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## **Namibia – 5<sup>th</sup> Year Anniversary**

**The impact of competition enforcement in  
South Africa and the importance of  
competition law in Africa**

**Commissioner Tembinkosi Bonakele**

**04 December 2014**

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# Background & Policy Framework



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- **Before 1994, high levels of concentration of ownership control in the economy.**
  - Excessive state intervention with discriminatory laws.
  - State sponsored firms, subsidies, tariffs, co-operatives.
  - Restrictions on full and free participation.
  - Economy was inefficient.
  - Fertile ground for cartels and abuse of dominance.
  - High levels of unemployment.
- **Competition policy part of a package of economic transformation initiatives by democratic government.**

# Legislative Mandate



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- **Competition Act 89 of 1998, set up three institutions**
  - The Commission.
  - The Competition Tribunal.
  - The Competition Appeal Court.
- **Purpose of the Competition Act is to promote and maintain competition in order to:**
  - Promote efficiency and development of the economy.
  - Provide consumers with competitive prices and product choices.
  - Ensure SMME's an equitable opportunity in the economy.
  - Advance economic welfare of South Africans.
  - Expand opportunities for South African participation in world markets.
  - Promote greater spread of ownership, in particular HDPs .

# Early years of enforcement



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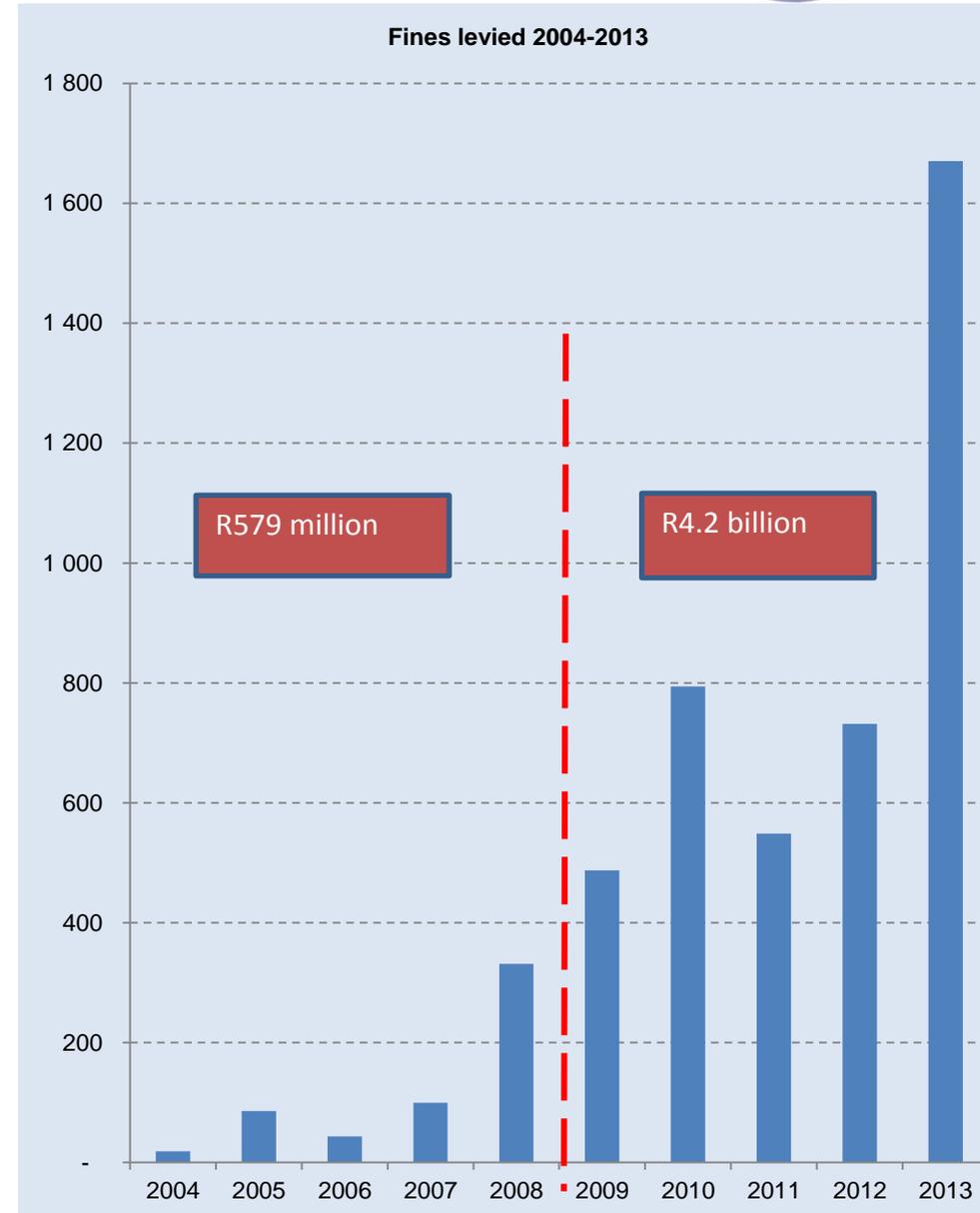
- **During period between 1999 and 2004**
  - Competition authorities focussed their actions on setting up the institutional framework and developing competencies to implement the Competition Act.
- **In 2006, the Commission embarked on a prioritisation framework to identify and target cases and particular sectors**
- **A framework for prioritizing sectors and cases was developed in January 2008 and it set the criteria for prioritization**
  - Impact on consumers, especially the poor.
  - Alignment with government's economic growth and development objectives.
  - Prevalence of anti-competitive conduct , especially cartels
- **Priority sectors identified**
  - Food and agro processing, construction and infrastructure, intermediate industrial products and financial services.

