The role of competition policy and law in growth and the recovery from COVID-19

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1 Introduction

The economic impacts of COVID-19 have added pressure and urgency to pre-existing debates on the role of competition law and policy in the economy and in society. Before the onset of COVID-19 serious discussions were being had about whether competition law and policy, as largely applied for the past few decades, were any longer fit for purpose.

The significance of these conversations is difficult to overstate. The post-Cold War consensus in the West (and the Washington consensus adopted by many developing countries) was largely founded on the notion that competitive markets are paramount to growth, development, and successful societies. Policy focused on ensuring competition via trade liberalisation, competition law enforcement, privatisation and regulation of "state aid", and *ex ante* sector regulation. If this consensus is now crumbling – fairly clear evidence for this can be found in rising trade protectionism and economic nationalism – then it was inevitable that hard questions were going to be asked about competition law and policy.[2]

This paper takes the opportunity to discuss some of these questions in the South African context. It first covers the leading competition policy and law concerns that had everyone's attention before the COVID-19 crisis erupted. This explains how and why calls arose before COVID-19 for a "rethink" on competition law – internationally and in South Africa (there are several parallels). It then reviews how COVID-19 has affected those debates including current thinking on how competition law and policy could or should be used during the recovery.

These two sets of debates – about the major issues in the competition "world" before COVID-19 and how COVID-19 is changing that, which are connected – inevitably circle around the age-old question of the appropriate "welfare standard" to be applied in competition law enforcement. This paper reviews current thinking on this question from 30,000 feet. There are several reasons why it does not undertake a fuller review. The main one is that it is not immediately relevant to the question of COVID-19 recovery. We say this because changes in enforcement policy (or the approach to enforcement) take a long time to show impacts – the "right" enforcement policy will

[1] Affiliated to or employed by the Berkeley Research Group (BRG). The views expressed in this paper are those of the authors alone. This paper is a working draft and is not for citation.

[2] Tyrie, A., "Is competition enough? Competition for consumers, on behalf of consumers," 8 May 2019, available at https://www.gov.uk/government/speeches/is-competition-enough-competition-for-consumers-on-behalf-of-consumers. In this speech the author argues that these debates and the challenges causing them are prompting *inter alia*, "… a fundamental rethink of the principles and purpose of competition law and policy."

remain an ongoing debate with implications for the long term, not the current crisis. The other reason is that South Africa has recently amended its laws and changed its approach to enforcement and the effects of these changes are not clear yet.

Accordingly, the paper focuses on ideas raised by commentators in Europe more closely linked to short run COVID-19 recovery efforts. These include, primarily, whether the promotion of competition according to the tradition of the past few decades should remain a top economic policy priority in the short to medium term; the role of broader competition policy efforts, as opposed to competition law; and how competition policy could or should interact more or more effectively with industrial strategy.

2 The leading competition law and policy concerns before COVID-19

Concern has been growing for several years about the way markets work, the outcomes they are producing for consumers and society more broadly, and the role law enforcement and policy has played in these processes. These concerns have not been limited to competition law practitioners and the policymakers in charge of shaping governments' broader approaches to markets. They have dominated wider political debates and have been linked to broader debates on the appropriateness of the market liberalisation policies that gained popularity after the Cold War.

The central concerns have been growing concentration and market power and their consequences for economies and societies. The latter are what matter to most people. They include concerns over inequality, fairness, political power, privacy, and even the functioning of democracies.[3] