rather constructing artificial barriers to entry.

This strategic behaviour exposes a critical flaw in treating trademarks as neutral market tools. It demands moving beyond legal formalities to assess economic effects such as when does "distinctiveness" become market foreclosure? Where should the line be drawn between brand integrity and anti-competitive exclusion? These questions define the next frontier of IP-competition policy, requiring regulators to scrutinize not just counterfeiters, but how the trademark system itself can be gamed.

The Tanzanian Context

Trademark law in Tanzania is governed by the Trade and Service Marks Act, Cap. 326 (the “TSMA”), which establishes the statutory framework for the registration and protection of trademarks. The framework adopts the NICE Classification system, enabling the categorization of goods and services under various classes. Trademark infringement under Tanzanian law is a statutory tort, articulated under Section 32 of the TSMA. Particularly, Section 32(1) outlines instances in which a registered trademark may be deemed infringed, namely, when a person, without being the proprietor or an authorized user, uses a mark that is either identical to or closely resembles a registered mark in a way that is likely to deceive, cause confusion, or impair its distinctive character.

However, the rights afforded by registration under the TMSA are not absolute. Section 32 makes it clear that while a proprietor enjoys an exclusive right, this right is conditional & subject to limitations provided under the TMSA. Specifically, Section 32(4) tempers any notion of monopoly by stating that the legitimate use of a registered mark, even if it is identical or closely resembles another does not, by itself, constitute infringement. This provision acknowledges that multiple parties may hold valid registrations for similar marks, provided they comply with the Act's registration procedures and coexist peacefully in the market. It is a clear legislative rebuke of monopolistic tendencies in trademark protection, reinforcing the principle that trademark law does not exist to create exclusivity over common or descriptive terms.

The Court of Appeal further crystallized this principle in its 2025 landmark decision in **Rig Co. Limited v. Watercom Tanzania Limited (Civil Appeal No. 210 of 2022).** In that case, Rig Co., the registered proprietor of the trademark "RIG Afya Natural Drinking Water," sought to restrain Watercom from using the term "AFYA" in its own trademark for carbonated drinks. The appellant claimed infringement and sought, among other remedies, a permanent injunction and substantial damages. However, the Court dismissed the claim, ruling that the term "AFYA," a generic Swahili word for "health," was inherently descriptive of the goods in question, drinking water and soft drinks and therefore not subject to exclusive appropriation.

In its reasoning, the Court observed that allowing the appellant to monopolize such a common term would run counter to the purpose of trademark law and create anti-competitive barriers. The Court emphasized that trademark protection hinges on distinctiveness and actual market use. Since "AFYA" merely described an attribute of the product and had been commonly used in the industry, its exclusive use could not be sustained. Notably, the Court pointed out that Rig Co. had not demonstrated actual use of its mark in the marketplace, a critical flaw in its claim for infringement.

Perhaps most importantly, the Court rejected the notion that registration alone confers immunity from challenge or a presumption of infringement against later users. Citing doctrinal reasoning, the Court stated that "the law cannot simultaneously blow hot and cold." It cannot grant trademark rights through formal registration and, at the same time, treat subsequent overlapping use, especially of descriptive or generic terms as inherently unlawful. Where the later mark does not mislead or unfairly compete, the earlier registrant cannot automatically assert infringement.

Tanzanian jurisprudence has rightly begun demarcating the boundaries between legitimate trademark protection and the anticompetitive monopolization of generic terms. Yet this progress remains constrained by a critical flaw in the dispute resolution framework confined in the TMSA. The TMSA permits challenges to abusive trademark practices only when coupled with an infringement claim. This creates a perverse accountability gap. Where no direct infringement exists, such as when a firm weaponizes trademark registrations to block market entry, aggrieved parties have no recourse under trademark law.

Consider the following predatory scenario: a dominant firm registers trademarks across multiple classes or jurisdictions in bad faith, not to protect innovation, but to artificially raise barriers against smaller competitors. The TMSA offers no remedy here. Its provisions recognize claims solely by registered proprietors, leaving victims of systematic market foreclosure with empty hands. This raises urgent questions:

1. How can a small enterprise challenge a trademark squatter who weaponizes registrations to exclude competition?
2. What recourse exists when trademarks become tools of market domination rather than identifiers of origin?

The Role of the Fair Competition Commission (FCC): Can It Intervene in Trademark Markets?