# Cartel enforcement: some highlights



- **Cartel enforcement**

- The Corporate Leniency Policy (“CLP”) came into force in February 2004 and was modified in 2008.
- Cartels uncovered, include:
  - Bread, flour and white maize meal cartels in 2007, which fixed the price of these products from 1999 to 2007.
  - Construction services.
- Increase in the size of administrative penalties imposed by the Tribunal
  - Between 2004 – 2008, about R579 million compared to R4.3 billion between 2009 – 2013.
- Appropriate and innovative remedies, (e.g. Pioneer Foods settlement).



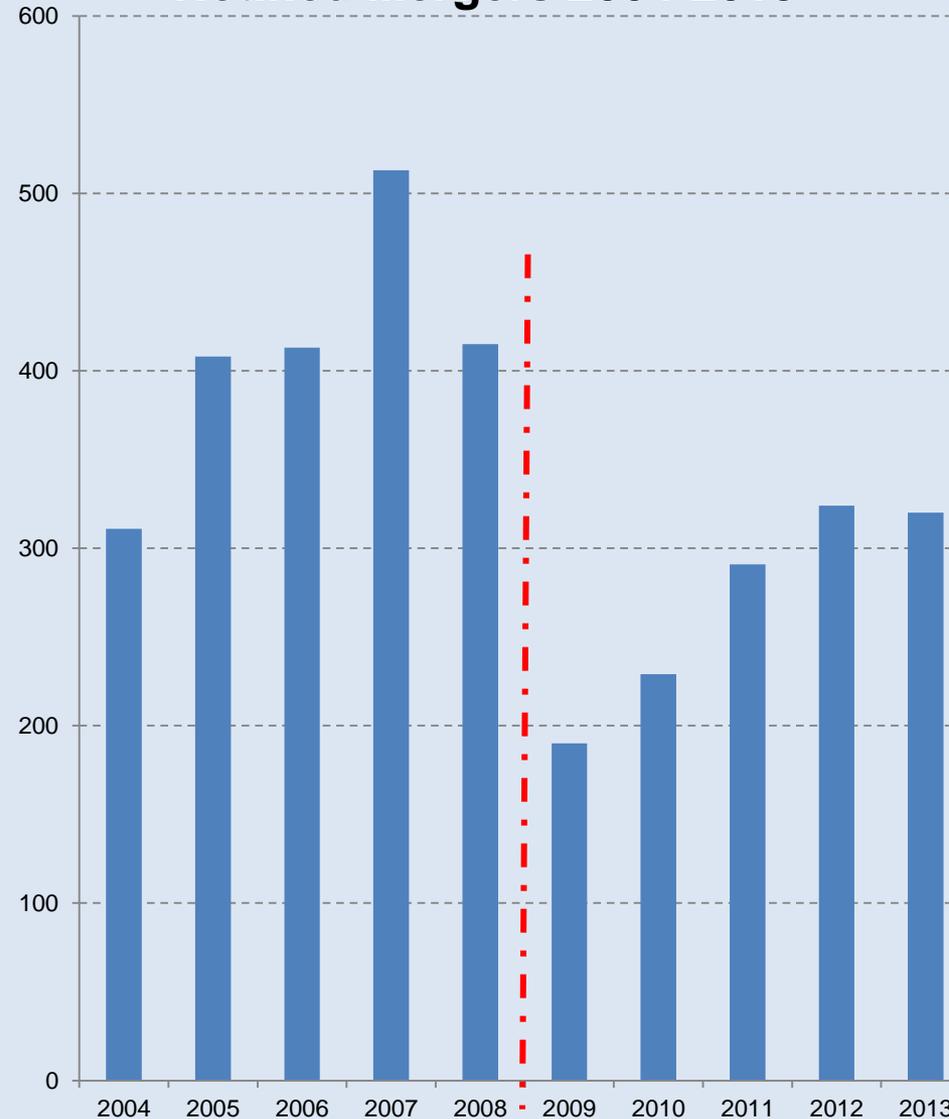
# Merger regulation: some highlights



- **Merger regulation**

- Between 2004 – 2008, increase in the number of merger notifications.
  - Economic growth
- Merger thresholds increased in 2009.
  - Financial crisis
- Careful balancing of competition issues with public interest considerations in mergers assessments:
  - Employment
  - Sector or region
  - SMEs and HDI-owned businesses
  - Ability of industry to compete internationally
- Appropriate and innovative remedies
  - Massmart/Wal- mart merger
  - Agrigroupe/Afgri merger

**Notified Mergers 2004-2013**



# Abuse of dominance: some highlights



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- **Abuse of dominance**

- The Tribunal has only decided about 11 dominance cases over the past 15 years, finding that abuse occurred in 8.
  - On the part of Patensie, SAA 1, SAA2, Sasol 1, Sasol 2, Mittal 1, Telkom and Senwes.
  - In three of these the finding was overturned (against Sasol and Senwes) or set aside and remitted by the CAC (against Mittal 1).
  - In the SAA 2 case, the Commission settled without an admission and the complainants subsequently launched their own case on which they got a favourable Tribunal decision.
  - Sasol excessive pricing case is being appealed.
- The cases referred and decided almost all involved firms who owe their position to prior state ownership and/or support.
  - Former agricultural co-operatives, such as Senwes and Patensie, received very extensive state support and subsidies under apartheid.
  - SAA is state-owned.
  - Telkom is the former state fixed-line monopolist.
