

# Building Linkages for Financial Markets in Africa

*“The benefits of competition and the importance of a sound competition law system”*: A South African Perspective

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Financial Services Commission  
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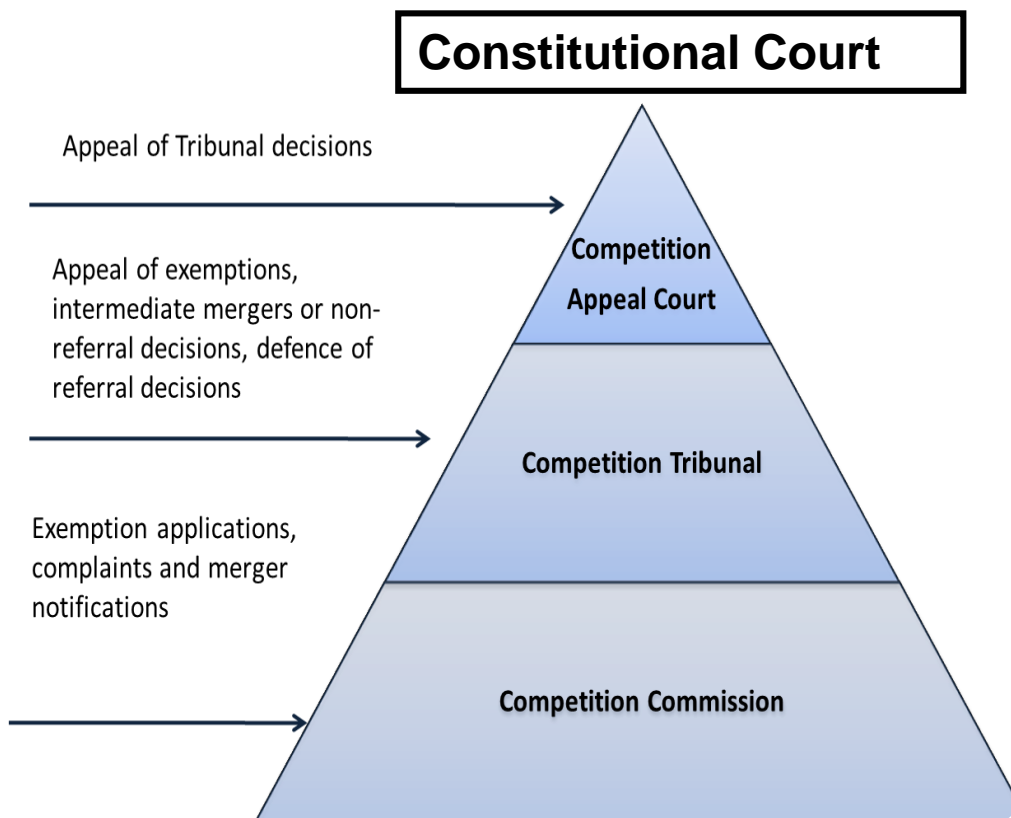
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Deputy Commissioner

