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Review Paper Two: the links between competition policy, regulatory policy and trade and industrial policies

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Abstract

This paper builds on an earlier working paper no. 04/15 on barriers to entry and inclusive growth by assessing the linkages between competition policy as a microeconomic tool and other national policy objectives. In so far as the mandates of regulators and various government departments charged with facilitating economic development seek to transform the economy into one that is more inclusive, the objectives of competition policy and other policies are complementary. For example, the work of economic regulators should be in parallel with competition policy through promoting access and restricting the ability of incumbent firms to exercise market power to the detriment of rivals and ultimately consumers. However, in practice South African policymakers and regulators faced with difficult choices have placed limited emphasis on regulating for competition and greater emphasis on encouraging investment and balancing the narrow interests of established incumbents.

This paper reviews the performance of the competition authorities in the past 15 years and draw links to other economic policies. It discusses the key challenges faced by the competition authorities and other government agencies in regulating for competition and transforming the structure of markets. It also explores the impact of industrial and trade policy on competition and barriers to entry. Successful industrial policy should support entry, dynamism and innovation rather than simply subsidising jobs. However, if the state neglects to facilitate the creation of new entrants, capabilities and industries in its developmental framework, there may be limited competition in the long-term, as is the case in many industries in South Africa. The paper finds that whilst recent policy documents highlight the importance of competition and competition policy in achieving the aims of industrial policy, in practice the importance of rivalry and entry by new players does not seem to have been a major consideration in the implementation of policy programmes.

The findings of this paper and its companion paper provide motivation for a more detailed programme of study into the nature and impact of barriers to entry in different sectors of the economy, focussing in particular on the role of entrenched incumbent firms and government actors in maintaining or increasing barriers to entry

JEL classification

L11, L12, L50, L51, L52

Contents

1. Introduction

This paper explores how competition policy and the concept of barriers to entry fits into the broader economic policy context. It complements the first review paper, which focused on the economic theories of barriers to entry, and how they relate to the development of capabilities and inclusive growth. This paper assesses the ways in which the goals of competition policy are aligned with broader developmental goals and evaluate to what extent in practice economic policies, especially industrial and trade policies, have reflected competition principles.

The Competition Act of South Africa does not seek to protect competition for its own sake but, as reflected in the objectives of the Act, does so in order to promote the development of the economy, more equitable participation, and wider ownership especially by historically disadvantaged persons.[1] It does this by restraining certain trade practices, assessing and prohibiting mergers which substantially prevent or lessen competition, and prosecuting firms that seek to abuse positions of market power to the detriment of competition, economic efficiency and consumers. Furthermore, the explicit provisions regarding the evaluation of public interest concerns that may arise from merger transactions are, by design, a means towards linking competition law with the greater socio-economic development agenda of the country. Specifically, these provisions seek to account for the protection of employment, strategic industrial sectors or regions in the context of industrial policy, and small or medium-size businesses and particularly those owned by previously disadvantaged groups.

The objectives of competition law are therefore directly related to the attainment of economic development, transformation of the economy, and economic redress through promoting market access and economic participation, economic efficiency, and consumer welfare. The provisions of the Act implicitly speak to the creation of an environment that allows for new entry to domestic markets, and removing strategic barriers to their growth and eventual graduation up the value chain in a manner that is consistent with the vision of a vibrant entrepreneurial South African economy.

In so far as the mandates of regulators and various government departments charged with facilitating economic development seek to transform the economy into one that is more inclusive, the objectives of competition policy and other policies are complementary. For example, the work of economic regulators should be in parallel with competition policy through promoting access and restricting the ability of incumbent firms to exercise market power to the detriment of rivals and ultimately consumers. However, in practice regulators faced with many difficult choices have placed limited emphasis on regulating for competition and greater emphasis on encouraging investment and balancing the narrow interests of established incumbents (see Makhaya and Roberts, 2013; Das Nair and Roberts, 2014).

Similarly in terms of the alignment of industrial and trade policy with competition policy, whilst the ultimate aims of inclusive economic growth and economic development are the same, their means of trying to achieve these goals can be quite different and competition principles are not necessarily seen as critical in these other spheres. We argue that if the state neglects to facilitate the creation of new entrants, capabilities and industries in its developmental framework, there may in turn be limited competition to speak of in the long-term, as is the case

[1] Preamble and section 2.

in many industries in South Africa, and hence limited dynamism and growth. As such, competition and the lowering of barriers to entry should be a key concern of industrial policy.

This paper will build on Review Paper 1 to assess the linkages between competition policy as a microeconomic tool and other national policy objectives including the mandates of different regulatory entities and industrial policy strategies such as the Industrial Policy Action Plan (IPAP). Section 2 considers the extent to which competition policy successfully promotes broader goals related to inclusive growth, transformation and participation. Section 3 then goes on to look at other areas of economic policy and their alignment with competition principles and the goal of lowering barriers to entry and participation. In particular, economic regulation, industrial and trade policies are considered. For each of these we assess their alignment with competition objectives, whether competition is adequately taken into account in policy frameworks/legislation and finally the track-record of regulators and policy makers in terms of impact on competition and barriers to entry in practice. Section 4 concludes on the extent to which competition should form a more integral part of the policy-making process in SA.

2. The relationship between competition policy and wider questions of economic development

The South African Competition Act sets out the wider objectives and context of the legislation. These benefits are reflected in the preamble and purpose of the South African Competition Act which tasks the competition authorities with promoting and maintaining competition in the Republic, not for its own sake, but explicitly in order:

(a) to promote the efficiency, adaptability and development of the economy;

(b) to provide consumers with competitive prices and product choices;

(c) to promote employment and advance the social and economic welfare of South Africans;

(d) to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;

(e) to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and

(f) to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantage persons."

Competition policy does not exist in a vacuum, however; and a glance at these objectives clearly illustrates that efficiency is not the only goal of competition policy. The list indicates that the South African legislature was also concerned with the distribution of these benefits across the population, an issue on which perfectly competitive markets are agnostic. In fact the South African Competition Act explicitly calls for consideration of a set of more broad-ranging goals. The intention of those who framed the Act was thus clearly that it should be interpreted and enforced in the interest of promoting economic efficiency, but also with regard to the promotion of employment and SMEs and the broadening of ownership. The competition authorities as the enforcers of the Act are therefore required to take account of these broader goals in their work.

One way in which this broader mandate is exercised by the competition authorities is through the consideration of "public interest" as specified in the Act, in addition to their primary goal of protecting competition. This is most often relevant to merger cases, where in addition to a set of competition-related considerations, the Act requires the authorities to consider whether a merger can or cannot be justified on public interest grounds, given its impact on

> *"(a) a particular industrial sector or region;*
>
> *(b) employment;*
>
> *(c) the ability of small businesses or firms controlled or owned by historically disadvantaged persons, to become competitive: and*
>
> *(d) the ability of national industries to compete in international markets."*

To-date, this provision has most often been relevant to the consideration of mergers where job losses are expected as a result of the transaction, and has resulted in a number of cases where mergers have been approved with conditions protecting employment.

Perhaps the most interesting application of the public interest provision in respect of mergers to-date was in the Wal-Mart/Massmart merger. The Competition Appeal Court (CAC) approved the merger subject to conditions after submissions from a number of intervening parties including trade unions, three Ministers and the South African SMME forum which argued that the merger should be prohibited on public interest grounds.[2] The merger did not have any competition implications since Wal-Mart was not present in South Africa at the time of the merger, and the main concern of the government departments was around the impact that Wal-Mart's global procurement model would have on local producers. The fear was that the merger could lead to increased imports of goods which had previously been sourced locally, with a knock-on impact on domestic production levels. The CAC ordered a study to be conducted by experts to determine the best means of assisting local producers. Following this, the CAC then ordered the merging parties to establish a supplier development fund to the value of R240 million, to assist local producers to compete with foreign competition.