  - Sasol and Mittal Steel were both state-owned until the very end of the 1980s.

# 15 Years of Competition Enforcement



- **This year the competition authorities are celebrating 15 years of existence.**
  - We have enough history with the implementation of competition law to evaluate our actions and the outcomes.
    - A proper measure of a competition agency's actions is not its output of cases, but its demonstrated ability to solve competition problems.

- For example...
  - In 2008 the Commission started investigation of SA's cement producers with a dawn raid in their premises, after conducting a scoping study into the costs of construction inputs.
  - The Commission uncovered a long running cartel that included price fixing and market allocation, through market share allocation.
  - The Commission has undertaken a study of the impact of uncovering the cartel. Using estimates of overcharges as a result of the cartel the study found that consumer saving as a result of the cartel being uncovered range approximately between R 4.5 billion to R 5.8 billion for the period 2010 to 2013. In addition, there has been noticeable change and dynamism in the market, with firms entering territories they previously did not trade in.

# Importance of Competition Law in Africa



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- **Africa challenges include:**
  - poverty and unemployment (mainly among the youth),
  - excessive concentration of ownership and control,
  - inadequate restraints on anti-competitive trade practices,
  - unjust restrictions on full and free participation in the economy.
- **Competition can be driver for sustainable inclusive economic growth**
  - The positive link between competition and inclusive growth is confirmed by a wealth of micro-economic evidence.
  - Examples of the positive impact of specific competition interventions on price, choice, employment, empowerment and innovation are abundant.
- **Need to enhance strategic cooperative relationships within the African Competition Forum to ensure close collaboration on cross-border cases and convergence toward Africa relevant competition policies**



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**THANK YOU**