The Fair Competition Commission (FCC) is the statutory authority mandated to promote and protect effective competition in the economy and prevent practices that have or are likely to have adverse effects on competition in markets in Tanzania. The FCC's powers span a broad spectrum, from merger control to investigation of restrictive agreements, abuse of dominance, and unfair trade practices. However, the main question particularly in this discourse is whether the FCC can lawfully intervene in markets shaped by intellectual property rights (IPRs), particularly trademark ownership and licensing.

Although the Fair Competition Act No. 8 of 2003 (FCA) does not explicitly reference trademarks or other intellectual property rights, its provisions are drafted with sufficient breadth to capture any conduct, regardless of its legal origin that has the effect of substantially lessening competition. Section 9 of the Act prohibits agreements that have as their object or effect the prevention, restriction, or distortion of competition, while Section 10 proscribes the abuse of dominant position in the market. These provisions are effects-based and technology- or sector-neutral, allowing the FCC discretion to assess conduct based on its competitive impact rather than its formal categorization.

This is particularly salient in the Tanzanian market, where trademark registration can be used not only as a shield for brand protection, but also as a sword for strategic exclusion. For instance, dominant firms may leverage trademark portfolios to tie products, block rival brands from accessing retail channels, or enforce exclusivity clauses that foreclose market entry. In some cases, trademarks may be registered across multiple classes or territories in bad faith, not to protect innovation, but to erect artificial entry barriers. While the FCA defines dominance by a 40% market share threshold, the challenge arises when such exclusionary conduct is undertaken by firms below this threshold. The legal question, therefore, is whether the FCC's mandate can extend to structurally harmful conduct even in the absence of traditional dominance.

To date, the FCC has not formally exercised jurisdiction over trademark-related conduct in any published investigation. This jurisdictional gap may stem from either institutional caution in encroaching on intellectual property matters or limited awareness among stakeholders regarding the FCC's procedural avenues for initiating disputes. Unlike purely adversarial systems, the FCC operates with inquisitorial powers, enabling it to self-initiate investigations or act upon third-party complaints, a mechanism that remains underutilized in trademark-related competition disputes. This underuse likely reflects broader systemic unfamiliarity with the FCC's role in addressing the intersection of competition and intellectual property law, leaving aggrieved parties without clear recourse against anti-competitive trademark practices.

A further question arises: Can the FCC, exercising its quasi-judicial authority, compel the Registrar to amend or cancel trademark registrations that distort competition? While the FCC undeniably wields powers to issue compliance orders under the FCA, the enforceability of such directives against the Registrar hinges on their legal characterization. Section 46(c)(i) of the TMSA authorizes the Registrar to cancel a registered mark upon application by "any person" where the mark is used contrary to lawful purposes. A purposive interpretation of this provision suggests that an FCC compliance order, following a determination that a trademark's use violates competition principles, could constitute a valid "application" under the TMSA. This reading aligns with the legislative intent to prevent IP rights from shielding anti-competitive conduct, ensuring that competition law remedies are not nullified by formalistic adherence to trademark registrations.

On the other hand, challenges arise from the conventional reliance on a 40% market share as the working threshold for establishing dominance. While this benchmark is designed to distinguish between mere market leadership and potentially harmful dominance, it inadvertently narrows the scope of regulatory oversight. The rationale behind the threshold is understandable: large firms, by virtue of their scale, often deliver efficiencies, drive innovation, and improve product quality, benefits ultimately passed on to consumers. It provides a safe harbor for organic growth, shielding firms from undue regulatory scrutiny as they expand through legitimate business practices.

However, this rigid numerical benchmark risks becoming a regulatory blind spot. In today's economy particularly in niche or IP-driven markets, firms with less than 40% market share can still wield disproportionate influence through strategic trade-mark licensing, exclusivity arrangements, or portfolio control. These practices, though subtle, may significantly distort competition. By limiting enforcement to a formal threshold, the Commission risks overlooking exclusionary conduct that, while numerically small, is economically significant. This view is consistent with international best practice. In jurisdictions such as the United States and South Africa, where dominance is determined not merely by market share, but by the firm's actual ability to behave independently of competitors, customers, or consumers. In such systems, complaints can be brought even against entities with seemingly modest market positions, provided their conduct demonstrates exclusionary intent or results in appreciable harm to competition. The FCC, in line with these precedents, can and arguably must extend its mandate to ensure that intellectual property rights do not become instruments of market foreclosure or consumer harm.