In addition to having sensitivity to policy issues and goals in pursuing their mandate, the Competition Act also calls upon the competition authorities to inform the way that government formulates policy so as to ensure that it is aligned with competition principles. In Section 21 of the Act, the Commission is mandated to:

> *(b) implement measures to develop public awareness of the provisions of this Act;*
>
> *…*
>
> *(h) negotiate agreements with any regulatory authority to co-ordinate and harmonize the exercise of jurisdiction over competition matters within the relevant industry or sector, and to ensure the consistent application of the principles of the Act;*
>
> *(i) participate in the proceedings of any regulatory authority;*
>
> *(j) advise, and receive advice from, any regulatory authority;*

[2] Case no: 110/CAC/Jul11

(k) *over time, review legislation and public regulations and report to the Minister concerning any provision that permits uncompetitive behaviour.*

These provisions make it clear that the Commission also has a role to play in advancing competition principles to both government and the wider public. The Commission does this by entering into MOAs with other regulatory authorities and by providing input to proposed laws, regulations and policy processes where relevant.

When the Act first came into effect in 1998, section 3(1)(d) excluded from its application “acts subject to or authorised by public regulation”. This meant that the competition authorities did not have jurisdiction over regulated entities. However, in 2000 the Act was amended to repeal this provision and introduce a new section which establishes concurrent jurisdiction over regulated entities in terms of competition matters. The Act goes on to mandate that the manner in which the concurrent jurisdiction is exercised must be managed in terms of negotiated agreements to coordinate and harmonize the actions of the regulatory authority and the competition authorities. These agreements must ensure the consistent application of the Act. The basis for the memorandums of agreement (MOAs) is therefore to clarify how the concurrent jurisdiction will operate where competition concerns overlap with regulatory responsibilities.

The Commission has signed 5 MOAs with other regulatory authorities. These are: the Council for Medical Schemes, Independent Communications Authority of South Africa (ICASA), the National Gambling Board, the Postal Regulator and the NER (National Electricity Regulator). On paper the MOAs are all quite similar and straightforward, but do not appear to provide much guidance in practice, particularly where a competition complaint arises that falls to be investigated by the Commission. The Telkom case discussed in Review Paper 1 was one such problematic case. Following many years of litigation, however, the SCA’s decision finally established that in spite of sector-specific legislation and the existence of a designated sector regulator responsible for regulating some aspects of Telkom’s conduct, the competition authorities still have jurisdiction to prosecute instances of anti-competitive conduct in relation to the regulated entity.

Finally, the third way in which the competition authorities contribute to the achievement of broader policy goals is through their enforcement actions. As highlighted in review paper one, strategic behaviour by firms whether individually or collectively can reduce competition but also works against the goals of transformation, diversification and the promotion of SMEs through raising barriers to entry. Enforcement by the competition authorities, along with active ex-ante economic regulation in some cases, is one of the key mechanisms for undermining such conduct and lowering barriers to entry in the economy.

The authorities’ record is generally much stronger in terms of addressing cartel conduct than in respect of abuse of dominance. This may be due to the fact that the requirements for proving an abuse of dominance under the South African Competition Act are onerous (Roberts, 2012). The high hurdles for proof of abusive conduct have meant that there have been relatively few successful enforcement actions by the Competition Commission since the new Act has been in force. Up until 2012, the Competition Tribunal had only decided on nine abuse of dominance cases and found that abuse had occurred in six of these, of which three were subsequently challenged. Only about twice this number of cases had been referred to the Tribunal, an average of approximately 1.5 cases per year, from 2001 to 2012. Since then, Telkom has twice been found guilty of abuse of dominance, but the authorities' record in terms of abuse of dominance is still relatively weak, considering the highly concentrated nature of the economy. This may partly explain the lack of progress in terms of lowering barriers to entry in the economy.

In a few recent cases the competition authorities have tried to tackle strategic conduct by imposing innovative behavioural remedies. The intention of such remedies is to go beyond the deterrent effects of simply fining parties found guilty of anti-competitive conduct, and to rather try to influence the future development of the affected markets so that they become more competitive. Two interesting examples are the remedies imposed on Telkom and Pioneer Foods.

In 2002 the Commission received a complaint against Telkom from the South African Value Added Network Services (VANS) Association (SAVA) and 20 other internet service providers (ISPs), which it referred to the Tribunal in 2004. The Commission found that Telkom had:

- Refused to supply essential access facilities to independent value added network service (VANS) providers;
- Induced their customers not to deal with them;
- Charged their customers excessive prices for access services; and
- Discriminated in favour of its own customers by giving them a discount on distance related charges which it did not advance to customers of the independent VANS providers.

After several years of disputes around the jurisdiction of the Tribunal to hear the case, the Tribunal hearing took place in 2011 and 2012, with the Tribunal subsequently finding that Telkom had abused its dominance in contravention of section 8 (b) and 8(d)(i) of the Act. The Tribunal found that Telkom had leveraged its upstream monopoly in the facilities market to advantage its own subsidiary in the competitive VANS market and that Telkom's conduct had caused harm to both competitors and consumers and impeded competition and innovation in the dynamic VANS market. The Tribunal imposed an administrative penalty of R449m on Telkom for this conduct[3].

In the meantime, the Commission had been investigating a second complaint against Telkom. Between 2005 and 2007, complaints were received from Internet Solutions, Multichoice, Verizon and the Internet Service Providers Association. The Commission's investigation found that Telkom had once again abused its dominance, contravening sections 8 (a), (b), (c) and (d) (iii) of the Act. Telkom had engaged in a margin squeeze where it had charged prices for the wholesale services used by first tier ISPs to construct their internet access and IP VPN services which precluded cost-effective competition with Telkom Retail's own internet access and IP VPN services. Telkom had also engaged in anti-competitive bundling by selling its IP VPN and internet access services together with Diginet and ADSL access services that were priced far lower than the equivalent access services which end customers would purchase when considering the purchase of IP VPN and Internet access from other licensed operators.

[3] Tribunal case number: 11/CR/Feb04

Following the Tribunal's ruling on the earlier case (in August 2012), the Commission negotiated a settlement with Telkom which included an admission of guilt, a further penalty of R200m and, perhaps most importantly, structural and behavioural remedies aimed at preventing Telkom from pursuing similar conduct in future and ensuring that competitors are able to access the services they need from Telkom on equivalent terms to Telkom's own retail division. These remedies included the implementation of a functional separation between Telkom's retail and wholesale divisions and a transparent transfer pricing programme to ensure non-discriminatory service provision by Telkom to its retail division and ISPs. Finally, Telkom agreed to wholesale and retail pricing commitments for the next five years estimated to yield R875m savings to customers. The settlement was confirmed by the Tribunal in July 2013[4].

In a settlement agreement with the Commission confirmed by the Tribunal in 2010[5], Pioneer Foods admitted to cartel conduct in respect of maize products and milled wheat products as well as abuse of dominance in respect of the baking of bread. This conduct caused harm to consumers by inflating the price of bread and maize meal, both staple food products. Pioneer Foods undertook in terms of the proposed settlement agreement to desist from the conduct and cooperate with the Commission in its prosecution of others, as well as agreeing to pay a fine of R500 million to the National Revenue Fund. The more innovative aspects of the remedy were around the use of the penalty and a pricing and investment remedy. The Commission, National Treasury and the Economic Development Department agreed that the Economic Development Department would submit a budgetary proposal and business case motivating for the creation of an Agro-processing Competitiveness Fund of R250 million drawn from the penalty to be administered by the Industrial Development Corporation (IDC). Finally, Pioneer Foods agreed to adjust the prices of certain of its products for an agreed period of time so as to reduce its gross profit by an amount of R160 million. It also committed to maintain its capital expenditure and increase it by an amount of R150 million.

These recent examples of innovative remedies indicate the competition authorities' acknowledgement of the wider goals of competition policy and attempts to address them through competition enforcement. The Telkom cases in particular indicate that deterrence through penalties alone may not be enough to ensure competition flourishes in an industry, and that more on-going behavioural interventions and greater cooperation with sector regulators are required in order to ensure positive market developments.

[4] Tribunal case number: 016865
[5] Tribunal case numbers: 10/CR/Mar10, 15/CR/Mar10

3. How well does economic policy promote competition?

In this section we look first specifically at economic regulation and consider different areas of regulation, and then secondly assess trade and industrial policy.

