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COMESA CC APPROVAL OF THE BIH & CARLSBERG BEER MERGER

Anthea Paelo

In April 2017, the COMESA Competition Commission (CCC) conditionally approved a large merger between Brasseries Internationales Holdings (BIH) Ltd and Carlsberg Malawi Ltd (Carlsberg). BIH is the holding company of Castel Group, a French beverages company. The second party to the merger, Carlsberg, is a beverages manufacturer participating solely in the Malawian market in Africa. The merger spans four countries: Ethiopia, Malawi, Madagascar and the Democratic Republic of Congo. The conditions to the merger included a commitment to not engage in information exchange or anticompetitive behaviour; that retrenchment be withheld for a period of 24 months; that the company continue to build the capacity of its employees; and that contracts with local input suppliers not be terminated for a period of 12 months. The merger occurs in the context of a highly concentrated sector in which a small number of firms have significant market power in particular geographical locations. SABMiller, for instance, has a 90% market share in South Africa. It also maintains a dominant position as a beer producer in at least 15 African countries with representation in an additional 21 countries through a strategic alliance with the Castel Group (excluding South Africa and Namibia). Similarly, East African Breweries has 90% market share in Kenya. The already highly concentrated market was further consolidated in 2016 when SABMiller, the second largest beer producer in the world, was acquired by Anheuser-Busch InBev, the largest producer in the world.

Further concentration in the region 's beer industry should be a concern for authorities

Concentrated sectors are prone to anticompetitive conduct and are often characterised by abuse of dominance, price fixing,

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collusion and allocation of markets with negative effects on consumers.[1] This anti-competitive conduct is clearly illustrated in the African beer market. For instance, the beer industry in Africa is characterised by a number of geographical or territorial allocation agreements, as detailed in an earlier CCRED Quarterly Review article, many of which include Castel and SABMiller. The Competition Commission of Mauritius (CCM) has in fact already fined a subsidiary of one of the parties to the new merger for participating in a regional cartel. Stag Beverages Ltd, a subsidiary of Castel, and Phoenix Beverages were penalised MUR27 million (approximately USD800 000) for a market arrangement in which the parties agreed to share the beer markets in Mauritius and Madagascar. Additionally, the dominant beer firms appear to view allocation of markets across countries as a key strategy considering the lack of transnational competition law, and given significant scale economies in beer production.[2]

In view of the nature of this market and the history of anti-competitive conduct, the CCC's recent decision to approve the merger between BIH and Carlsberg is surprising. This is especially true since, in its ruling, the Commission noted that the merger raised competition concerns particularly with regards to potential coordinated effects between SABMiller and Castel which owns 38% of the SABMiller African business. The Commission also observed that the market appeared to be allocated wherein Carlsberg beer produced in Malawi was not exported to neighbouring countries and SABMiller products were similarly not exported into Malawi from neighbouring countries.

A further critique of the decision is the manner in which the merger was assessed. The CCC does not appear to fully consider the implications of the merger at a regional level despite its mandate as a regional competition body. By assessing the merger through a narrow country-market scope, the CCC ignored the fact that these companies could be potential competitors through selling in each other's territories and that implementation of the merger would serve to remove a potential rival within the Malawian market and neighbouring countries. The decision is even more unexpected when considering that the CCC had recently announced its intention to pursue more restrictive business practice cases including cartels that operate across the region.

The potential for anti-competitive conduct and the resulting negative effect on consumers suggest that the merger should either have been prohibited or at least approved with stronger conditions. The conditions to commit to allowing free trade across countries and to not participate in information exchange seem to be insufficient to deter anti-competitive conduct in the sector. A more practical condition might have been to compel Castel to dispose of its 38% share in SABMiller's African business to an independent beer producer. It remains to be seen if the current conditions placed on the merged entity will allow for increased rivalry and competition in the beer market in Malawi.

[1] Bernheim, B. D. & Whinston, M. D. (1990). Multimarket contact and collusive behaviour. *The Rand Journal of Economics*, 1-26 and Roberts, S. (2012). 'National Dominant Firms, Competition Law and Implications for Economic Development in Southern-Africa: case study of energy, beer and food'. *Instituto de Estudos Sociais e Económicos Conference*, Conference Paper 17.

[2] Jenny, F. 'Transnational market sharing and coordination of national competition authorities law enforcement'. Presented at *3rd Annual Competition Commission, Competition Tribunal and Mandela Institute Conference on Competition Law, Economics and Policy*, Pretoria, South Africa, 3-4 September 2009.

THE IMPLICATIONS OF GLOBAL CONSOLIDATION IN THE SEED INDUSTRY

Shingie Chisoro-Dube & Lauralyn Kaziboni

The world population is expected to reach ten billion by 2050, which has implications for food security in the context of climate change. In the recent $43 billion acquisition of Syngenta, a global seed company, by ChemChina, a chemicals company, the CEO of ChemChina notes that the merger was driven by China's need to secure future food supply, given the country's history of famines. This strategy highlights the importance of access to seeds as a key input in agricultural production. This article looks at the implications of increased consolidation in the global seed industry on access to seed and food security.

Understanding the global seed market

The global seed market is highly concentrated with a few lead international players led by Monsanto, DuPont and Syngenta (Table 1).[1] In 2017, Monsanto merged with Bayer Crop Science; DuPont Pioneer merged with Dow AgroScience; and Syngenta acquired ChemChina. The main reasons driving these mergers and acquisitions include the need to secure and expand into new markets and diversify the company portfolios following the decline in prices of crops and cereals.[2] The approval of the above mergers will result in three corporations controlling close to 60% of the global patented seed market and 64% of the agrochemical market.

The Monsanto, DuPont and Syngenta mergers were approved subject to divesture conditions by the competition authorities in USA, Europe and South Africa. The divesture conditions are meant to remove overlaps in specific markets in an attempt to promote competition and limit any likelihood of anti-competitive conduct, which may arise from high concentration. The Dow AgroScience and DuPont merger was approved in the European Union on the condition that DuPont would divest a significant proportion of the insecticides business. The European Union also cleared ChemChina's acquisition of Syngenta subject to ChemChina selling off products in the insecticide, herbicide and fungicide markets.

The Competition Commission of South Africa approved the Monsanto and Bayer merger with conditions. As part of the conditions, the parties were required to divest Bayer's cotton business and avoid a monopoly in South Africa. An independent South African third party will purchase this business allowing it to autonomously supply genetically modified cotton seed in the country. Furthermore, the parties will also sell Bayer's Liberty Link technology and Liberty -branded agro-chemicals business. Apart from these divestures, the merger removes any possibility of Bayer entering the South African market to compete with Monsanto in the development and production of seed. This follows the acquisition by Pioneer of Pannar in South Africa finalised in 2012 following a Competition Appeal Court decision to overturn the Competition Tribunal's earlier prohibition.

In South Africa, DuPont (Pioneer), Monsanto and Syngenta control 85% market share in the genetically modified maize seed market. Although Syngenta has limited participation in South Africa, it will have links through Adama South Africa, a manufacturer and distributor of crop protection solutions, owned by ChemChina following the approval of the merger with ChemChina.

Trends towards increased consolidation in the seed industry are also evident in other African countries. In Zimbabwe, the Competition and Tariff Commission approved the US$30 million acquisition of Pannar Seeds by Du Pont Pioneer in 2015. ZAAD Investment Limited, a South African seed manufacturing acquired 80% in local seed manufacturer, Agriseeds. In 2013, Zambian seed company, MRI Seed, was acquired by Syngenta. At the time of the acquisition, MRI Seed's maize germplasm collection was supposedly amongst Africa's most comprehensive and diverse.