*competition regulation for a growing and inclusive economy*



**competition commission**  
south africa

## Institutional Arrangement & Legislative Mandate

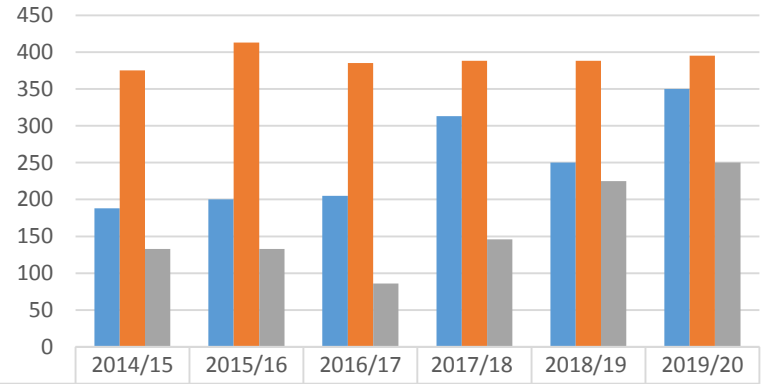


- Prior to democracy in 1994, the South African government played a prominent role in the economy including in the operation & functions of competition law & policy
- Competition law regulation gave a lot of discretion to the Government (through a designated Ministry) in the operation of what was then known as the Competition Board. The economy was characterised by state-sanctioned cartels & state monopolies
- Following the advent of democracy in 1994 the new South African government gave high priority to redressing economic imbalances corresponding to racial divisions in the country – strong competition policy became an important tool
- The Competition Act (as amended) was introduced in 1998 and became operational on 1 September 1999 including its relevant enforcement institutions:
  - ❑ **Competition Commission** - which reports to Parliament through Ministry (Economic Development Department-EDD) which appoints Commissioner and Deputy Commissioner(s) and Commissioner appoints staff
  - ❑ **Tribunal** - which reports to Parliament through EDD, members of Tribunal (including Chairperson and Deputy Chairperson) are appointed by President of the Republic of South Africa on recommendation of Minister EDD, Chairperson is responsible for appointing staff
  - ❑ **CAC** - is analogous to a High Court with its judges being appointed by the President on recommendation of the Judicial Services Commission, not a court of first instance but rather considers appeals and reviews of the Tribunal but is the court of last instance on all competition-related matters

### Concentration in South African Markets

Sector	Average: Herfindahl-Hirschman Index (HHI)
Communication technologies	3 539
Energy	2 832
Financial services	2 788
Food and agro-processing	2 861
Infrastructure and construction	2 859
Intermediate industrial products	2 958
Pharmaceutical	3 003
Transport	3 254
Other	2 891

### ENFORCEMENT IN NUMBERS



	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
Market Conduct	188	200	205	313	250	350
Mergers & Acquisitions	375	413	385	388	388	395
Cartels	133	133	86	146	225	250