3.1 Economic regulation

Economic regulation and competition

Regulation is broadly defined to be government intervention to change market outcomes (Church and Ware, 2000). Regulation may affect market outcomes such as price, quality or product variety directly, or may do so indirectly though changing or imposing constraints on firms or consumers which change their incentives. Regulation may address market power, such as natural monopolies, and/or market failure, where the outcome produced by the market is not socially optimal and where regulatory intervention therefore can improve economic efficiency and welfare (Church and Ware, 2000; Viscusi et al. 1998). Natural monopoly occurs when scale economies in an industry are so great that it would be inefficient for more than one producer to exist, such as in electricity transmission or fixed line telecommunications infrastructure. As discussed in Review Paper 1, a requirement for large sunk investments becomes a barrier to entry and, where the scale economies are substantial relative to the size of the market implies low levels of competition and contestability. Furthermore, opportunistic behaviour by consumers and competitors may make contracting costly or lead to investment hold-up where there is uncertainty and information asymmetry. An example of this type of situation is the gas pipeline industry which is typically regulated as a result.

In terms of goals, economic regulation and competition should generally be well-aligned. For example, where economic regulation is implemented to prevent a natural monopoly from exercising its market power to the detriment of consumers, this is generally in keeping with the aims of competition policy. Similarly, regulation to promote non-discriminatory access for competitors to an essential facility or input will usually be pro-competitive. On the other hand, certain types of regulation can be more problematic from a competition point of view, such as where entry is limited by onerous licencing conditions. Of course, the licencing conditions may be absolutely necessary, such as for technical and standard setting reasons. Thus there are clear situations where competition principles will be at odds with the other goals of regulation. It can be the case that incumbent firms use this as a cover for raising barriers to rivals when there may be just as good ways to ensure the social and regulatory objectives are met while not protecting incumbents.

Even though economic regulation and competition policy are aimed at solving some of the same problems, in practice they have often taken quite different approaches. Traditionally the role of regulators was to be concerned with natural monopolies through guaranteeing that prices were acceptable in the eyes of public opinion and that public service obligations were fulfilled (Buiges, 2006). Competition was not a factor in this way of thinking about regulation. In Europe it was only later as deregulation was pursued that the importance of competition in the regulation of natural monopolies came to the fore (Buiges, 2006).

As technologies change, parts of industries which were deemed natural monopolies may no longer be so but this does not mean that effective competition simply arises. At the advent of utilities privatisation in Europe it was widely believed that regulation would become irrelevant as competition developed, but over time it has become evident that regulation is required to ensure that competition can take place and to govern aspects such as access to critical infrastructure (Das Nair et al, 2012). More recently, regulation in some jurisdictions has gone further than correcting for the natural monopoly and has sought to create what Ginsberg (2009) has termed 'synthetic competition' where the dynamic gains from rivalry such as in terms of product and service development are judged to merit ensuring several competitors, where scale economies imply that only one would minimise costs (Das Nair et al, 2012).

A major practical difference between economic regulation and competition policy is in terms of when the intervention takes place. Economic regulation mainly takes place ex-ante, setting the "rules of the game" whereas competition policy deals with any problems ex-post through prosecuting anti-competitive conduct (Roberts and das Nair, 2014). Given the South African competition authorities' enforcement record discussed above and the fact that competition prosecution can take many years, there is an argument in favour of sector regulation where anti-competitive conduct is likely to occur, such as in the case of vertically integrated natural monopolies. As discussed above, in recent years there has been a move to deregulate such industries and foster competition at downstream levels of the value chain, and this requires a more competition-focussed manner of regulation in order to be successful. South Africa's experience in the telecommunications sector with the conduct of Telkom illustrates precisely why in such network industries an ex-ante intervention is likely to be more effective than a competition enforcement case pursued ex-post, although competition cases may be pursued where regulation is found to have bene lacking.

Another way in which economic regulation and competition differ is in the types of remedy which each can impose. In general, economic regulators tend to have more extensive powers to impose remedies than competition authorities do. For example, Geradin and O'Donoghue (2006) discuss the case of a margin squeeze abuse where a vertically integrated monopolist takes advantage of its control over an essential input to either charge very high prices to competitors for the input, or to undercut them in the downstream market. A sector regulator will have the powers to enforce access to the input and to determine what proportion of its profit the monopolist can make at each level of the value-chain. On the other hand, a competition authority must first prove an abuse of dominance has occurred, which may involve proving a difficult excessive pricing or margin squeeze case. Das Nair et al. (2012) sum these considerations up, saying the following:

> *"where there is evidently a single monopoly network to which access at reasonable prices is required for downstream competition and for which detailed industry knowledge is desirable on the part of the regulator then a specialist body is appropriate, which does not need to prove anticompetitive behaviour in order to intervene."*

Where a sector regulator exists, competition policy may also be a useful complement to economic regulation. This is particularly true in instances where the enforcement of competition law brings additional powers of investigation and sanction to address anticompetitive practices which undermine the objective of regulation (Das Nair et al, 2012).

In theory, where a market failure exists, regulation should lead to improved efficiency and therefore higher overall welfare. However, in reality regulators do not have perfect information and will not be able to completely align the objectives of the firm and society (Church and Ware, 2000). This may mean that outcomes even with regulation are not perfectly efficient. As discussed in Review Paper 1, economic regulation that is not well implemented can present a barrier to entry and distort competition in an industry. Thus it is important that regulators are given an explicit mandate to consider the impact of their actions on competition and, as far as possible, to regulate for competition.

Ideally, regulation should be designed as far as possible to enable greater competitive rivalry, even more so in a country like South Africa with a historical legacy of highly concentrated industries (Das Nair et al, 2012). It is clear that economic regulation has a critical influence on the structure and development of industries. As Roberts and das Nair (2014) put it:

> *"the scope of economic regulation is broader than just controlling access and pricing. Dynamic considerations such as the impact on investment decisions, the impact of infrastructure on the development path of the economy, and the creative role of competitive rivalry all need to be part of an effective economic regulatory regime."*

Economic regulation and competition in South Africa[6]

In South Africa, economic regulation enforced by a sector-specific regulator is seen in a number of sectors such as the telecommunications, energy (electricity, piped gas, and petroleum), transport (rail transport and airports), and financial sectors. Das Nair et al (2014) note that regulation in South Africa, similar to other countries, is mainly concerned with the regulation of natural monopoly. The various economic regulators are listed in the table below along with their enabling legislation and key activities. Some of these regulatory bodies have an explicit or implicit competition mandate in carrying out their work. In some instances, competition is mentioned as one of the principles or objectives of the Act. In these cases, it is interesting to consider to what extent competition principles are carried through into the legislated duties of the regulator. In most cases where promoting competition does appear as a part of the regulator's mandate, it is referred to in quite a vague manner rather than through explicit provisions to protect or promote competition in the industry. The main exception to this is the ECA which tasks ICASA with a range of practical competition-related activities. The Petroleum Pipelines Act also grants NERSA the powers to intervene to ensure third party access on non-discriminatory terms to storage and pipeline facilities. In some cases, however, competition is not mentioned at all.

Table1: Economic regulators in South Africa

Sector	Regulator and Enabling legislation	Key activities	Reference to competition in enabling legislation
Telecommunications	ICASA ICASA Act of 2000 (and amendments) Electronic Communications Act of 2005 (and amendments)	Licensing, regulating facilities access, allocating spectrum	ICASA Act - no mention ECA – explicit reference: - reference to Competition Act - section on competition (Chapter 10) as part of ICASA's regulatory mandate. - competition an objective of the Act.
Energy - electricity	NERSA Dept of Energy Electricity Act of 1987 Eskom Conversion Act of 2001 NER Act of 2004	NERSA - Regulating prices, licensing, dispute resolution, compliance	Electricity Regulation Act of 2006 – implicit in objectives: - promote competitiveness and customer and end user choice and in provisions around new generation capacity:

[6] Much of the information making up this section of the report was sourced from a project conducted by CCRED in 2013/14 for the Economic Development Department, reviewing economic regulation in South Africa. The information presented here is highly summarised and much more detail can be found in the reports relating to the project which are available here: http://www.competition.org.za/regulatory-entities-capacity-building-project/