Although mergers may lead to efficiency gains, higher concentration may result in merged entities exercising market power and raising prices, along with potential effects in terms of reducing competition in terms of innovation. This may also create a conducive environment for collusive conduct. What is apparent is that the dominance of global players in the African market and that the acquisition of local firms by global seed companies undermines local competition in the seed industry.

Innovation

Central to the agricultural sector is increased innovation in the seeds industry through investments in research and development (R&D) by lead global firms.[3] Innovation through development of desired characteristics of seeds with traits such as disease and drought resistance, has led to increased agricultural productivity.

Intellectual property rights (IPRs) through the use of patents, plant variety rights, trademarks and trade secrets promote research, development and innovation.[4] Exclusive rights allow plant breeders to recoup R&D costs and earn returns from successful innovations for a specified time period, usually 20 years. This implies that competing plant breeders are prohibited from using the protected variety in the development of a new variety of seed; or reproducing and marketing the protected variety without the breeder's licence. Upon expiration of IPRs, other seed growers are able to reproduce and market the off-patented seeds or even develop generic versions of the seed.

Although IPRs stimulate innovation and reward firms for R&D investments, global seed players may use IPRs to reinforce market power in global food value chains.[5] IPRs limit open access and traditional sharing of seeds between farmers. Farmers are prohibited from saving seeds for replanting in subsequent farming seasons or selling to other farmers. On the one hand, such contractual arrangements limit farmers' sourcing options which increases the breeder's revenues as the sole supplier. On the other hand, other seed growers have limited access to the patented seed, which reduces scope for cumulative innovation or development of low cost generic seeds by rival firms. As a result, farmers are subjected to high seed costs and limited seed variety.

The recent South African case involving HZPC Holland, a seed breeder and Wesgro Potatoes, a seed grower, raises important issues on the effects of exclusive rights on access to seed. HZPC developed the *Mondial seed potato varietal* in 1993 and was granted 20-year IPRs. The plant breeder granted Wesgro Potatoes exclusive rights to produce and sell the *Mondial seed potato varietal* to commercial farmers in South Africa. The breeder's exclusive rights expired in 2013, which would have made the seed available in the open market. However, HZPC continued to enjoy the benefits of exclusive rights beyond the designated time period to the disadvantage of other potato seed growers who are

Table 1: Sales of global top 10 seed companies in 2015 (US$m)

Company	Country	2015 sales ($m)	Merger partner
Monsanto	U.S	10 243	Bayer Crop Science
DuPont Pioneer	U.S	6 785	Dow AgroScience
Syngenta	Switzerland	2 838	ChemChina
Group Limagrain	France	1 706	
Land O'lakes	U.S	1 565	
Dow AgroScience	U.S	1 427	DuPont Pioneer
KWS	Germany	1 404	
Bayer Crop Science	Germany	1 389	Monsanto
DLF	Denmark	506	
Sakata Seed	Japanese	457	
Takii Seed		-	
Rijk Zwaan		-	

Table 2: Percentage of registered seed varieties owned by merging parties in SA[7]					
		DuPont	Monsanto	Syngenta	Total
Maize GM	Yellow	71.6	12.7	0.5	84.8
	White	80.3	8.6	-	88.9
Maize non-GM	Yellow	56.4	5.8	1.2	63.4
	White	41.8	6.2	-	48.0
Soya GM		34.9	4.6	-	39.5
Soya non-GM		11.4	2.9	-	14.3
Wheat		19.0	54.3	-	73.3
Cotton		-	-	-	0.0
Other agronomic		37.4	0.5	2.1	40.0

unable to grow or sell the *Mondial seed potato varietal.*

In 2017 the Competition Commission of South Africa referred a case of alleged abuse of dominance against these firms to the Competition Tribunal of South Africa for prosecution. This illustrates that despite seed breeders being granted exclusive rights for a specific time, they can insist on exercising the exclusivity to reinforce market power and limit access of the seed to other industry players.

Implications

Agriculture is a key sector in most African economies such that access to affordable high quality seed is crucial. Disruption in seed supply may lead to a global food catastrophe.[6] Access to genetically modified seeds is thus important as it increases agricultural productivity and security of food supply. However, genetically modified seeds require the use of agrochemicals which tend to increase costs of production. Seeds constitute approximately 10 -20% of overall production costs although agrochemicals and labour account for a larger proportion of production costs.

Increased input costs have implications for food security and agricultural and rural development. Small scale farmers, in particular, lack access to capital required to purchase seeds and agrochemicals and therefore continue to depend on less productive seeds saved from previous planting seasons or informal exchanges. Given that smallholder farmers constitute the majority of farmers in Africa, this may reduce total agricultural production necessary to secure food supply. Efforts to industrialise in Africa also depend on increased productivity in the agricultural sector due to its linkages with other sectors in the economy, and upgrading to higher value -added activities. There remains a key role for government to ensure appropriate enforcement of IPRs as well as the development of the local agricultural industry.

1. Lianos, I., Katalevsky, D., & Ivanov, A. (2016). The global seed market, competition law and intellectual property rights: untying the Gordian knot. *Research Paper Series: 2/2016*, Centre for Law, Economics and Society.
2. Moss, D. L. (2013). Competition, intellectual property rights, and transgenic seed. *SDL Rev.*, *58*, 543.
3. See note 1 & MacDonald, J. M. (2016). Concentration, Contracting, and Competition Policy in U.S. Agribusiness. *Concurrences: Competition Law Review*, No. 1.
4. See note 1.
5. See note 1.
6. See note 1.
7. African Centre for Biodiversity, 2017. Available here. Notably market shares in terms of sales are likely to be different as some varieties may outperform others.

THE CASE FOR PATIENT CAPITAL: SMALL BUSINESS FUNDING IN SOUTH AFRICA

Current trends in traditional commercial lending and the role of development finance

Maria Nkhonjera & Nicholas Nhundu

Small and Medium Enterprises (SMEs) are key drivers of inclusive growth in the South African economy, contributing about 55% to the gross domestic product, while their contribution towards employment is as high as 60%. In addition, small firms and new entrants enhance competition within different economic sectors, resulting in lower prices and greater variety for consumers, as well as dynamic and productive efficiencies.

Despite the importance of small and medium-sized enterprises and their significant economic contribution, they face limited funding options from both traditional financing institutions and government initiatives. For smaller businesses, building scale and being able to compete effectively in a market takes considerable time. This is exacerbated by the long periods it takes to develop the business including investing, trying out new approaches and strategies, innovating and expanding, along with obtaining regulatory approvals in some sectors. As such, these businesses need to have patient capital to support their growth.

This article reflects on the status quo of traditional commercial lenders in South Africa while considering the importance of development finance. We make recommendations on how the financial system can better address capital market constraints in the provision of finance to underserved sectors of the economy.

This article reflects on the status quo of traditional commercial lenders in South Africa while considering the importance of development finance. We make recommendations on how the financial system can better address capital market constraints in the provision of finance to underserved sectors of the economy.