Accordingly, while Tanzanian IP and competition regimes currently operate in silos, the legal architecture does not prohibit overlap. Instead, it creates regulatory space for the FCC to engage with IPR-related conduct, provided it does so on the basis of clear, measurable competitive harm. To that end, there is a growing need for inter-agency collaboration between the FCC and the Business Registrations and Licensing Agency (BRELA), which administers trademark registrations, to ensure that the grant and enforcement of trademarks do not become tools of market capture. As the Tanzanian economy matures and legal sophistication deepens, ensuring that intellectual property rights function as incentives for innovation, not as barriers to entry will be critical.

Conclusion

The invisible siege of anti-competitive IP use is not fought in courts alone. It is fought through vigilance, capacity-building, and a willingness to confront complex, often politically sensitive cases. While intellectual property protections are vital for incentivizing creativity and safeguarding brand identity, they must not become instruments for distorting fair competition. Firms should adopt a principle of proportionality: register only the trademarks they intend to use in good faith and for legitimate commercial purposes. The growing trend of defensive filings and territorial blocking, registering marks not to use them, but to fence out others, runs counter to the spirit of a healthy marketplace and may invite regulatory scrutiny.

For its part, the Fair Competition Commission must begin to view trademark-related abuses not merely as IP issues but as potential vectors of market foreclosure, consumer harm, & innovation suppression. This requires a strategic shift: expanding enforcement beyond the rigid 40% dominance threshold and embracing a more effects-based, conduct-driven framework. It also entails closer institutional collaboration with the Registrar of Trade and Service Marks, including the possibility of initiating cancellation proceedings in cases of strategic misuse. In short, Tanzania's competition authorities must rise to meet the nuanced challenges of the IP economy, not to stifle ownership, but to ensure it is exercised fairly. The law must protect innovation, not entrench incumbency.

1. Antitrust guidelines for the Licensing of Intellectual Property issued by the U.S Department of Justice and the Federal Trade Commission.
2. Refers to a licensing strategy where a property owner (licensor) grants rights to use their IP, such as a patent, trademark, or copyright, to a limited number of licensees.
3. Section 5 of the Fair Competition (Amendment) Act, 2024

LEVERAGE OVER SIZE:

INTERPRETING AND APPLYING SECTION 10 OF THE FAIR COMPETITION ACT IN PRACTICE; WHAT BUSINESSES SHOULD KNOW

Tanzania's competition framework, grounded in the Fair Competition Act Cap. 285 (FCA), has taken firm strides in addressing the abuse of dominant market positions. Section 10 of the FCA establishes a clear prohibition against conduct by dominant firms that exploits consumers or unfairly excludes rivals without legitimate justification. Unlike cartel behaviour, which necessitates collusion, abuse of dominance can arise solely from a single firm's conduct when its market power is wielded to distort the competitive process. Importantly, Tanzanian jurisprudence guided by the Fair Competition Commission (FCC) reinforces the principle that being dominant is not unlawful, but abusing that dominance is. This evolution signals a mature understanding of competition policy where unchecked market power risks hardening into structural exclusion or economic coercion, regulatory vigilance becomes a necessity.

What constitutes Abuse?

Abusive of dominance in Tanzania may present in diverse forms such as refusal to deal, discriminatory pricing, exclusive dealing, or strategic obstruction of access to essential infrastructure such as ports, railways, or processing facilities particularly in critical sectors like mining and logistics. These industries often host vertically integrated players who may dominate upstream and downstream value chains. When such firms manipulate terms or restrict access for new entrants, they invite FCC intervention. A holding of a 35% market share threshold was considered dominant, but with the Fair Competition (Amendment) Act, 2024, this has increased to 40%. While this reflects a pragmatic attempt to target only structurally significant position, it implicitly assumes that market power below 40% is harmless an assumption that may prove increasingly untenable in segmented or strategically concentrated markets.

In the landmark case of British Airways plc v Commission [2007] ECR I-2331, the European courts tackled a critical question thus, can a company with less than 50% market share still abuse a dominant position? British Airways, then the UK's leading airline, held around 39.7% of the market for ticket sales through travel agents. This figure was well below the traditional benchmark for presumed dominance.