	Electricity Regulation Act of 2006	DoE sets policy framework	- requirement to provide for private sector participation
Energy - petroleum	Dept of Energy Petroleum Products Act No 20 of 1977 (and amendments)	Licensing, regulating prices	Petroleum Products Amendment Act of 2005 – implicit in objectives: - to promote and efficient and competitive retail petroleum industry; - facilitate an environment conducive to commercially justifiable investment; - develop small businesses in the petroleum sector; and , - ensure countrywide availability of petroleum products at competitive prices
Energy – pipelines and storage	NERSA Petroleum Pipelines Act of 2003	Licensing, regulating facilities access, overseeing pricing	Petroleum Pipelines Act - explicit in objectives: - promote competition in the construction and operation of petroleum pipelines, loading facilities and storage facilities And mandate of the PP Authority: - promote competition in the petroleum pipeline industry And implicit in the duties of the PP Authority: - monitor and take appropriate action, if necessary, to ensure that access to petroleum pipelines, loading facilities and storage facilities is provided in a non-discriminatory, fair and transparent manner
Transport – rail	Dept ofTransport Dept of Public Enterprises Safety Regulator Various Acts in the 1970s - ordered the construction of dedicated railway lines and port for the export of iron ore & coal; Legal Succession Act of 1989 – corporatized Transnet; Transport Deregulation Act of 1988 - deregulated road freight transportation; National Railway Safety Regulator Act of 2002	DoT sets policy framework DPE oversees governance	Does not appear to be a concern of DoT or DPE
Transport – ports	National Ports Regulator National Ports Act of 2005	Price regulation, overseeing service, quality, responsiveness and access	National Ports Act - explicit in mandate: - negotiate and conclude an agreement with the Competition Commission established by section 19 of the Competition Act, 1998 (Act No. 89 of 1998), to co-ordinate and harmonise the exercise of jurisdiction over competition matters, and ensure consistent application of the principles of this Act - promote regulated competition
Transport - airports	Dept of Transport Airports Company Act of 1993 (and amendments)	Licensing, price regulation	ACSA Act – explicit in mandate: - restrain the company from abusing its monopoly position, in such a manner as not to place undue restrictions on the company's commercial activities

Financial	Prudential authority (SARB) Market conduct authority Draft Financial Sector Regulation Bill, 2013		Draft Financial Sector Regulation Bill - Competition Commission to sit on Council of Financial Regulators - focus on market conduct partly motivated by findings of Competition Commission enquiry

Source: Company and Department websites, Acts of Parliament

In the following sections we consider the track-record of the regulators in each sector in terms of their impact on competition in practice.

- **Telecommunications**

Even where legislation does speak explicitly to competition concerns, this does not seem to have led to more competitive outcomes. For example, in the Telkom case discussed earlier, the sector regulator, ICASA, did have a competition mandate as per the Electronic Communications Act of 2005, being tasked "to "create competition in the telecommunications, broadcasting and the postal industries" in order to bring about "affordable prices for goods and services rendered and provides value for money to consumers".[7] Furthermore, the Commission and ICASA had signed an MOA in 2002 with the intention of determining how the two would work together in the event of a merger or complaint in the telecommunications sector (Government Gazette no. 23857 of 2002). Neither of these factors prevented Telkom from repeatedly abusing its dominance and excluding competitors.

Despite what the legislation may say, telecommunications regulation in practice has not paid sufficient attention to competition (Roberts and Das Nair 2014). This has resulted in poor outcomes in terms of the rollout, speed and price of broadband internet access. Although a Second National Operator (SNO) Neotel was licenced in 2005, launched in August 2006, and commenced services in 2007, the presence of a competitor to the incumbent did not realise more competitive outcomes. In addition to the conduct for which Telkom was convicted of anti-competitive behaviour, Hawthorne (2014) argues that the poor enforcement of facilities leasing requirements by ICASA is responsible for the lack of competitive outcomes in the sector. In South Africa the facilities leasing regulations under the telecommunications legislation are designed to ensure that new entrants are able to gain access to the existing facilities in order to build their own infrastructure linked into the existing infrastructure and this to climb the "ladder of investment" (Hawthorne, 2014). However, in practice this requirement has not been effectively enforced. Nor was the Ministerial Policy Directive requiring local loop unbundling (LLU) acted upon by ICASA. In the meantime, Telkom has refused requests by Neotel to lease local loop infrastructure.

The actions of the state as owner of Telkom have been contradictory to its aims as a reformer and economic policymaker. Unlike with other entities such as the transport and electricity parastatals, the government shareholding in Telkom is held by the Department of Communications which is also responsible for the policy framework. This compounds the conflict of objectives reduces the incentive to encourage ICASA to develop into a strong, effective regulator. For example, Telkom's long battle to keep competitors from offering voice services was assisted by the Department of Communications' delays in providing clarity to the extent to which value added services providers could also provide voice services.

[7] See ICASA website: https://www.icasa.org.za/AboutUs/OverviewMandate/tabid/631/Default.aspx

In terms of mobile telephony on the other hand, Hawthorne (2014) finds that after a period of inaction on call termination rates which kept mobile call prices high, ICASA's intervention to lower termination rates in 2011 brought prices down substantially, as well as allowing greater space for Cell C as a smaller player to compete effectively in the market. This illustrates how regulation can be used to change the rules of the game to allow smaller competitors to compete on a level playing field and thus to foster effective competitive rivalry.

- **Energy**

The energy sector provides both positive and negative examples of economic regulation. In electricity, consumer prices have increased dramatically in the past 5 years whilst prices to energy-intensive users has remained highly subsidised. This is in spite of the fact that these major users (smelters in particular) are not particularly labour-intensive. This suggests that capital-intensive industrial users are being subsidised at the expense of households. In terms of competition, there has been much back and forth at a policy level around the idea of encouraging new independent power producers (IPP) to invest in power generation in the country. The idea floated was a hybrid model, in which Eskom on one hand was given the responsibility for immediate new investment and private IPPs could participate in electricity generation (Das Nair et al, 2014). To-date this has not materialised to the extent envisaged by the original policy and recent outcomes have reflected this on-going policy uncertainty. Investment patterns in generation infrastructure are a product of regulatory decisions but these have also been swayed by political pressure, Eskom's market power and the influence of large electricity-intensive user groups (Das Nair and Roberts, 2014).

In liquid fuels, the regulatory pricing regime has constrained the ability of independent fuel wholesalers to grow and compete successfully in the market (Paelo et al, 2014). Whilst the DoE has granted over 1000 licenses to prospective fuel wholesalers, only a handful of these players are operating and competing successfully in the market. One part of the reason for this is the Regulatory Accounting System by which the DoE prescribes margins for different levels of the fuel value-chain. Small wholesalers argue that the formula works in favour of the vertically integrated fuel incumbents who not only service the most lucrative areas of the country (whilst the returns granted work on an average), but also can in practice control the proportion of the allocated margin which is fed through to smaller wholesalers (Paelo et al, 2014).

In terms of pipelines and storage facilities, the regulator has been similarly unable to promote competition effectively. In terms of pipelines, the actions of NERSA have been the subject of a competition complaint where it was claimed that a pricing decision taken by NERSA benefited the incumbent, Transnet and rendered a private project unviable[8]. In the fuel wholesale market, access to storage facilities presents a major barrier to entry and growth, and currently, only 1.7% of storage capacity is used for independents, despite the fact that NERSA has a mandate to ensure third parties can gain access to storage and pipeline facilities (Paelo et al, 2014).

On the other hand, there is also a recent regulatory success story emanating from the electricity industry. The Renewable Energy Independent Power Producers (REIPP) procurement programme is an interesting case study which highlights ways in which

[8] See Robb (2014) and Loopoo and van Wyk (2013) for details of the complaint by Petroline

challenges in the sector can be addressed through effective regulation which proactively introduces competitive rivalry. The REIPP Procurement Programme was a competitive bidding procurement programme for the generation of renewable electricity, run by the National Treasury and the Department of Energy. It stimulated investment in renewable generation at competitive prices by private players. The programme was highly successful, achieving falling prices for the power purchased in each successive procurement round, with every round being over-subscribed and with a high success rate for chosen projects. A clear policy framework with hard commitments created the competitive space for the bidders to come forwards with financed projects (Montmasson-Clair et al, 2014). Cooperation between the key stakeholders – Eskom, the regulator and the private sector – was critical to the success of the programme, as was flexibility in implementation such that the lessons from each round of procurement were learned and incorporated into subsequent rounds. Whilst the authors acknowledge that there is still room for improvement, the programme provides an example of what can be achieved in terms of regulating to stimulate investment and competition. It also highlights that the private sector does have appetite for investing in power generation in South Africa and can respond quickly once a clear mechanism for participation has been provided.