A series of CCRED studies on barriers to entry and inclusive growth in different economic sectors highlighted the lack of funding for new entrants and the need for patient capital to grow smaller firms. This was evident in the agro-processing sector, such as the case of Grain Field Chickens (GFC) as a poultry entrant. GFC, which is jointly owned by Vrystaat Koöperasie Beperk (VKB) and the Industrial Development Corporation (IDC), took four years before making a profit. The diverse operations of its parent company (VKB) and development finance from the IDC assisted greatly in sustaining the business during this period while it built scale and capabilities. This case highlights the size of the barriers to firms which do not have owners such as these.

"How the financial system can better address capital market constraints in the provision of finance to underserved sectors of the economy"

Similarly, Capitec Bank in the retail banking sector did not manage to grow to scale for a considerable period (2002 – 2009), largely due to a lack of adequate funding. Capitec survived this difficult period largely due to the support of PSG (an investment holding company) that acted as a shareholder of reference and provided financing for the entity to survive. Similar small banks like Ubank (formerly Teba Bank licensed in 2000) have stagnated largely due to a scarcity of patient capital, such as from a shareholder.

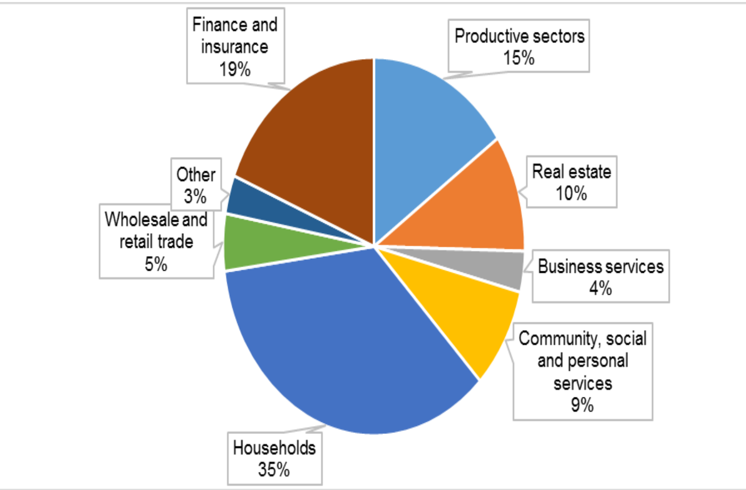
The cases of Soweto Gold and Lethabo Milling, black industrialists in beer and maize milling respectively, demonstrate the challenges faced by small firms and the impacts. In its early years of establishment, Soweto Gold met with potential funders for over four years without success. After failing to secure funding from commercial banks and DFIs, the company managed to get funding from Europe to complement the partners own funding. The company ultimately received a loan facility from the IDC through the Agro-Processing Competitiveness Fund which arose as part of the remedy imposed by the Competition Tribunal on Pioneer Foods for engaging in cartel activity in the bread and flour markets. Similarly, it took Lethabo Milling four years to obtain start-up capital after approaching several banks and public entities (including DFIs) who were unconvinced of the bankability of the business. The enterprise later obtained financing from the Massmart Supplier Development Fund[1] which facilitated and supported entry into the milling sector. Both companies have succeeded in growing and being financial viable.

The above examples speak to a widely recognised failure of traditional financial markets.[2] One solution to this challenge has been through state-controlled DFIs. DFIs mobilise financial resources for developmental purposes through investing in markets deemed too risky for the private sector to enter alone, but which are essential for the growth of the broader economy. They do so in partnership with the private sector, but initially carry most of the risk. Thus, they initiate sustainable development by supporting opportunities that are not addressed by the market, and by providing risk capital to companies and individuals in partnership with the private sector. Once these markets are developed, DFIs gradually withdraw and focus on developing other underdeveloped markets.

The state of traditional lending in South Africa

The South African banking sector has grown significantly (measured by total assets) since 1994, however the growth of the financial services sector has not translated to better funding for new entrants nor assisted in the growth of small firms.[3] This is largely attributed to the risk aversion of traditional banks (including partly because of regulatory requirements) which means they tend to fund established enterprises with a financial track record. In other words, the lending activity of traditional financial institutions continues to undermine rivals and entrants. Financialisation debates further suggest that firms increasingly invest in reversible short-term financial assets instead of long-term fixed assets, essentially crowding out the accumulation of productive assets. Figure 1 below provides evidence of this practice, showing that credit extension by banks appears to be more focused on investing in non-productive sectors of the economy. Banks also tend to extend a larger pool of credit towards consumers than they do to business enterprises.

Figure 1: Credit extension, 2016[4]



Source: South Africa Reserve Bank quarterly bulletin

South Africa's development finance system

South Africa has a plethora of DFIs at both a national and provincial level, all with different organisational structures and institutional mandates. These institutions also differ in the weight of their financial resources and the scale of their projects. But while provincially-based DFIs tend to be more localised, given their 'proximity' to local communities, there tends to be an unavoidable mandate overlap with funding institutions at a national level. This lack of coordination naturally results in a duplication of effort across DFIs, substantially undermining their role as development financiers. The mandates of provincial development finance institutions (PDFIs) are also broadening as they become more like economic development agencies, thus losing their focus as key financiers and supporters of small businesses enterprises.

A great majority of PDFIs are further limited by internal operational inefficiencies. The Gauteng Enterprise Propeller (GEP) for example, spent 70% (R90 million) of its annual budget (R130 million) on wages and salaries (2011 - 2015), leaving only R30 million to be disbursed as loans to SMEs. On average GEP's wage bill is 220% larger than its loan disbursement budget. High write-offs and impairment rates exhibited by all PDFIs further suggest a lack of internal operational efficiencies, where these are as high as 60% for the Free State Development Corporation.

A lack of sources of funding appears to be a key challenge that makes PDFI operations unsustainable; however this is exacerbated by the existing inefficiencies outlined above. The importance of establishing partnerships between DFIs and traditional finance institutions for raising and effectively allocating finances has been widely emphasised. Partnerships offer an effective and cost-efficient alternative of mobilising resources for long-term investments.[5] The European Commission notes that partnerships not only relieve pressure on public finances but safeguard private institutions by providing stability of long-term cash flows from public finances while bringing in socially strategic investments.[6] It however appears that there is a great lack of cooperation between these two financing entities in South Africa. We note here that co-funding initiatives (between DFIs and commercial banks) can potentially enhance the risk appetite of traditional finance institutions and also facilitate financial additionality, that is, the synergies created through collaboration between DFIs and commercial lenders.

The positive outcomes associated with the close cooperation between commercial banks and DFIs is best exemplified in the relative success of the Brazilian development bank, the BNDES.[7] In the BNDES case the partnerships created between the two financing entities are extended beyond project co-funding to partnering on distributing development finance to farmers through banks. This allowed the BNDES to dispense funds effectively through the commercial banks' wide footprint across Brazil. The disbursement of loans through commercial banks also meant cutting down on costs through leveraging off the systems and operations of commercial banks.[8]

[1] This unique fund was established as a condition following the Massmart/Walmart merger to provide financial assistance to small and medium enterprises in the form of zero-interest grants backed by guarantees to commercial lenders.

[2] Adesoye, A.B. and Atanda, A.A. (2012). Development Finance Institutions in Nigeria: Structure, Roles and Assessment, Munich Personal RePEc, Archive Paper No. 35839.

[3] Abor, J. and Quartey, P. (2010). Issues in SME development in Ghana and South Africa. *International Research Journal of Finance and Economics*, 39(6), 215-228.

[4] Productive sectors comprise of Electricity, gas and water (2,2%); Transport, storage and communication (3,3%); Agriculture, forestry and fishing (2,2%); Manufacturing (4,7%); Construction (0,9%); Quarrying and Mining (2%).