Yet, the European Commission found, and the courts confirmed, that British Airways exercised substantial power over travel agents by using loyalty-based incentive schemes that distorted competitive conditions. This case fundamentally shifted the view that dominance is purely about numbers it highlighted that dominance is about influence and independence, not just percentage points.

British Airways had created a performance reward system that gave extra commissions to travel agents if they exceeded their previous sales of BA tickets. On paper, this looked like a legitimate commercial strategy. But in practice, it created a situation where agents had little incentive to promote rival airlines, even if those carriers offered better routes or prices. The retroactive nature of the bonuses meant that even a slight dip in BA sales could cause a significant loss of income for the agent. This subtle but powerful mechanism locked in agent loyalty not through quality or price, but by making it financially irrational to switch. That, the Commission ruled, was not healthy competition rather it was a strategic foreclosure of the market due to dominance in spite of being below percent.

The European Court of Justice upheld the Commission's view, making it clear that market conduct, not just market share is the heart of competition law. A firm can abuse its position even if it does not dominate by numbers, as long as its behaviour suppresses competition or limits consumer choice. The ruling sent a strong message across Europe as abuse of dominance is not about size alone but it is about how power is used. British Airways' conduct, while commercially clever, crossed the line into anti-competitive territory. The case remains a vital precedent for regulators, reminding them to look beyond thresholds and examine whether a firm is distorting market freedom through its tactics.

Also, in Napp Pharmaceutical Holdings Ltd v Director General of Fair-Trading [2002] CAT 1 from the UK offer a compelling lesson. There, Napp controlled only 25–30% of the total UK market for sustained-release morphine, well below Tanzania's current threshold. Yet, it held over 90% of the hospital submarket, a critical access point in the pharmaceutical supply chain. Patients introduced to Napp's products in hospital settings typically remained on those prescriptions post discharge, effectively locking in market dominance through initial gatekeeping. Both the UK's Office of Fair Trading and the Competition Appeal Tribunal agreed that, Napp's strategic pricing offering hospital supply at near zero costs was not just aggressive but exclusionary. This case illustrates that true dominance may lie not in aggregate numbers, but in control over pivotal market segments or infrastructure a concept directly relevant to Tanzanian markets, where early mover access or control of logistics often dictates downstream competition.

Contextual dominance: the South African Approach

This global precedent(s) resonates with the broader reforms in Tanzanian competition law, particularly as Section 10 now recognizes nuanced forms of abuse including loyalty rebates, tying arrangements, and abusive exercise of intellectual property rights. Accordingly, market positions below the 40% threshold should not escape scrutiny where they can pose a genuine threat to the integrity of competition. The FCA, now more aligned with the effect-based approach of Article 102 of the Treaty on the Functioning of the European Union (TFEU), reflects international best practice by shifting focus from formal thresholds to market impact. In this evolving landscape, regulators must be empowered to assess not just how large a firm is, but how it uses its position strategically to control access, shape demand, or exclude competition.

South Africa's approach to defining dominance under its Competition Act No. 89 of 1998 takes a structured yet flexible view, balancing market share with actual economic power. According to Section 7 of the Act, a firm is automatically presumed dominant if it holds 45% or more of the relevant market. Between 35% and 44.9%, dominance is presumed but rebuttable as the firm must prove that it does not possess market power, i.e., it cannot act independently of competitors or customers. Crucially, the Act also recognizes that a firm holding less than 35% may still be found dominant if evidence shows it exercises substantial market power. This multi-tiered approach reflects a sophisticated understanding that market influence isn't always proportional to market share.

In practice, this legal framework has enabled South African competition authorities to tackle complex market dynamics, particularly in concentrated sectors such as retail, telecommunications, and energy. For example, even firms below the 35% threshold have come under scrutiny where they control key infrastructure, exclusive supply chains, or where barriers to entry are high. This was evident in cases like the Walmart Massmart merger, where despite no single firm controlling a majority share, concerns about long-term competitive harm prompted a detailed investigation. Such precedents underscore that conduct, control, and the ability to foreclose competition matter just as much as numerical dominance but conduct, duration etc.

This has significant implications when compared to jurisdictions such as Tanzania, where legal frameworks risk overlooking market distortions if analysis is overly reliant on statistical thresholds. South Africa's approach demonstrates that dominance is often subtle, strategic, and context-specific, rather than being defined merely by market share percentages. By incorporating rebuttable presumptions and emphasizing economic power and conduct, the South African model challenges the view that competition law should not rely solely on fixed numerical criteria. It shifts the focus to more probing and practical questions such as; can the firm act independently of competitors and customers? Does its position deter new market entry? Is it using its influence to shape or control market dynamics? Among others. These considerations reflect a more nuanced and realistic understanding of how market dominance operates.