- **Transport**

South Africa's geographic location and size means that access to efficient port and rail infrastructure is of critical importance for growth (Roberts and Das Nair, 2014). Approximately 96% of South Africa's exports (by volume) are by sea, so the competitiveness of the country's ports has a direct bearing on the competitiveness of its industrial and export activities. The regulation of freight rail and ports is similar to electricity in that the provision is under a state-owned entity which has been corporatised, and operates within a policy framework determined by a line department. It also has similar characteristics of cross-subsidisation of certain user groups at the expense of others. Historic investment patterns were oriented to heavy, mining and energy-intensive industry (Fine and Rustomjee, 1996). A lack of policy coordination and inefficient outcomes due to cross-subsidisation have meant that this cross-subsidisation has continued up to the present, penalising manufacturing exports in favour of minerals (Baloyi, 2014).

Considering pricing and investment in a mature rail infrastructure, which simply needs to be maintained and upgraded, is quite different from the investment decisions for an industrialising economy where much of the infrastructure needs to be constructed with a view to the changing structure of economy (Baloyi, 2014). The apparent lack of coordination between the DPE and DoT, greater emphasis on short term financial measures, and lack of public finance for investment has meant that governance and decision-making is not consistent with the wider needs of economic development.

In terms of ports, cross-subsidisation led to tariffs in South Africa being higher than those internationally, while efficiency levels were lower and fewer and lower quality services were provided by the ports (Baloyi, 2014). Further, the prices charged at the different ports within South Africa had been kept uniform for equity reasons, despite their different locations, demand drivers and features. This limited competition between ports, as well as competition for services within ports, and reduced the incentive to invest in infrastructure and to increase productivity. This dynamic arose from the fact that Transnet National Ports Authority (TNPA) was the only entity permitted to develop, manage and set tariffs for ports in South Africa: a major conflict of interest given Transnet Port Terminal's dominant position in service provision (Baloyi, 2014).

In order to address this problem, a National Ports Regulator was established in 2009 as an interim measure until the full separation of these activities could take place. Whilst the separation of powers has still not happened, the Ports Regulator has made significant progress in reducing tariffs through changing tariffs to different user groups (Baloyi, 2014).In 2013, tariffs were even lowered in key tariff lines. The Ports Regulator has also conducted a number of benchmarking studies to compare tariffs at South Africa's ports with other countries. It has used this evidence to take proactive decisions to lower tariffs and better align them with industrial policy goals so as to increase the competitiveness of South Africa's ports.

In terms of the regulation of airports, a difficulty has been the issue of political interference in regulating the sector. ACSA, a majority state-owned company, owns and operates practically all major commercial airports in South Africa. As in several other regulated sectors, airport tariffs have increased sharply over the past five years. The main reason for this tariff increase has been the major investments made by ACSA in its facilities, some of which were arguably not sound business decisions. For example, the building of King Shaka International Airport in Durban was completed without an identified need for expanded airport facilities. ACSA had determined there would be no need for a new airport until 2017-2020 and that the project would not be economically viable (even based on optimistic cost estimates) until then (Steyn, 2011). This led to a disagreement over tariff increases between ACSA and the regulator and eventually the Minister was forced to intervene. This delay led to a huge tariff increase of 68.6% in order to allow ACSA to "claw-back" the required annual tariff (Politics Web, 2011).

- **Financial sector**

In 2007 the Competition Commission conducted an inquiry into the banking sector in response to concerns around prevailing high bank charges and competition in the national payments system. The inquiry resulted in a number of recommendations to regulators, policymakers and the banks which aimed to increase the level of competition in the sector. A recent study by Hawthorne et al (2014) reviewed the impact of the inquiry and the extent to which, first, the recommendations have been implemented and, second, competition in the sector has increased. There is some evidence that competition between the banks had increased in the lower income segment of the market, particularly between FNB and Capitec and the Enquiry did lead to regulatory change in some key areas, including improved transparency around ATM charges; an interchange project undertaken by the Reserve Bank to set interchanges rates for cards and ATMs; and changes to the National Payment System Act, Payments Association of South Africa (PASA) documents and other SARB papers to allow for designation of non-banks and allow non-banks to be members of PASA (Hawthorne et al, 2014).

Since the banking enquiry smaller new entrant banks have increased their market shares but their share of total deposits remains relatively small (Hawthorne et al, 2014). As a result of the expansion of new entrants, access to financial services has grown considerably. While prices for mass market banking accounts have declined, prices for other transaction banking services have not declined significantly. There is still considerable scope for reforms that will facilitate more competition and better outcomes for consumers, including greater access to the payments system in a risk-based prudential regulatory framework and better governance of

PASA, as well as changes to approaches on interchange (Hawthorne et al, 2014). However, that the planned introduction of a twin peaks regulatory framework with a prudential regulator and a market conduct regulator may improve the regulation of the sector and allow more competition to develop.

Conclusion on alignment of economic regulation with competition in SA

The South African experience of economic regulation which has been discussed above clearly illustrates that in practice competition concerns have not generally formed a significant part of the implementation of economic regulation. Outcomes for the most part have not met expectations and have failed in terms of stimulating competitive rivalry for various reasons including the influence of entrenched interest groups, and a lack of appreciation of the importance of competition.

The issue of the competition authorities' relationship with other regulatory bodies and the working of concurrent jurisdiction in practice is clearly an area which could be improved upon. Experience suggests that the MOAs concluded have not necessarily provided much practical assistance when it comes to the issue of how to deal with specific anti-competitive conduct. Closer and more productive relationships between the competition authorities and sector regulators could lead to a stronger awareness of, and willingness to incorporate, competition issues by sector regulators. This in turn would create a more competitive environment in the various industries and would lead correspondingly to a lesser need for protracted ex-post interventions.

3.2 Trade and Industrial policy

Competition and industrial policy have often been set against each other where industrial policy is cast as supporting and protecting 'national champions' (Brooks, 2007). However, this relies on a framing of industrial policy as favouring individual firms. It is now widely recognised that developing productive capabilities requires targeted support and trade protection can be an important tool in doing so but that care should be taken in supporting firms rather than sectors, protection should be temporary, and there should be clear performance expectations attached to the support. It is true that, give scale economies and small market sizes, there will likely only be a few large firms in some sectors, but the manner in which big businesses interact in markets is an important dynamic to contend with in a developing economy (Chandler, 1990: Chandler et al. 1997). Effective competitive rivalry is still possible with a few firms.

Competition understood in this way evidently speaks to behaviour and not market structure. We are interested in the degree of effective competitive rivalry between firms, not simply the number of firms. This can be framed as 'optimal competition', where dynamic factors and externality effects are considered (Singh & Dhumale, 1999; Amsden and Singh, 1994). From this perspective, competition can be seen as part of industrial policy, following the examples of Japan and South Korea (Amsden & Singh, 1994). The nature and intensity of rivalry between firms and the effect it has on investment and production decisions is an integral part of achieving industrial development objectives (Chabane et al, 2006).

Crucial to the success of the rapidly industrialising East Asian countries was the ability to tie government support and intervention to disciplining mechanisms to ensure that economic outcomes were in line with performance agreements (Amsden, 1989; Chang 1996). For example, the use of export targets as a condition for state support can be understood as a tool to achieve competitive discipline as firms must successfully compete in export markets to ensure support. Firms also compete for state support in terms of the performance expectations, and the support is not setup for an individual firm. Competition is thus an important disciplining tool to encourage operational efficiencies and also to avoid the rent extraction that could arise from state support (Roberts, 2010). Amsden argues that South Korea developed a model of "state entrepreneurial capitalism" where the state uses its political power and patronage in order to promote systematic capital accumulation but is not captured by particular business interests (Amsden, 1997a and b).