[5] Wehinger, G. (2011). Fostering Long-Term Investment and Economic Growth: Summary of a High-Level OECD Financial Roundtable. *OECD Journal: Financial Market Trends*, Vol. 2011, Issue 1.

[6] European Commission. (2009). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions -Mobilising Private and Public Investment for Recovery and Long-Term Structural Change: Developing Public Private Partnership. Commission of the European Communities, Brussels.

[7] BNDES is Brazil's National Bank for Economic and Social Development.

[8] Colby, S. (2012). Explaining the BNDES: What it is, What it does and How it Works. Centro Brasilierio de Relações Internacionais Artigos, 3.

WHAT CAN WE LEARN FROM THE FIRST COMESA RESTRICTIVE BUSINESS PRACTICE CASE?

Procedural issues and effectiveness of regional competition authorities

Tatenda Zengeni

In the first quarter of 2017 the COMESA Competition Commission (CCC) assessed its first restrictive business practice complaint. The case relates to the exclusive award of marketing and media rights for the main regional football competitions on the African continent. The allegation is that on 12 June 2015 the Confederation of African Football (CAF) entered into an agreement with Lagardère Sports S.A.S., a sport marketing firm based in Paris, France that awarded the media and marketing rights for the Africa Cup of Nations, African Nations Championship and African Champions League to Lagardère exclusively for the period 2017 to 2028. It is further alleged that CAF entered into a similar agreement with Lagardère Sports S.A.S. from 2009 to 2016 in relation to the media rights of the same tournaments over this period.

The launch of the investigation by the CCC comes at a time when the competition authority in Egypt, a member of COMESA, concluded its investigation into a similar allegation. The Egypt Competition Authority (ECA) found CAF to have violated its act and requested the Prosecutor's Office to press criminal charges against the former CAF President and Secretary General. At the same time, the Fédération Internationale de Football Association (FIFA) recently awarded media rights to several companies for the Confederations Cup 2017 and World Cup 2018 through a competitive tendering system. Five broadcasters in Sub-Saharan Africa namely; Econet Media, SABC, SuperSport, StarTimes and CANAL+ have been awarded media rights to broadcast the two tournaments.

These developments raise two important concerns. First is the continued use of exclusive agreements in the broadcasting sector on the continent in contrast to more competitive bidding processes elsewhere. Second, and important to this article, is that the conclusion of a case with regional dimensions by the ECA raises questions about jurisdiction and procedural issues on competition concerns that transcend borders in COMESA. The article does not weigh the merits of the case but examines procedural issues that may affect the effectiveness of the regional competition authority in future cases.

CCC jurisdiction on regional competition issues versus that of national competition authorities

Article 23 of the COMESA competition regulations empowers the CCC to investigate mergers that involve companies operating in two or more COMESA member states. Part 3 of the COMESA competition regulations outlines RBPs that can be investigated by the regional authority. Specifically, article 16 states that, '*the rules on restrictive business practices apply only if the agreement, decision or concerted practice is, or is intended to be, implemented within the Common Market*. Furthermore, it considers conduct that *may affect trade between Member States;* and RBPs which have *as their object or effect the prevention, restriction or distortion of competition within the Common Market*. Article 22 (1) states that '*where the Commission has reason to believe that business conduct by an undertaking restrains competition in the Common Market, the Commission will so notify the undertaking involved and will launch an investigation*' which empowers the Commission to institute an investigation. The CCC is empowered in terms of article 16 and 22 to investigate the CAF case since all COMESA members are part of CAF and are therefore affected by the exclusive agreement.

The regulations for RBPs are not as explicit as those for mergers, and seem to create some uncertainty about the circumstances under which the CCC can investigate such cases. The current wording suggests that CCC has the power to investigate any case even at national level as long as the country is a member state and if that matter will have an impact on the common market, even though the Egyptian authority may have investigated aspects affecting its own territory.

The lack of an explicit definition that distinguishes cases with regional effects might have led to the ECA conducting a unilateral investigation on a case that actually has a regional dimension. The jurisdictional uncertainty is further compounded by a lack of COMESA guidelines for investigating such cases, which may explain why the ECA only informed the CCC of its investigation after it had been concluded. The lacuna in the law can potentially create a conflict between national authorities and the regional authority on jurisdiction and can also lead to over-enforcement. For instance, while the ECA has referred the case to the Prosecutor General for prosecution, CCC regulations stipulate that if found guilty the undertakings involved will be liable to a pay a penalty of up to 10% of annual turnover of each undertaking for participating in the infringement.

It is important to note that investigations by both the ECA and the CCC of the same conduct partly defeats the purpose of establishing a regional competition authority. Regional competition authorities provide a platform for member states to pool financial resources when undertaking investigations and avoid duplication of resources.[1]

What is the practice in the EU regional authority?

The European Union Competition Commission is a mature regional competition enforcement agency and therefore it is useful to look to it for comparative purposes. A significant difference between the European law and the CCC Competition Regulations is that the former decentralised the application of its act in 2004, empowering member states to enforce the European Competition Law in parallel with their domestic laws. The process came with many challenges especially around inconsistency when applying the law.[2] To counter these challenges, the EU created a robust system of cooperation among competition authorities through the establishment of the European Competition Network.

Mechanisms were developed to facilitate effective cooperation. First a signalling mechanism is in place, in which any authority is required to alert others when it commences investigation or any other action to avoid overlapping activities that have the potential to lead to divergent results. Second, authorities agreed on a division of work mechanism to enable each authority to utilise its relative advantages in investigations. As a general principle, the authority that initiates the investigation remains competent to act until the end of the investigation. Third, a system of information exchange and coordination was developed to invigorate cooperation between authorities in their investigations. A dispute resolution mechanism to solve and prevent potential conflicts was also agreed upon.

Important to note from the EU is that the mechanisms have been created to avoid multiple investigations of the same matter. This is a very important step towards harmonizing competition laws and facilitating regional integration at large. The current CCC case seems to have exposed a weakness in this respect.

[1] Fox, E. M. (2012). 'Competition, Development and Regional Integration: In Search of a Competition Law Fit for Developing Countries' in Law & Economics Research Paper Series Working Paper No. 11-04.

[2] Cseres, K. (2010). Comparing Laws in the Enforcement of EU and National Competition Laws'. European Journal of legal studies, p.7 -44.

KEY ISSUES IN DEVELOPING COSMETICS, SOAPS AND DETERGENTS VALUE CHAINS - SOUTH AFRICA & ZAMBIA

Opportunities and constraints in building viable regional value chains

Farisai Chin'anga

Firm competitiveness can be understood as the ability to provide products and services at least as efficiently and effectively as competitors. At the industry level, international competitiveness is the ability of domestic firms to achieve sustained success against foreign competitors such as in terms of unit labour costs and relative productivity.[1] Competitiveness is critical if a country's firms are to take advantage of the opportunities presented by the regional and international economy. Furthermore, it can stimulate industrialisation and economic growth which subsequently promotes job creation, higher productivity and innovation.

In this context, recent research suggests that South African and Zambian firms can leverage rising urbanisation, increasing populations and incomes and the resultant higher demand for fast moving consumer goods towards building industrial production capabilities in the cosmetics, soaps and detergents industry. Trade data shows that there is a trade deficit of $536m for cosmetics and $667m for soaps and detergents in the SADC region, presenting an opportunity for the region to simultaneously meet this demand internally rather than imports from global markets. This article draws insights from the research conducted by CCRED and ZIPAR on the cosmetics, soaps and detergents value chains in South Africa and Zambia.[2] It particularly focuses on how standards and regulations, access to retailers, scale and packaging constrain competitiveness and their implications on the cosmetics, soaps and detergents industry in both countries based on in-depth interviews with stakeholders, firms and associations.

