Competing on whose merits?

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Competition Policy and Economic Development

- Challenges of inequality, high unemployment and poverty still persist in the country 24 years after democracy and the need to address these remains urgent.

- The role of competition law and policy as part of the basket of industrial policy tools geared towards economic development has been recognized in recent years.

- Barriers to entry and expansion in key markets remain high and the participation of SMEs and firms owned by HDIs remains low.

- Competition authorities cannot by themselves address these concerns.

- Understanding competition policy: a set of policies and instruments, including competition law, aimed at promoting competition in markets and protecting competitive processes in order to foster allocative, internal and dynamic efficiency.
Competition Policy and Economic Development

- Pre-democracy South Africa’s economy was characterized by extensive government regulation alongside the active participation of government in the economy e.g. telecoms, transport, utilities and steel, and coordinated conduct.

- Given the historical context of the economy reliance on the “invincible hand” has not yielded the desired self-correction.

- Challenges that face a developing country like South Africa establishing effective competition policies have a lot to do with institutional structures and relationships.

- Lessons from developed countries show that competition policy is not enough on its own to address development but is key as part of the basket of tools.
Sector regulation and competition policy

- The relationship between sector regulators and the competition authorities is well traversed and the history well documented.

- We use the examples ICASA and NERSA: key utilities in driving economic development.

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<th>ICASA</th>
<th>NERSA</th>
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<td>Regulatory authority of electronic communications, broadcasting and postal services</td>
<td>Regulatory authority of electricity, piped-gas and petroleum pipeline industries</td>
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<td>Signed MOA with Commission in 2002</td>
<td>Signed MOA with Commission in 2012</td>
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Challenges faced in current framework

- Lack of coordination of operational activities – ex ante vs. ex post regulation.

- New amendments create more of an overlap in the operations of the both sector regulators and competition authorities.

- Regulating coordination – the need for alignment.

- Current legislation makes real and meaningful coordination between sector regulators and competition authorities difficult.

- Regulatory feature of markets that lessen, prevent and distort competition.

- Coordination amongst other regulators affecting the competitive process.

- The operation of SOEs in markets.
Proposed framework for effective collaboration

- Framework lends from the CMA’s UK Competition Network.

- This is a legislated framework calling for cooperation amongst named sector regulators with the competition authorities in key sectors that drive economic growth: energy, transport, finance.

- Creates a framework that allows for coordination of activities by the regulators including exchanges of information, transfer of cases, sharing of resources.

- Strategic input by the state is key.

- Discretion on collaboration is removed.
Implementation in the South African context

- Collaborative efforts in the country have not always yielded the best results.

- Existing framework has flaws that can only be resolved through changes in legislations to allow for coordination.

- There is a need for strategic drive from government, an understanding of the broad scope of competition policy and a change in mindset.

- Starting point could be those regulators who already have MOAs with the competition authorities.

- Parliamentary report becomes a key tool for accountability and a measure of impact/efficacy.

- Resource-sharing and institutional restructuring can reduce duplication of efforts and lead to efficient outcomes.
Conclusion

• Our understanding of competition law and policy has grown over the years.

• Despite all the efforts of the competition authorities high levels of concentration and barrier to entry and expansion persist.

• The three challenges of inequality, poverty and unemployment continue to be at alarming rates.

• Though competition has a role to play, the authorities can only do so much. And even though this is widely recognized, not much could be done without deliberate and meaningful collaboration.

• Our proposed framework provides an opportunity for practical implementation of a collaborative framework that will allow the competition authorities and sector regulators to address market failures so as to meet the country’s developmental objectives.
Thank You

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