Industrial policy is broadly defined as proactive targeted state support to achieve the development of important sectors and types of activities, such as those with strong linkages and positive externalities. Viewed in this way, trade policy and development finance both fall within the wider industrial policy framework. Trade laws generally attempt to enact specific limitations (tariffs and non-tariff barriers) on business activity across national borders and are inherently protectionist in nature. However, it matters greatly whether the protection favours a concentrated corporate interest or whether the rents generated from the protection are productive in the sense that they encourage local investments in improved capabilities. Investments in diversified capabilities imply more intense and dynamic local rivalry even while the protection provides a buffer for domestic firms against the winds of international competition. In the South Korean case the more a company exported the greater the chances of it receiving cheap, long-term loans and tariff protection for its stake in the local market. These stipulations unleashed aggressive competition among Korea's big businesses at time when heavy industries were emerging that were working to dampen competition at a sectoral level and given a relatively small local economy (Kim, 1993).

Rather than a sterile debate about industrial policy and competition policy in general terms, it is critical to understand the nature of the industrial policy framework and how it relates to issues of competition, in practice.

Industrial and Trade policy in South Africa

In the early years of the post-apartheid state, trade policy was placed ahead of industrial policy (Flatters & Stern, 2008; Hartzenberg, 2010). This was a continuation of the changes already being made in the later 1980s as the government was concerned with the gains to productivity from integrating with the international economy. The adjustment was somewhat painful as some industries, such as the clothing and textiles industry, struggled to weather the global competitive forces as a result of increased import competition while the macroeconomic policy environment was also unforgiving with the Reserve Bank in particular sticking to tight monetary policy.[9]

South Africa has spent much of the last decade and a half attempting to mitigate the economic experiences of the 1990s, by shifting its primary policy focus to employment creation (Hartzenberg, 2010). Part of this has been a progression away from the implicit subordination of industrial policy to trade policy. This is most comprehensively articulated in the National Industrial Policy Framework (NIPF) and the rolling iterations of the Industrial Policy Action Plan (IPAP), as part and parcel of the 2030 vision for South Africa articulated in the National

[9] See, for example, Hirsch (2005) who lays much of the blame for the harsh adjustment at the Reserve Bank's door.

Development Plan (NDP) (see National Development Plan, 2012; Tregenna & Kwaramba, 2014).

The various plans set out details for industrial upgrading in more labour intensive sectors to create sustainable employment. Upgrading South Africa's industrial base to foster the production and export of more sophisticated value added products requires purposeful intervention in the industrial economy aimed at achieving dynamic, competitive advantages (ITED, 2010). Tariffs are viewed as a key instrument of industrial policy because they have implications for capital accumulation, technology change, productivity growth and employment. The National Industrial Policy Framework (NIPF) thus recommends a 'strategic tariff policy' approach. In addition, there are a range of incentives which largely fall under the DTI, together with development finance,

The Department of Trade and Industry manages a very wide range of incentives, organised under investment promotion, trade facilitation and competitiveness programmes. A wide range of incentive types have been adopted to support investment, trade facilitation and improved competitiveness support, including incentive types which are tax-based, grant-based and matching grant-based, duty credit-based, loan risk-based, and service offering-based.

Incentives have evolved since 1994 in accordance with shifting policy priorities. The targets of incentives have significantly increased over the past decade in terms of job creation & retention, sector investment and export targets, firm-level competitiveness (R&D, innovation, partnerships), firm size, black economic empowerment, and non-manufacturing sectors (Hanival & Rustomjee, 2008). The net result today is a complex mixture of investment, trade facilitation and competitiveness programmes which are sectorally generic but are nonetheless aligned to the dti's complex and multiple policy objectives. In addition to the generic programmes, there have been two very important sector-specific incentive programmes, for clothing and textiles and for the automotive sector (Hanival & Rustomjee, 2008).

The NIPF recognises the need to strongly shift competition policy towards dealing more vigorously with anti-competitive behaviour and outcomes in the economy. This would entail setting up strong monitoring mechanisms as well as greater powers to deal with uncompetitive behaviour at sector level. While the NIPF does make an effort to frame the context under which competition policy is important and relevant for the growth of the economy, it does not, however, highlight in which specific policies competition plays a critical role, and in particular the complementary role it plays to industrial policy. As a result, competition policy has mostly been understood broadly according to its principles, rather than in terms of the practical ways in which it should play a role in industrial development.

The Industrial Policy Action Plan (IPAP) identifies that competitive outcomes require more than enforcement by competition authorities. Importantly the latest IPAP states that interventions across institutions must ensure that dominant firms' strategies, particularly where they receive state support, are based on dynamic, long-term investments in building capabilities and not on the short-term exploitation of market power. In addition, this must be supplemented by support for the entry and growth of new firms wherever practical (IPAP, 2015).

IPAP states that the focus of the Competition Commission as an institution will continue to be on the two areas of inputs into manufacturing and wage goods for low income households (especially food). The IPAP places the onus on the Commission to increase its engagement with Government and public institutions to play a more active role in following up on findings of anti-competitive conduct and in making further policy recommendations to government. The competition-related proposals in the IPAP5 bring to the fore the changing landscape of regulation and competition policy in South Africa, and this is out of a recognition that South African policy needs to be more structurally transformative in nature. The need for competition policy to operate in an environment where the state intervenes through the use of industrial policy tools demonstrates that competition law does not exist in a vacuum, but within a complex policy environment (Qobo, 2013).

However, while the fifth iteration of the Industrial Policy Action Plan goes to great lengths to explicitly define a role for competition policy and its related institution(s) in specific areas, in practice industrial policy has not generally been concerned with competitive rivalry. The government has not attempted to use rivalry as a mechanism to foster the type of industrial development that would help fulfil long-term economic goals. Instead, it has put a great deal of trust into what Roberts (2010) has termed “moral suasion” (for instance the assurance that Mittal Steel had given the state that it would come to an agreement on a “developmental steel pricing policy” in collaboration with the DTI), coupled with a heavy reliance on increasing productivity through liberalisation (Roberts, 2010). This approach has failed to a large extent, with the widespread use of import parity pricing by dominant incumbent firms in key sectors keeping input prices high and limiting the growth of downstream labour-intensive industries. For example in the plastics sector, Sasol’s import parity pricing of the key polymer input is a major part of the reason for the decline of the downstream plastics conversion sector which is a large employer of unskilled and semi-skilled labour (Beare et al, 2014).

Thus, although the policy documents highlight the importance of lowering barriers to entry and increased rivalry, policymakers appear to have found it more difficult to achieve this in practice, and particularly to incorporate this thinking into industrial policy programmes. In this regard, two major questions concerning the implementation of industrial policy in South Africa is whether the correct incentives are being created for dynamic rivalry between firms, and whether, indeed, there is actually a large firm or incumbent-bias in the provision of support. For example, a key question following from the literature on international experience discussed above is whether industrial policy programmes properly take into account the need to support entrants and to hold incumbents to performance targets. The following discussion considers the evidence relating to these questions.

The existing evidence suggests that where firms have been offered incentives, there have not always been clear conditionalities or performance standards (see 15 year Review of Industrial Policy by Hanival & Rustomjee, 2008). The issue of conditionality in industrial policy is of critical importance, as described above. Industrial policy support does necessarily tend to favour certain firms and hence raise returns for recipients. An unintended consequence is that this can entrench incumbent firms which may impose barriers to entry for new firms. In developing industrial support measures, it is therefore important to attempt to ensure that these measures do not unduly serve to raise the barriers to entry for new firms (Kaplan, 2007). To prevent the heavy reliance of industries on government support it is key to set up instruments and benchmarks that allow for industries to wean themselves off state subsidies. Not only is this important for building strong capabilities and efficiencies within strategic sectors, but it also emphasises the temporary nature of state support and that it should not become a permanent feature in characterising the growth of industries (Kaplan, 2007).

Further to examples of steel and plastics discussed above, the auto industry has been identified as another example of the lack of effective conditionality in industrial policy in South Africa (Flatters & Stern, 2008). The Motor Industry Development Programme (MIDP) has been one of two long-standing dti sector-specific programmes (the other being clothing and textiles). The MIDP has been criticised due to its cost, both to government and consumers, the arguably relatively small impact on employment and the length of time over which support has been provided (Flatters & Stern, 2008). However, it is important to understand that the programme is designed to support objectives in the sector and not for a particular firm. At the heart of the MIDP is the continued import protection, which provided the incentive to export in order to earn duty free import certificates. The protection (which includes blocks on second hand car imports) works by maintaining higher car prices than would otherwise be the case, which is obviously the benefit of the industry at the cost of consumers. There is a second set of issues relating to whether the domestic manufacturers are competing in the local market and here the Competition Commission found that there had been various practices related to the retailing of vehicles, including minimum resale price maintenance. The MIDP was replaced by the Automotive Production Development Plan (APDP) from January 2013 which focuses on local investment and local content, including in components production.