Structure of the retail market for cosmetics, soaps and detergents in South Africa and Zambia

The South African *cosmetics* industry comprises a number of personal care products ranging from skin, body and hair care. The industry is not concentrated relative to soaps and detergents with four multinationals, namely, Unilever South Africa, Procter and Gamble, Colgate-Palmolive and Johnson & Johnson, accounting for 28.8% in total of the retail market for cosmetics in South Africa.[3] Contrary to South Africa, the cosmetics industry in Zambia consists of very few players with a few emerging firms engaged in the manufacture of organic cosmetic products. The industry is dominated by imported cosmetic products from Unilever, Colgate-Palmolive and Johnson & Johnson's notably from South Africa.

The *soaps and detergents* industry in South Africa broadly includes the manufacturing of soap, synthetic organic detergents, inorganic alkaline detergents, and crude and refined glycerine from vegetable and animal fats. The industry is highly concentrated with Unilever constituting 51%; whilst Colgate-Palmolive, Procter & Gamble and Bliss Chemicals (Pty) Ltd constitute 13%, 8% and 7% respectively of the total market share.[4] In addition, there are several contract manufacturers and small- and medium-sized producers. In the Zambian soaps and detergents industry, Trade Kings Limited is the local industry leader. The rest of the local market comprises smaller players that manufacture liquid detergents and dish washing liquids predominately for industrial use, along with popular international brands.

Standards and regulations

Complying with standards and regulations is often costly and therefore affects the competitiveness of cosmetics firms in South Africa and Zambia. Standards give consumers the assurance that a product is safe and of good quality. Firms that manage to exceed quality standards tend to stand out above their competitors.[5] While the cosmetics industry in South Africa is generally self-regulated, firms are still required to comply with certain standards such as Good Manufacturing Practice (GMP), which is costly. Firms that also supply retailers are required to have their products tested to meet the retailers' own standards. Currently South African Bureau of Standards (SABS) does not offer this service and firms can only resort to private testing which is relatively expensive, but not necessarily prohibitive for smaller players looking to access the mass market.

Furthermore, product certification is critical for accessing export markets. For instance, firms exporting to Europe require EU certification which is very costly. While, the Zambia Bureau of Standards (ZABS) provides Zambian firms with product accreditation, it is not recognised both regionally and internationally making it difficult to export. This compels firms to seek accreditation by other internationally recognised standards organisations which is costly. In an effort to alleviate this exporting constraint, ZABS has entered into a few bilateral arrangements with Namibia and Botswana regarding standards and the export of selected products, however cosmetic products are not among these selected products.

Access to retailers

The challenges associated with access to retailers are identified as a key concern that limits competitiveness, particularly for smaller firms. Retailing is the major route to market for soaps, detergents and cosmetics products, however smaller firms often fail to list with retailers. This is mainly due to constraints which include lack of good quality packaging, barcodes, lack of fleets and own logistic arrangements, limited advertising budgets and the inability to supply consistently the volumes required by retailers. Consequently, some smaller firms are currently making use of alternative routes to market such as direct marketing, salons, spas, hotels and cleaning services to mitigate the above constraints.

Scale

Smaller firms in the South African and Zambian soaps, detergents and cosmetics sectors produce in low volumes due to various factors such as limited production capabilities and lack of access to markets. Many firms struggle to expand their production due to lack of finance for investing in machinery and equipment. Almost all the small firms surveyed in South Africa and Zambia produce below their maximum capacity. Failure of small firms to meet sufficient production volumes deprives them of the benefits of economies of scale, and renders them less competitive compared to large multinational rivals.

Packaging

Packaging is also highlighted as a key constraint hindering the competitiveness of smaller firms in the cosmetics industry. Packaging firms in both South Africa and Zambia often impose minimum order quantity restrictions on their products to as high as 5000 units, leaving smaller firms lacking scale to resort to standard packaging. Standard packaging is cheaper but may not be as appealing as the unique packaging often used by multinational companies made from costly moulds which range in price between R2 million to R10 million. Furthermore, once a design has been agreed upon and a mould purchased, it becomes difficult to change the design. Large multinational firms have sufficient scale and are able to justify investments in these moulds which gives them a competitive edge over smaller firms. However, 3D printing technology used for prototyping is now available at relatively low prices, costing as little as R15 000. Therefore smaller firms can use it to test out different designs before eventually settling for a particular design.

Cross cutting recommendations

The study recommends that a chemical innovation centre with 3D printing and testing facilities for new products can be developed and shared by two or more countries in the region. Zambia is already working on establishing a centre for packaging. This would provide adequate testing facilities for the two countries and also ease packaging constraints for small firms. Developing a regional content policy for consumer goods such as cosmetics to open up shelf-space to regionally produced product or offtake commitments. This could be implemented in conjunction with supplier development programmes to continuously build capabilities for suppliers. Establishing industrial clusters that aggregate small scale firms could mitigate production scale constraints, and allow for sharing of common costs such as packaging input costs and distribution costs.

[1] Edwards, L. and Golub, S. S. (2004). 'South Africa's international cost competitiveness and exports in manufacturing'. *World Development*, Vol. 32, No. 8, p. 1323-1339.

[2] Bosiu, T., Chinanga, F., das Nair, R., Mondliwa, P., Phiri, M. and Ziba, F. (2017). 'Growth and development in the cosmetics, soaps and detergents regional value chains: South Africa and Zambia'. Study conducted by Zambia Institute for Policy Analysis and Research (ZIPAR) and Centre for Competition, Regulation and Economic Development (CCRED). CCRED Working Paper No. 2017/9.

[3] Euromonitor (2015)

[4] See note 3.

[5] Cebos website; and see note 3.

SOUTH AFRICA'S PUBLIC TRANSPORT MARKET INQUIRY: INTEGRATING MODES

Key issues for rivalry between modes of public transport

Mmamoletji Thosago

The Competition Commission of South Africa's land-based public passenger transport market inquiry, which commenced in June 2017, addresses a range of questions including issues with intermodal transport links. The inquiry relates to excessive short distance passenger transport fares charged by buses, peak season long distance bus fares, operational subsidies disadvantaging operators that are not subsidised, and restricting particular providers to operate in specific areas and routes. The issues to be considered cut across several public transport modes. The inquiry coincides with the Gauteng provincial government's plan to expand its high speed train, Gautrain, into two of Gauteng's largest townships.

The inquiry further arises in the context of contentious rivalry between metered taxis and Uber operators based on specific areas, licensing or route restrictions faced by metered taxis but not faced by Uber, among other factors. Disruptive competition between metered taxi and Uber operators exists in South Africa and Kenya, among other developing countries. As of 2016, South African regulators amended the National Land Transport Bill which requires Uber to operate as metered taxis as an attempt to level the playing field between Uber and metered taxis.

A lack of intermodal connectivity between different forms of passenger transport occurs alongside substantial differences in funding, government support and the capacity of different modes. For example, in South Africa minibus taxis as private operators are not subsidised. However, minibus operators directly compete with government subsidised buses and trains. The significant differences in support are highlighted in the fact that the Gautrain's subsidy is R63 per passenger per trip while Metro train receives R4 per trip and bus services receive between R11 and R24 per trip. Notably, although minibus taxis are not subsidised they are considered the most readily available and affordable mode of transport and as such they have a national market share in passenger transport of 65%, while busses hold 25% and rail (Metro train and Gautrain) have 15%.