\*2018/19 and 2019/20 are projections

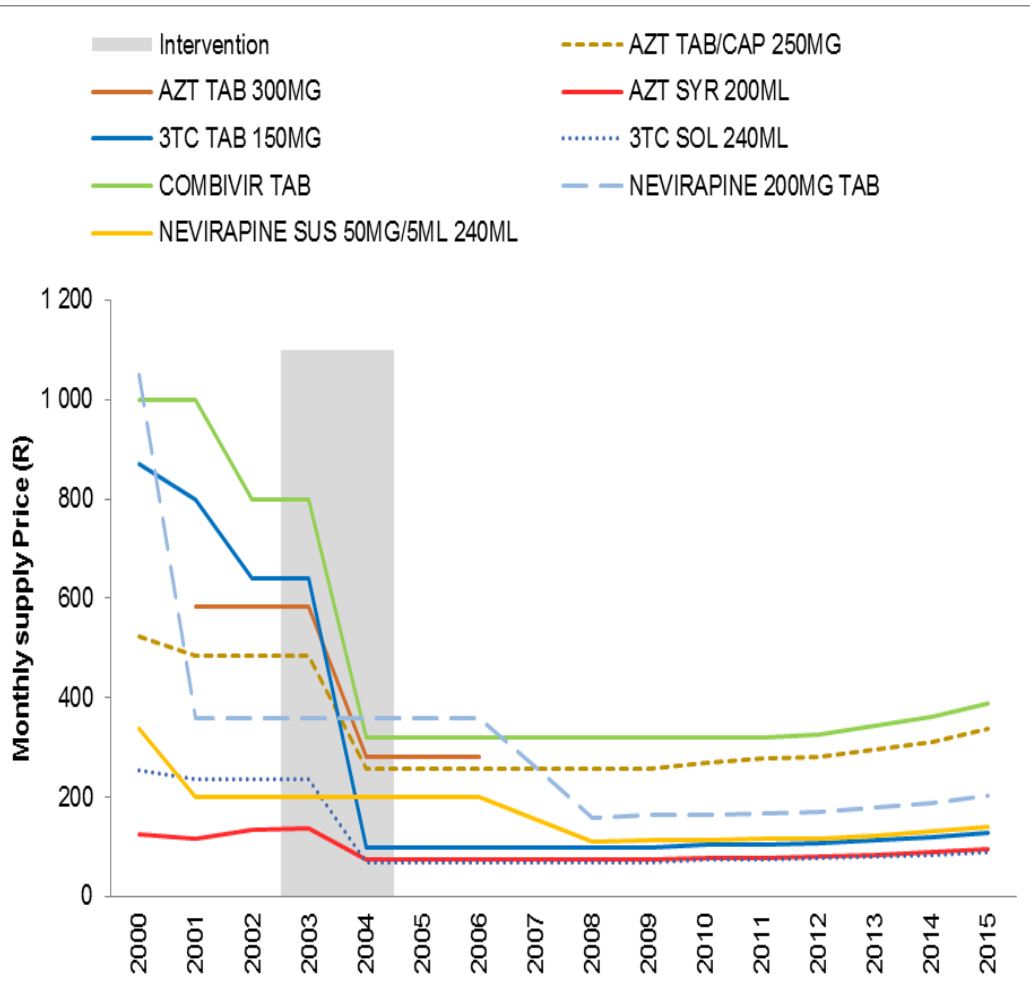
## Enforcement over the years

- **Formative years** - focus of competition authorities was largely directed at establishing an institutional framework & developing competencies to implement the Competition Act
- **1999 – 2004** - prioritised **merger control**, building capacity of the Competition Commission to deal with complex enforcement and cartel cases
- **2004** – Corporate Leniency Policy (CLP) came into force (modified in 2008) which led to a rise in the number of cartels being uncovered including the bread, flour and white maize meal cartels. The number of cases referred by Competition Commission to Competition Tribunal increased significantly since then and today stands at **circa 117** in litigation
- Increased cartel enforcement led to increases in the quantum of administrative penalties - **2004 – 2008**: a total of **R579 million (approx. \$39,8 million)**; **2009 – 2013**: a total of **R4.3 billion (approx. \$290 million)**; 2016 biggest cartel settlement with ArcelorMittal SA (a single firm) for **R1,5 billion (approx. \$140 million)**
- **Prosecution of abuse of dominance/unilateral conduct** – this has brought mixed results despite the rise in complaints since enactment of the Competition Act in 1999
  - ☐ 30 cases have thus far been heard by the Competition Tribunal:
    - 10 were successfully prosecuted or settled
    - 3 were overturned by Competition Appeal Court
    - 6 were dismissed
    - Remaining (11) still pending at first instance before Competition Tribunal or Courts
- Abuse of dominance is still proving the most complex for enforcement

# Selected Remedies

## Creative Remedies: Unilateral Conduct – Hazel Tau settlement - 2002

- Pharmaceutical companies (GlaxoSmithKline and Boehringer International) alleged to have priced excessively for the cocktail of patented drugs for HIV/AIDs.
- Settlement with Commission led to drop in prices



## Creative Remedies: Cartels (2010) – Pioneer Foods

- This case involved price fixing on bread products that led to a penalty of **R500 million (approx. \$34 million)** half of which was allocated to establishing an Agro-Processing Competitiveness Fund (APCF) which sought to address the structure of the affected markets by facilitating entry & expansion in the agro-processing value chain, particularly of SMMEs owned by historically disadvantaged South Africans, to decrease prices of certain products for an agreed period of time through reducing gross profit by **R160 million (approx. \$11 million)**
- At the end of the duration of the fund, 12 enterprises were supported & are active in subsectors which were cartelized by Pioneer Foods i.e. poultry, animal feed & the flour milling & bread industries
- 22 other firms were supported by the APCF & are active in other agro-processing activities i.e. beverages sector, oil, fruit canning etc.

## Creative Remedies: Mergers (2012) – Wal-Mart/Massmart

- Following entry of Wal-Mart into South Africa through the acquisition of a local firm Massmart, the Competition Appeal Court ordered the following remedies:
  - The development & funding of a programme to empower local SMMEs impacted by merger to enable them to take advantage of global value chain of merged entity (public interest provisions)
  - The Supplier Development Fund was set up worth R240 million (**approx. \$16 million**) to be financed by merged entity over a 5-year period
  - Firms supported are active in multiple markets including building materials (9), bricks (2), general merchandise (12), clothing & textiles (3) & processed food (3)

# Selected Impact Assessments

## Sasol – Divestiture

- **2003/04** – Nutri-Flo and Profert (downstream players) filed complaints with the Commission against Sasol for the abuse of dominance and collusion with Omnia and Kynoch (Yara)
- **May 2009** – Sasol settled with the Commission:
  - ❑ Paid an administrative penalty of approx. **R250 million (\$17,5 million)**
  - ❑ Undertook to provide fertilisers on an ex-works basis
  - ❑ Non-discrimination across customer types (i.e. blenders, traders and end-users) and across geographic regions (inland vs coastal)
  - ❑ Divestiture of 5 blending plants