An indication that a large proportion of support is going to incumbent firms rather than entrants is provided by the example of the International Competitiveness and Job Creation Project (ICJCP) which was implemented by the dti between 1999 and 2004 and consisted of three matching grant schemes, namely the Competitiveness Fund (CF), the Sector Partnership Fund (SPF) and the Black Business Development Fund. An impact assessment study was completed in May 2004 in conjunction with the World Bank. During its duration, the CF approved 1248 enterprises to the value of R230 million (R140 million disbursed) to co-fund their competitiveness promotion projects. The net additional impact of the programme is questionable, since two-thirds of beneficiary enterprises stated that they would have funded their programmes themselves eventually, although they may have done so on a smaller scale. This suggests that the 50% subsidy was excessively high and many companies gained windfall profits (Hanival & Rustomjee, 2008). The review of this project suggests that support was not being provided to those who most needed it and, in fact, the majority of support was provided for projects which would have happened anyway.

More recent evidence suggests that the issue of supporting incumbents rather than entrants is still a challenge for the dti. Research conducted recently for the dti looked at the performance of the plastics conversion sector, which investigated the impact of incentives on the sector. The report analysed the grants awarded in the sector in 2013/14 under the MCEP and MIP programmes. One of the main findings was that a great deal of support was granted to large, well-established and even multi-national companies to do things which they may well have done anyway. This raises questions around the impact and additionality of the projects being funded and highlights the tendency to support incumbents rather than entrants in many instances (Beare et al, 2014). A second and equally important finding of the research, which involved a range of interviews with industry participants, was that smaller firms find it disproportionately difficult to apply for DTI's incentives. This arises from the complexity and bureaucracy of the process which makes it hard for small firms with limited management time available to navigate it successfully (Beare et al, 2014). By contrast, larger firms with greater resources generally invest in using consultants to manage the application process, giving them a better chance of success. This may account to some extent for the large firm-bias in grants awarded (Beare et al, 2014). Whilst this research was focussed on the plastics sector, the issues raised are general and are very likely to apply in other targeted sectors.

In terms of the impact of programmes on supporting entrants, the evidence is mixed. As noted above, the application process for most assistance is stacked against small firms to begin with. The Sector Partnership Fund (SPF) provided some degree of direct assistance through 100 upgrading programs to about 870 individual firms. A 2004 programme review found that the SPF had a satisfactory productivity outcome; weak vertical and horizontal spill-over effects predominantly because partner firms were often not highly interlinked, but operated largely as independent recipients of the upgrading programmes; network impact was less than satisfactory - on balance the project did not actually build networks, nor did it significantly strengthen those that were in place already. About half of the partnerships have closed since the end of the project; the achieved productivity outcome was quite good but the economic impact was not as good. Overall, the review found the impact of the SPF was marginal (Hanival & Rustomjee, 2008).

On the other hand, reviews of the Support Programme for Industrial Innovation (SPII), which was developed by the dti as a supply-side incentive, indicate that turnover of supported firms grew with an emphasis on exports, and that the relevant taxes paid by the beneficiary companies more than compensated government for the support it provided (Pouris, 2006). However the major deficiency of the SPII programme (that worked to compromise its reputation) appears to be its high overhead costs (Hanival & Rustomjee, 2008).

Several of these examples are relatively dated, however, and it is not clear to what extent the dti has revised its approach to providing assistance in the light of the reviews cited. A major challenge to understanding the effectiveness of industrial policy has been the lack of monitoring and evaluation instruments set up alongside funded programmes. Indeed this could be said across all support programmes and instruments dedicated to increasing the benefits from industrial policy. It is important therefore that the institutional design of industrial policy embodies feedback mechanisms and structured monitoring and evaluation. This will allow governmental capacity to grow with experience - a version of learning by doing. As its own capabilities grow and develop, government will then be in a position to be more effective in designing and implementing its industrial policies (Kaplan, 2008). From the perspective of this project, the dearth of useful information on the impact of industrial policy suggests the need for in-depth case studies to consider the impact of interventions on entry and rivalry.

Development finance is another important tool of industrial policy and, if used effectively, can be used to support entry and drive rivalry and dynamism. In South Africa, the Industrial Development Corporation (IDC) historically played a major role in the structure of industrial development through the provision of substantial support, subsidies and incentives which were instrumental in developing the capital-intensive mineral-based industries around which much of manufacturing is focused (Maia et al, 2005). Even in 2005 it was clear that those previous development decisions were continuing to shape patterns of industrial development and that competitive advantages had become entrenched and were retarding the growth of more labour-intensive downstream manufacturing (Maia et al, 2005).

Similar themes emerge from a review of the competition impact of development finance in South Africa since 1994, but an additional complication seems to have been the lack of clear alignment between the mandate and activities of the DFIs and the goals of industrial policy. A review of the IDC conducted in 2005 concluded that *"careful attention needs to be paid to specifying expectations linked to the provision of finance. This is only possible with a clear plan of the relationship between the strategies of the development finance institution and the industrial policy goals of government."* (Maia et al, 2005: 33) This suggests that at the time, there was not a particularly coherent relationship between the mandate of the DFI and industrial policy goals. The IDC's own review, conducted in 2005, found that the IDC had failed to diversify out of its core metals and chemical interests, and that its market-related criteria and interest rates compromised its ability to finance projects in new interests and conflict with its BEE and SME mandates (Roberts and Mondi, 2005).

Since then, the IDC has changed its approach to lending, to place greater emphasis on assisting new entrants and providing subsidised interest rates for developmental purposes. Examples of entrants that the IDC has assisted in recent years are Soweto Gold, a brewing company and Grain Field Chickens, an integrated poultry producer. Both of these are in sectors where there are established incumbents which have been the subject of competition investigations. The IDC may also fund a proposed steel mill in competition with the incumbent flat steel monopolist Arcelor Mittal. Thus the IDC does appear to be attempting to focus more on competition in executing its mandate. Once again, research on the impact of this approach in practice on the relevant industries would be useful in evaluating how successful it has been.

Finally, trade policy can also have an important impact on the degree of rivalry in an industry as has been discussed above. South Africa has taken into account the WTO and other bilateral trade agreements in the development of its tariff regime (including those with the EU, SADC and BRICS communities) (ITED, 2010). The International Trade and Administration Commission (ITAC) was established in 2003 to replace the Board of Tariffs and Trade (Tregenna & Kwaramba, 2014). It implements and administers tariff policy in South Africa through established legislation, regulation and procedure with the aim of fostering economic growth and development such that it raises incomes and encourages investment and employment in South Africa (ITED, 2010; Tregenna & Kwaramba, 2014).

In general, since the lowering of tariffs as part of the policy of trade liberalisation in the late 1990s and early 2000s, trade policy has not been actively used as a tool of industrial policy and there have not been major changes in tariffs in most sectors since that period. Two exceptions are the lowering of tariffs on steel and polymers, key input products with a single dominant local producer. Whilst domestic producers of the products have still charged prices based on import parity (or even higher) this tariff reduction had the direct effect of reducing product prices, to the benefit of downstream industries. In the paper sector, however, tariffs have been maintained at the upstream level, apparently largely due to effective lobbying by incumbent firms.

However, where decisions have been made in response to requests for tariff increases by certain industries, there has not been a clear mechanism for competition considerations to be taken into account by ITAC. A recent report by Tregenna and Kwaramba (2014) conducted a review of ITAC's handling of the recent case related to the importation of chicken into the South African market. The study is illustrative of the process followed by ITAC in respect of executing its mandate, as well as the institution's capabilities and the extent to which fostering entry and rivalry form part of its decision-making process. The importing of chicken into the South African/SACU market has always been controversial. Before the current tariff regime on poultry came into being, ITAC imposed temporary anti-dumping duties on imports of chicken from Brazil. This was subsequently challenged by the Brazilian government at the World Trade Organisation's (WTO) dispute settlement system and later reversed by the Minster of Trade and Industry on the 8th of March 2013 (see ITAC Notice 173 of 2013).