Passengers, especially short distance commuters, do not choose a transport mode based on fares only but also on accessibility, frequency and reliability. In South Africa, one of the most accessible and frequent transport modes is travel by minibus taxi. By comparison, the Gautrain and Bus Rapid Transit (BRT) systems require commuters to link to the closest platform at either end of the journey.

As cities experience high population density due to urbanisation, transport capabilities are challenged by commuters' increase in demand for mass transport systems. Challenges might emerge as rail stations, for example, are located within certain areas leaving particular areas unserved or lacking efficient intermodal transfers. A resolution in Australia was the introduction and integration of public transport intermodal systems where different public transport modes complemented one another. One concern raised in Sydney's independent public transport inquiry was that of high speed rail not being fully integrated with other public transport modes.

The South African public passenger transport market inquiry excludes issues around public transport integration and swift passenger transfers between modes. Integrating public transport modes might be efficient if commuters experience less difficulty when transferring between modes, and reach their destination quicker with affordable fares overall. Implementing an integrated ticketing system for public transport modes and constructing integrated transport modes' stations could enhance ease of intermodal transfers, for example.

It is relevant whether there is overlap and complementarity between modes of transport. Given that the Commission is pursuing an inquiry and not an investigation, there may be some room to consider broader policy issues relating to public transport in South Africa. It is important to note that some issues are likely not to be resolved through the competition law proceedings, but require coordination with other policy makers and responsible agencies to effect meaningful change in public transport.

RECENT CARTELS PENALISED IN SOUTH AFRICA: POSSIBLE IMPACTS IN THE REGION?

A cartel in South Africa is a cartel in the region?

Teboho Bosiu

The South African Competition Commission has been very successful in uncovering cartels, with a large number of settlements over the past 10 years. It should be noted that settlements typically involve an admission on the part of the companies involved. Given the regional scope of many companies' activities across southern Africa this begs the question as to whether these cartels affected neighbouring countries and should also be prosecuted in these countries.

In some cases, the companies busted for cartel conduct in fact disclosed other countries in which the cartel had impact. One example is the construction cartel where companies, as part of the full disclosure required, listed contracts in other countries which had been rigged. For instance several construction companies disclosed collusive conduct in relation to various projects in countries such as Botswana, Zimbabwe, Swaziland, Malawi and Lesotho (see Table 1 in the Appendix for examples of the disclosed conduct and countries involved).

Given the time taken to investigate and finalise cases, much of the conduct relating to other countries has occurred before these countries had passed competition legislation.[1] In addition, in recent cartels companies seem not to be disclosing the extent of their conduct in other countries. This could be because companies are aware that their disclosure could trigger prosecution in other jurisdictions. Nonetheless, trends in trade and investment between South Africa and other countries in southern Africa make it highly probable that "a cartel in South Africa is most likely also taking place or has taken place in other SACU/SADC members".[2] In addition, industries such as cement are likely to have regional cartels due to their regional oligopolistic structure.[3] Amunkete and co-authors explain that the cement cartel unearthed in South Africa in 2009 effectively cartelized the whole of the SACU region.

Possible impact of the recent cartels on other countries in the region

In the chemicals cartel, two companies (Investchem (Pty) Ltd) and Akulu Marchon (Pty) Ltd) involved in the manufacturing and supply of key chemical input materials used to make detergents, cosmetics and toiletries recently agreed to pay penalties. The penalties amounted to R23.4mn in the case of Investchem and R13.9mn on the part of Akulu Marchon after admitting to price fixing and dividing markets between 2003 and 2013.

Although not disclosed, it is highly likely that the conduct of these companies has impacted other African countries since their products are also exported to various countries in the continent. Investchem specifically has customers in countries such as Botswana and Zimbabwe, although it does not have branches or subsidiaries there.[4] Akulu Marchon (a subsidiary of Chemical Services Ltd) also has a footprint in other African countries through exports, however these operations have apparently been taken over by Chemical Initiatives (Pty) Ltd[5], another subsidiary of Chemical Services Ltd. It seems unlikely that having agreed not to compete in South Africa that these arrangements did not extend to export sales into neighbouring countries.

The fire protection industry cartel involved several companies that also conduct business in various countries in the rest of the continent. These include Fireco Gauteng (Pty) Ltd, Afrion Property Services CC, Belfa Fire (Pty) Ltd, Cross Fire Management (Pty) Ltd, Fire Protection Systems (Pty) Ltd, Fireco (Pty) Ltd and Tshwane Fire Sprinklers CC. These companies specialize in supplying, installing and maintaining fire control and protection systems in South Africa and the continent.

To date, two of the companies (Fireco Gauteng and Afrion) have admitted to fixing prices, dividing markets and tendering collusively when bidding for tenders to install fire control and protection systems in new and existing buildings. They have agreed to pay penalties and assist the Commission in the prosecution of the other companies. These two companies also have operations across other countries in southern Africa. Fireco Gauteng (which changed its name to KRS Fire) does business in various sub-Saharan African markets. For example, one of its clients is Debswana Diamond Company in Botswana. The company also has a branch in Mozambique. Afrion does business in countries including Botswana, Namibia, Zimbabwe and Swaziland. The other companies identified in this case also do business in the region, with the exception of Tshwane Fire Sprinklers which does business only in Gauteng.[6] Fireco (not Fireco Gauteng) has offices in Namibia as well as a sister company in Angola. Belfa does business in the whole of the southern Africa region. Cross Fire covers the rest of the continent, and has branches in Ghana and Mozambique.

Conclusion

So what can be done? Countries that have competition laws as well as operational competition enforcement agencies can, and should, prosecute. At the very least, the admission of conduct in South Africa taken together with the regional spread of sales should provide the basis for initiating investigations. The admissions could place an onus on the firms to explicitly deny that the conduct affected the other countries in question. These are practically low-hanging fruits that competition authorities in the region should not miss.

The adoption of leniency policies and settlement procedures will make the process of resolving cases more straightforward. Most countries already have or are now putting these in place. In addition, a working committee on cartels has been established by SADC competition authorities. This means that there may be much activity in enforcement against cartels with regional effects in the near future.

[1] For instance, Botswana's competition act was only passed in 2009, which implies that Botswana cannot pursue the Tati Activox conducts which took place in 2006 and 2007 (see table 1). On the other hand Malawi could have possibly pursued the Kayelekera Uranium Contract since its act was passed in 1998 while the conduct happened in 2007.

[2] Kaira, T. (2017). Cartel enforcement in the southern African neighbourhood. In Klaaren, J. et al. eds. *Competition Law and Economic Regulation: Addressing Market Power in Southern Africa.* Wits University Press. pp. 71-93.

[3] Amunkete, T. et al. (2016). Regional cartels and competition in cement industry across six countries: Botswana, Kenya, Namibia, South Africa, Tanzania and Zambia. In Roberts, S. ed. *Competition in Africa: Insights from key industries*. HSRC Press. pp. 8-40.

[4] Telephonic enquiry with Investchem (16 August 2017).

[5] Telephonic inquiry with Chemical Initiatives (16 August 2017) .

[6] Telephonic inquiry with Tshwane Fire Sprinklers (16 August 2017) .