### Impact

- **Divestiture of blending facilities** created opportunities for expansion and entry downstream – significant entry by blenders and traders
- **Pricing** – Pre-intervention inland customers were generally charged higher prices than coastal customers and post-intervention inland customers were generally charged marginally lower prices than coastal customers due to divestiture limiting Sasol’s dominance and its ability to discriminate across customers between inland and coastal regions. Coastal & inland prices fluctuated more during post-intervention period relative to the pre-intervention period

## Telkom – unilateral conduct

- **July 2013** – the Commission entered into a settlement agreement with Telkom (SOC - former state monopoly fixed-line provider, supplies upstream fixed line infrastructure to downstream suppliers who utilise fixed line infrastructure as a backbone to deliver value added network services i.e. internet access and VPN and Telkom is also active downstream and competes in the downstream market for the provision of VANS) following complaints by competing network service providers between 2005 and 2007.
- Telkom paid an administrative penalty of **R200 million (approx. \$14 million)** and agreed to structural and behavioural remedies, including the functional separation of Telkom’s wholesale & retail business operations

### Impact

- **Pricing trends in upstream and downstream markets** – prices decreased more significantly after the Settlement Agreement came into effect than before including significant price decreases following implementation of the Settlement Agreement for internet access
- **Cost savings** – the Commission found that (assuming a counterfactual reflective of the dynamics in price that would have prevailed absent the Settlement Agreement) following the Settlement Agreement, total cost savings were approximately **R331 million (2010-2016) (approx. \$23 million)**
- **Entry** – there was an increase in the number of licenses (used as proxy for entry) issued in the period after the Settlement Agreement compared to the period prior

# Selected Impact assessments

## Cement

## World Bank/ACF Study 2016

- Cement cartel involved price fixing and market allocation by the main cement producers (Pretoria Portland Cement (“PPC”), Lafarge, AfriSam and NPC-Cimpor)
- 2011 and 2012 Commission concluded settlement agreements with AfriSam and Lafarge:
  - ❑ Paid administrative penalties of approx **R125 million (approx. \$9 million)** and **R149 million (approx. \$10 million)** respectively
  - ❑ Limited release of data to historic region-specific product data
  - ❑ Monthly statistics, cementations sales figures could only be released on a quarterly basis with a three-month delay

### Impact

- **Savings** – post intervention total savings to the South African consumers (2010 to 2013) were **approx. R4.5 to R5.8 Billion (approx. \$315 million – \$406 million)**
- **Entry** – post intervention, regional market allocation ended with all players entering each other’s territories across the provinces and new entrant Sephaku Cement in the domestic market in 2015

- The Study found that Competition policy in Africa has brought substantial benefits to households, especially the poor, including:
  - ❑ **In South Africa** – by tackling four cartels in wheat, maize, poultry & pharmaceuticals [goods that amount to just over 15% of consumption basket of the poor in South Africa], the reduction in the overcharge in prices to consumers is estimated to have reduced overall poverty by at least 0.40 percentage points, 202,000 individuals were made better off & lifted above the poverty line through lower prices & the savings put an additional 1.6% back into the pockets of to the poorest 10% of the income spectrum by raising their disposable income
  - ❑ **In Kenya** – by tackling cartels and subsequently reducing the price of main food staples by even 10% (average overcharge imposed by cartels around the globe) could lift 270,000 people in Kenya above the poverty line. Such a policy would save households money especially poor household with bottom 10% gaining (6 times more) than richer households
  - ❑ **In Tanzania** – A study conducted by the Fair Competition Commission of Tanzania found that the removal of a suspended duty on imported cement led retail prices to drop by 26% percent over the following year

# Challenges and Way Forward in South Africa

## Challenges

1. Highly concentrated markets
2. Cartels
3. Abuse of market power
4. Closed value chains and routes to market
5. Lack of innovation and new impactful discoveries

## Desired outcomes (what we should do)

1. Strengthen competition law to effectively address abuse of market power (Competition Amendment Act passed into law)
2. Coordinated regulatory approach
3. Enhanced complementary measures to promote entry in concentrated markets
4. Globally competitive businesses
5. Social compact and partnerships

## Regulatory interventions:

1. Dismantling cartels (successes)
2. Tackling abuse of market power by dominant and large firms (mixed results)
3. Fostering a competition and innovation culture (getting there)
4. Breaking down barriers to entry (getting there)
5. Creating new opportunities (getting there)

Thank you

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