



## Competition Policy in South Africa: Efficiency and Development Matters

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## Overview



- ▶ Background – development of South Africa's competition policy
- ▶ Competition Act: key features
- ▶ Institutional Architecture for Enforcement
- ▶ From Merger Regulation to Restrictive Practices
- ▶ Enforcement Record (incl capacity issues)
- ▶ Advocacy – developing a competition culture
- ▶ Regional and Trade Agenda
- ▶ Conclusions and Recommendations

## Background – development of South Africa's competition policy



- ▶ Policy Revamp – early 1990s

Including:

- ▶ Industrial Policy
- ▶ Trade Policy

Conceptualising competition policy - beyond efficiency

- ▶ Policy Process:
  
- ▶ Act 89, 1998: Competition Act



## Competition Act: Key Features



- ▶ Covers all economic activity (amendment after Stanbic-Nedcor merger)
- ▶ Efficiency Focus
- ▶ Public Interest Matters – implications for effective enforcement
- ▶ Key provisions:
  - Merger Control - SLC,
  - Exemptions – no block exemptions (discretionary) – link to specific objectives eg export promotion, SME development
  - Restrictive practices – horizontal and vertical, per se prohibitions and rule of reason

## Institutional Architecture for Enforcement



- ▶ Competition Commission – investigatory body
  - ▶ Competition Tribunal – adjudicatory body (court of first instance)
  - ▶ Competition Appeal Court – hears appeals of Tribunal decisions
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- Independence (compared to 1979 Act, Competition Board)
  - Separation of powers (institutional independence)
  - Capacity to enforce (skills, institutional capacity, institutional memory)
  - Finance: funding, fees, finance



## From merger regulation to restrictive practices ● ● ●

- ▶ Focus on merger regulation (until approx 2003)
- ▶ More recent shift of focus to restrictive practices ( complaints, as well investigations initiated by the Commission)
- ▶ Implications for capacity – skills profile
- ▶ Corporate Leniency Programme
- ▶ Administrative Fines, Consent orders





- ▶ Merger Control – few prohibited mergers
  - Implications: thresholds?
- ▶ Restrictive Practices – investigative capacity (powers of Commission, capacity issues)

- ▶ Development of a Competition Culture
  - Corporate compliance programmes
  - Monitoring of compliance by Commission, Tribunal



## Regional and Trade Agenda



- ▶ Southern African Customs Union (SACU) – 2002 Agreement
  - Part 8: Common Policy Development (Cooperation in Enforcement among member states)
- ▶ Trade Agenda: Free Trade Area negotiations (eg Economic Partnership Agreement with EU, SACU-EFTA Agreement, SADC agenda)





- ▶ Progress made esp on restrictive practices
  - strategy (eg why no investigation of retail yet/)
  - powers of commission to investigate
  - capacity within Commission (modeling and quantitative techniques)
  - CLP (strengthening compliance)
  - what about small firms' capacity to bring complaints?
  
- ▶ What about merger control?
  
- ▶ Advocacy – competition culture