DSTV MEDIA SALES: PRICE FIXING, MARKET POWER AND TWO-SIDED MARKETS

Leveraging market power in two-sided media markets

Jason Bell

DStv Media Sales (Pty) Ltd (DMS) was recently found to have been involved in anti-competitive behaviour and has admitted to price fixing as well as fixing trading conditions. This comes after an investigation by the Competition Commission of South Africa which commenced in November 2011 where it was concluded that, through a company called Media Credit Co-Ordinators (MCC), associated media agencies were offered discounts for early settlement of their accounts of 16.5% for payments made within 45 days whereas non-member agencies were only given a 15% discount.

DMS noted that this was a "long-standing" practice in the media industry. The Competition Commission found that the practice restricted competition in the industry "as [the agencies] did not independently determine an element of a price in the form of discount or trading terms". In settlement of the matter, DMS agreed to a remedy with several components amounting to approximately R180 million in value in terms of the various commitments that were agreed. First, an administrative penalty amounting to R22 262 599 was also levied against the company. Second, an additional R8 million is also required to be paid to the Economic Development Fund over the next three years. The third aspect is to provide bonus airtime of 25% for every Rand bought by smaller media agencies which meet specific criteria, up to an annual cap of R50 million for three years (amounting to R150 million). This is intended to help small black-owned media agencies to enter, participate, and compete in the market.

DMS, which is a subsidiary of Multichoice, was established in 1995 and was originally called Oracle Airtime Sales (OATS). The company handles the sale of commercial airtime (which refers to advertising slots) and on-air sponsorship and currently has offices in Johannesburg, Cape Town and Lagos with agents in Kenya, Ghana, and Angola. Airtime is sold on over 70 commercial pay-tv channels as well as the two terrestrial M-Net channels. Time slots are typically sold in a group of multiple slots with prices per slot varying depending on the exact time period that the slot falls into (i.e. primetime or not).

This is not the first time that Multichoice and related firms have been investigated for anti-competitive conduct across the region. In an earlier article in this Review, it was noted that two complaints were lodged with South Africa's Competition Commission regarding the exclusive rights Multichoice's subsidiary SuperSport holds over premium sports content. In that case it was alleged that Multichoice's refusal to give downstream competitors access to their exclusive sports content is anti-competitive. Similar complaints were also lodged in Egypt relating to tying and bundling of exclusive content and in Kenya regarding exclusive agreements on content sharing. Multichoice was accused of abusing its position as market leader in Zimbabwe, Zambia, and Nigeria where a lack of competition within the pay-tv market allowed Multichoice to increase its fees. This resulted in consumers in Zimbabwe purchasing their decoders and paying their fees in South Africa due to it being relatively cheaper.

From the recent case against Multichoice, it appears that Multichoice has been able to leverage its position as the dominant player in the pay-tv market in Africa into a position of market power in the media sales industry as well. Control in the advertising market may serve to reinforce its position in the primary pay-tv market as well. This is consistent with outcomes in two-sided markets where there is a high degree of market power in one primary market. *Two-sided markets* refers to "where two or more groups of customers are catered for through a platform and one group's utility increases as the number of consumers on the other side of the market increase".[1]

Multichoice is dominant in one market (subscribers to pay-tv) and appears to have leveraged this position into the adjacent market (on-air airtime sales and sponsorships) that is closely related to the main business of the firm. This has allowed Multichoice to use its large subscriber base to indirectly gain market share in the media sales industry. Media agencies will prefer to buy time slots from Multichoice because Multichoice boasts a large subscriber base of close to 10.4 million households in Africa. This poses a problem in that rival firms are unable to provide competitive offerings and as such are not able to build their subscriber base because consumers are drawn to the larger platform.

It appears that through MCC, the arrangements in the industry favoured some market players while at the same time restricting other firms from operating and competing in the market. In light of the investigation by the Competition Commission, DStv Media Sales released a statement saying that it had revised its policies regarding agency settlement discounts across all platforms as from 1 May 2016, which is a positive development. A cursory assessment of Multichoice South Africa Holdings (Pty) Ltd financial reports suggests that the fines along with the financial commitments under the remedy are a small proportion of the profits of the firm. As such the penalty and remedy are not likely to have a deterrence effect. It is therefore important that emphasis is placed on further reducing the barriers to entry into the market and giving greater assistance to smaller enterprises which the remedy, if correctly implemented and monitored, seeks to achieve.

[1] See Robb, G., Tausha, I., and Vilakazi, T. (2017) 'Competition and regulation in Zimbabwe's emerging mobile payments markets'; in Klaaren, J., Roberts, S, and Valodia, I. (eds), *Competition Law and Economic Regulation: Addressing Market Power in Southern Africa*. Johannesburg: WITS University Press.

Quarterly competition case update - Mergers and acquisitions			
Country	**Target**	**Acquirer**	**Status**
Botswana	Cradle Arc Investments (Pty) Ltd	Alecto Minerals PLC	Approved
	Alecto Minerals PLC	PenMin Botswana (Pty) Ltd	Approved with conditions
	WS Atkins PLC	SNC-Lavalin Group INC	Approved
	Building Supply Group (Pty) Ltd	Steinhoff Doors and Building Materials (Pty) Ltd	Approved
	Chevron Botswana (Pty) Ltd	SOIHL Hong Kong Holdings Ltd	Approved
	51% shares in Aveng Grinaker LTA Holdings (Pty) Ltd	Kutana Construction (Pty) Ltd	Approved
	Hodges Morupule Mauritius Ltd	Shumba Energy Ltd	Approved
	49.1% of issued share capital of Kanu Equipment Ltd	Agricola Africa Ltd	Approved
	GDS Botswana (Pty) Ltd	Innolead Consulting (Pty) Ltd	Approved
	Fleming Asset Management Botswana (Pty) Ltd	Capital Management Africa (Pty) Ltd	Approved
	Woodworld (Pty) Ltd t/a Storage and Mr Car Wash (Pty) Ltd Solutions	Capital Management Botswana Fund 1(Pty) Ltd	Approved
	infrastructure and building businesses of Murray and Roberts Limited	Firefly Investments 319 (Pty) Ltd	Approved
	70% issued shares of Safari Adventure Company (Pty) Ltd in Hana-ven (Pty) Ltd	Soren Lindstrom Safari (Pty) Ltd	Approved
	Global Holdings Botswana (Pty) Ltd	PST Sales and Distribution (Pty) Ltd	Approved
	25% shareholding in PST Sales and Distribution (Pty) Ltd	Imperial Capital Ltd	Approved with conditions
	Poultry Assets from Bokomo Botswana (Pty) Ltd	Amigear Ventures (Pty) Ltd	Approved
	50% shares in Cottesloe Consultants (Pty) Ltd from Bokomo Botswana (Pty) Ltd	Amigear Ventures (Pty) Ltd	Approved
	49% shares in Amigear Ventures (Pty) Ltd	Bokomo Management	Approved
Kenya	26.43% stake in Kenya Wine Agencies Ltd	Distell International Holdings Ltd	Approved
	19.91% shareholding in Vivo Energy Holdings	Vitol Africa	Approved
Malawi	The Commission dismissed a case against Real Insurance for alleged consummation of a merger with Britam of Kenya in 2014 which would likely lead to a substantial lessening of competition with authorisation. It was found that the transaction did not change the structure of the market as the acquirer had no presence in Malawi.		
Namibia	7.5% of Polyoak Packaging Namibia	Stimulus	Approved
	Professional Provident Society (PPS) Insurance Company Limited Namibia	Sanlam	Prohibited