Tanzania must therefore be cautious in equating specific market share levels with competitive safety. While percentages such as 40% may offer regulatory guidance, they should not be mistaken as absolute indicators of whether a firm can exert dominance over the market. As international experience shows such as in the Napp Pharmaceuticals case a company can have substantial market impact even with less than stipulated market share if it controls a strategic access point or exercises exclusionary conduct. True dominance is often exercised through behavioural tactics, network effects, or supply chain leverage, none of which are visible in percentage terms.

As Tanzania's markets continue to liberalize and diversify, the FCC must remain empowered to assess dominance based on a holistic view of power, conduct, and market conditions. Regulatory discretion should allow for scrutiny of firms whose influence arises from structural advantages, not just size. To preserve fair competition, the law must evolve from mere arithmetic toward principled analysis rooted in competitive effects and economic reality. Market regulation should be guided not just by size, but by strategy, structure, and sectoral context a principle now firmly embedded in global competition law and one Tanzania is well positioned to champion in the region. The percentage threshold in fair competition law is rarely decisive on its own. What truly matters are the broader elements such as control, influence, and market conduct which, when combined, often reveal the real potential for anti-competitive harm.

Practical compliance strategies for business in fair competition arena

In markets where firms hold significant power, proactive engagement with the FCC is not a bureaucratic step it is a strategic necessity. Before implementing expansive commercial strategies or structural changes that could influence market dynamics, dominant firms should consult the FCC to ensure their actions align with the principles of fair competition. Early dialogue can clarify legal expectations, reduce compliance risks, and demonstrate a commitment to market integrity.

Dominance in the market is not measured by ownership alone it includes influence and control, often exercised through non obvious means like long term supply contracts, tied arrangements, or indirect shareholding structures. Understanding how your business conduct may exert undue influence is crucial. It is not just what you own, but how you behave in the marketplace that determines whether your position could distort competition.

Holding a strong market position is not inherently problematic, but misusing that position is. Firms with significant power must take extra care to avoid exclusionary practices such as discriminatory pricing, loyalty rebates, or denying access to essential infrastructure. Regulatory scrutiny increases with market power, and so must corporate responsibility. The most sustainable firms are those that lead without abusing their advantage.

Maintaining detailed records of compliance actions, internal reviews, and correspondence with regulators is vital. Such documentation is not merely administrative it is a strategic asset. In times of investigation or dispute, it reflects a company's integrity and helps establish a clear, factual defence against any allegations of misconduct.

In a fast-evolving regulatory environment, staying informed is as important as staying compliant. Firms must continuously monitor changes in competition law and ensure their business models adapt accordingly. This isn't about excessive caution it is about sound governance and long-term risk mitigation. A business that adapts is a business that endures.

Finally, compliance must be more than a legal checklist it should become part of the company's culture. Fair competition begins from within. By embedding these principles across all levels of an organization from boardrooms to operational firms can foster a market presence rooted in merit, not manipulation. A culture of fairness and accountability ensures that dominance never crosses the line into abuse.

Conclusion

While Tanzania's move to raise the merger notification threshold to 40% under the Fair Competition (Amendment) Act, 2024 reflects an effort to streamline regulatory focus, it risks overlooking a critical reality. Market dominance and anti-competitive conduct are not solely matters of percentage points. Influence over essential infrastructure, strategic pricing, & exclusionary practices can all distort market dynamics even where a firm holds less than the statutory threshold. By relying too heavily on numerical cutoffs, we may inadvertently allow harmful conduct to escape scrutiny simply because it falls below a formal benchmark.

This calls for a more nuanced and adaptive approach one that empowers the Fair Competition Commission (FCC) to assess not just market share, but the actual competitive impact of firm behaviour. The global trend, as seen in landmark cases like Napp Pharmaceuticals and British Airways, reinforces that abuse can occur even at lower thresholds when power is concentrated at key market chokepoints or deployed strategically. Should Tanzania not evolve its regulatory lens accordingly? The integrity of open markets demands a deeper, more contextual analysis before thresholds become blind spots rather than safeguards.

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