In response to this, the South African Poultry Association (SAPA) submitted an application to ITAC, suggesting that general tariffs be raised on all imported birds, boneless cuts, bone-in and offal. ITAC granted their request and by the end of September 2013, tariff increases ranging from between 12% and 82% on all poultry products had been implemented. This was later followed again by another request by SAPA for further measures to reduce imports of birds from Europe. This new bid to set up anti-dumping duties on frozen bone-in chicken portions began on the 25th of October 2013. Government has identified the poultry sector as a sector in distress, thus allowing ITAC to accelerate the pace of investigation and the rate of implementation (Tregenna & Kwaramba, 2014).

SAPA justified its request for higher tariff protection by projecting the potential losses to employment, lost exports to South Africa's trading partners, cost disadvantages to local firms, regulatory constraints on producers versus importers and the implications this may have on the overall health of the South Africa's trade balance sheet. They argued that the enforcement of import duties would result in greater investment, employment and grain production (as it is a complementary industry to the poultry industry), compared to the higher costs that would have be face by consumers (Tregenna & Kwaramba, 2014).

However, the Competition Commission took a different view, based on the fact that the poultry sector has been engaging in anti-competitive practices (Ramburuth, 2013). The Competition Commission's investigation in 2009 found evidence of collusion among local chicken producers (Ramburuth, 2013)[10] and concluded that the vertically-integrated structure of the poultry sector encouraged anti-competitive activities such as tie-in supply agreements, information exchange and price-setting tactics (Ramburuth, 2013).

There could thus be further appreciation of competition considerations in the way that ITAC executes its mandate. Furthermore, there does not appear to be adequate communication channels for engagement between ITAC and other economic regulators with similar mandates. ITAC has noted that increased cooperation with other economic regulators would be valuable, and in particular with the Competition Commission. The Chief Commissioner of ITAC has also acknowledged the case of the poultry sector where ITAC increased duties in spite of the flags raised by the Commission regarding anti-competitive behaviour in the sector as an example of where cooperation between economic regulators is necessary (Tregenna & Kwaramba, 2014).

The complexity in the wide range of industrial policy support mechanisms that exist make impacts difficult to assess, as outlined in the specific sections above. However, overall the evidence suggests that there has been limited focus on competition and barriers to entry by the dti in practice in its instruments and support programmes for the advancement of industrial policy. This is in spite of the prominence given to competition and barriers to entry in recent policy documents. It may be that it has proved difficult to incorporate competition principles into industrial policy in practice, but there is also limited recent information available to

[10] See also Business Day 11 September, 2013. Poultry debate exposes tariff tension. Available online: http://www.bdlive.co.za/business/trade/2013/09/11/poultry-debate-exposes-tariff-tensions.

evaluate how this is working in practice. This suggests that the research looking at particular sectors will be valuable.

4. Conclusions

Review Paper 1 motivated for the importance of addressing barriers to entry for advancing inclusive growth. It highlighted theories of growth and development which increasingly acknowledge the reality that markets are imperfect and not always self-correcting and that firms with incumbency advantage and market power have rational incentives to try to forestall the entry of new competitors. Review Paper 1 also discussed the importance of expanding capabilities in a country's development and in achieving inclusive growth. These concepts are all linked, since ultimately, the expansion of capabilities will occur where opportunities for participation are provided and where dynamic rivalry is able to drive innovation and growth. This in turn relies on the ability of entrants to be successful.

South Africa's history implied that capabilities were narrowly developed to cater for the strategic interests of the apartheid government. This includes state-owned interests and intervention in sectors such as telecommunications, mining, agriculture, and energy. This led to the creation of dominant firms in important sectors whose incumbency has subsequently allowed them to extract rents and shape even the current regulatory regime in their interests. The country's economic structure has not changed much in the intervening two decades and nor have capabilities expanded significantly, at least partly due to the lack of progress in tackling entrenched dominance in many sectors of the economy.

Here and in Review Paper 1 we have argued that what is required in order to drive capabilities development and growth in the future is greater access to markets and to opportunities, which implies lowering barriers to entry. This is not only about removing obstacles but also, where barriers are intrinsic such as because of first mover advantages, to consider constructive support for entrants and smaller rivals. This requires understanding, at a practical level, the nature and significance of different types of factors undermining entrants and smaller rivals. Government (including its various agencies such as the IDC) has an important role in facilitating the process by lessening structural and strategic barriers in the economy which restrict the dynamic rivalry introduced by firms that compete on the basis of investments, innovation and developing new processes and capabilities. The structural features of an economy like South Africa's and entrenched advantages of the dominant firms mean it is critical to consider how to make entry and participation possible by regulating *for* competition and inclusivity.

Thus the process of capabilities development is not just about coordination by the state, but rather about ensuring wider opportunity throughout the economy. A critical element of this intervention is to focus economic regulation and industrial policy on opening up access for entrants to critical inputs and facilities which they need in order to compete successfully, in particular in industries which feature network effects and vertically integrated natural monopolies.

Review paper 2 has reflected on the links between competition policy and broader economic policy, in order to assess to what extent the entrenched dominance and high barriers to entry in the economy are being addressed. It has found that competition policy has attempted to contribute to the broader goals of the economy, and has done so very successfully in some areas. However, the competition authorities' record in dealing with strategic entry barriers constructed by incumbent firms to prevent or retard entry has been mixed at best. This may partly be as a result of narrowly drafted abuse of dominance provisions in the Competition Act, but also raises questions around the appropriate method of dealing with such conduct, particularly in industries with vertically integrated natural monopolies. The authorities' history of dealing with such cases also suggests that cooperation between the competition authorities and sector regulators has not generally been as effective as it could be.

Similarly, the South African experience of economic regulation which has been discussed above clearly illustrates that, in practice, competition concerns have rarely formed a part of the implementation of economic regulation. Outcomes for the most part have been poor and have failed in terms of stimulating competitive rivalry as a result of political interference, conflicts of interest, influence by entrenched interest groups and a lack of understanding of the importance of competition.

In terms of industrial policy, whilst recent policy documents highlight the importance of competition and competition policy in achieving the aims of industrial policy, in practice the importance of rivalry and entry by new players does not seem to have been a major consideration in the implementation of policy programmes. Support for entrants has been not always been effective and assistance has often been focussed on incumbents rather than new entrants. Conditionality has not been implemented in all cases and in some cases incumbent firms appear to have made windfall profits without any conditions being attached. This has had clear detrimental effects on downstream industries and on job creation. Information on recent developments in the implementation of industrial policy programmes is not easily available, however, and so it is not clear to what extent the principles discussed in the latest IPAP have been carried through into implementation in practice. This suggests that further research on specific sectors may be useful in order to shed light on the impact industrial policy is having on rivalry and entry and to provide better information on how industrial policy can be made more pro-competitive.

Development finance had suffered from similar problems in the past as well as a lack of mandate clarity and alignment with industrial policy objectives, although there has recently been a concerted effort to focus financing more on entrants and on having an impact on competition in industries with established incumbents. Once again, it would be useful to review the impact of this change in approach and whether the interventions have contributed to greater rivalry and dynamism in these concentrated industries.

The programme of research being undertaken includes an assessment of the impact that competition policy, regulation and industrial policy have had on entry and competition in South Africa in specific markets and sectors. The intention of this is to provide a stronger evidence base to understand the nature of barriers to entry to provide greater guidance in terms of the ways in which policy and regulation can stimulate rivalry or, conversely, can stifle it.

The work will involve researching and analysing the barriers to entry across a wide range of sectors in South Africa with the intention of formulating policy recommendations that will help to facilitate greater levels of entry and competition and thus drive higher growth. The research programme will explore examples of successful and failed entry in order to understand the impact of different entry barriers on firms' ability to enter and compete effectively. It will look at regulated network industries in order to understand the impact of regulation in these sectors on competition and the extent to which the regulatory regime is contributing to lowering barriers to entry and stimulating greater rivalry. It will also consider sectors where there have been significant competition interventions in the past and investigate market developments since those interventions, in order to assess whether the interventions were successful in lowering barriers to entry. It will target sectors where active industrial policy has been pursued to evaluate the impact of the support provided on competition and barriers to entry.

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