South Africa	Guzman Gastronomia and Cuttings	Bidcorp	Approved
	Entco Spinco Inc	Micro Focus International	Approved
	Monsanto	Bayer	Approved with conditions
	MWeb Connect	Dimension Data	Approved
	Turbomeca Africa (TMA)	Denel	Approved with conditions
	100% STAKE OF Pan African Resources Coal Holdings	CoAL of Africa Limited	Approved
	DH Corporation	Tahoe Canada Bidco	Approved
	Keaton Energy Holdings	Wescoal Holdings Limited	Approved
	Increase stake from 55% to 65% in Latin America-focused Sun Dreams	Sun International	Ongoing
	Regent	Hollard	Approved
	Ocean Network Express	K Line (Japan), MOL (Japan) and NYK (Japan)	Prohibited
	Grindrod's rail construction businesses	WBHO Construction and Faku Family Enterprises	Approved
	Greif International BV(Dutch)	Rheem South Africa (Pty) Ltd	Prohibited
	Mining Bag Division of Tufbag (Pty) Ltd (Mining Bag Division)	Timrite (Pty) Ltd	Prohibited
	Aveng Grinaker LTA Holdings (Pty) Ltd	Kutana Construction (Pty) Ltd	Approved
	Ashbrook Investments 15 (Pty) Ltd	Regiments Capital (Pty) Ltd	Approved
	Boss Gaming and Entertainment (Pty) Ltd, Boss Gaming and Entertainment (EC) (Pty) Ltd, Arvolog (Pty) Ltd, Boss Gaming and Entertainment (KZN) (Pty) Ltd, Amandla Asiwe Trading (Pty) Ltd and Merimanzi (Pty) Ltd	Goldrush Group (Pty) Ltd	Approved with conditions
	Takealot.com	Naspers	Ongoing
	Media 24 (Pty) Ltd	Novus Holdings Limited	Approved with conditions (subject to Tribunal approval)
Zambia	African Energy Resources Ltd	GoviEx Uranium Inc	Ongoing
Zimbabwe	Palatial Gold Investments	RioGold	Approved

Quarterly competition case update - Main enforcement cases	
Country	**Case summary**
Kenya	A study commissioned by the Competition Authority of Kenya into supermarkets' pricing strategies was expected to be released by the end June 2017. The study is based on rising customer complaints of price manipulation, where customers are misled to overpay for goods.
Malawi	The Commission dismissed the allegation against Vision International Tobacco Limited of predatory pricing. The investigation revealed that Vision International was a relatively small player in the Malawi market with a market share of only 7% which meant the firm did not have market power in the Malawi.
Namibia	The Competition Commission rejected an application for exemption by Sanlam Namibia and the Professional Provident Society (PPS) Insurance Company Ltd in respect of an insurance marketing deal. The Commission found that the agreement would not result or contribute to the improvement or prevention of a decline in the production or distribution of goods or the provision of services within the market for long-term insurance.
South Africa	**Abuse of dominance:** The Commission has found that Afrimat abused its dominant position from 2012 until at least 2016 (the conduct may be ongoing) by charging clinker bricks manufacturers excessive prices to the detriment of consumers. In addition, the Commission found that the prices bear no relation to the economic value of the product. The Commission is seeking an order from the Tribunal declaring that Afrimat has contravened the Competition Act and that it must pay the maximum administrative penalty allowable of 10% of its annual turnover in South Africa as well as its exports from the country.
	The Commission has referred a Netherlands based seed potato breeder and its exclusive South African distributor to the Competition Tribunal for prosecution, for abuse of dominance in relation to the exclusive supply of Mondial seed potatoes varietal in the country. The Commission is seeking an order from the Tribunal that both companies contravened the Competition Act and that Wesgro must pay a fine equal to 10% of its annual turnover. In addition, the Commission is asking that the license agreement between Wesgro and HZPC be declared void, along with all other related agreements between Wesgro and its customers. Further, the Commission wants the Tribunal to interdict the companies from entering into similar agreements in future.
	Cartels: Cakaca AC 1892 (Pty) Ltd (Cakaca), Southern Ambition 1668 CC, (Southern Ambition) and Zamantlane Construction and Cleaning CC (Zamantlane) have been referred to the Competition Tribunal for alleged price fixing and collusive tendering in relation to a tender issued by the City of Cape Town Metropolitan Municipality. The companies compete in the supply and delivery of padlocks for high, medium, low voltage and access. In referring the matter to the Tribunal for adjudication, the Commission seeks an order declaring that the respondents contravened the Competition Act and that they are liable for payment of a fine equal to 10% of their respective annual turnover.
	The Commission conducted a simultaneous search and seizure operation at 13 premises belonging to seven meat suppliers in three provinces, as part of an ongoing investigation into the alleged fixing of prices and trading conditions. The Commission is probing alleged contraventions of the Competition Act by Karan Beef (Pty) Ltd (Karan Beef), Sparta Foods (Pty) Ltd (Sparta), Chalmar Beef (Pty) Ltd (Chalmar), Beefmaster Kimberley (Pty) Ltd (Beefmaster), Morgan Beef (Pty) Ltd (Morgan), Beefcor (Pty) Ltd (Beefcor), and Fabvleis (Pty) Ltd t/a Midland Meat (Fabvleis).
	Rooibos Limited, the largest processor of rooibos tea in South Africa, has been referred to the Competition Tribunal for prosecution on charges relating to abuse of dominance by inducing rooibos tea farmers not to deal with rival rooibos tea processors.
	The Competition Commission has referred for prosecution six Bloemfontein based companies for price fixing and collusive tendering in relation to the provincial treasury stationary tender. The companies entered into an agreement and/or engaged in a concerted practice to fix prices and tender collusively. The companies quoted the same prices for various items in their bills of quantities.
	Two of seven fire companies have admitted to have engaged in cartel conduct; the two companies have agreed to pay penalties and have undertaken to assist the Commission in the prosecution of the remaining firms. The fire companies concluded bilateral and multilateral collusive agreements which were implemented by exchanging cover quotes, sharing of bills of quantities and exchanging of prices through telephone, faxes, emails and occasional meetings.
	The Competition Tribunal took a decision to find Giuricich Coastal Projects (Pty) Ltd (Giuricich Coastal Projects) guilty of collusive tendering in contravention of section 4(1)(b)(iii) of the Competition Act and imposed fine of R900 000 as an administrative penalty. Giuricich Coastal Projects refused to settle the matter and the Commission referred it to the Tribunal for prosecution in 2014. The Tribunal found in favour of the Commission and that, on a balance of probabilities, Grinaker - LTA provided Giuricich Coastal Projects with a cover price and therefore engaged in collusive tendering.
	DSTV Media Sales (DMS) has agreed with the Commission to pay an administrative penalty of R22 262 599.00 for colluding with other media houses on pricing, discounts and payment terms for advertising space.
	The Competition Tribunal has dismissed applications sought by Goodyear South Africa ("Goodyear") and Continental Tyre South Africa ("Continental") to order that a portion of the Competition Commission's complaint referral be set aside in a price fixing complaint.
	Five vessel owners who ferry passengers between the Robben Island Museum and the V&A Waterfront in Cape Town have been referred to the Competition Tribunal for prosecution on charges of price fixing and collusive tendering. This follows an investigation by the Competition Commission, after it received a complaint from the Robben Island Museum against the five respondents.

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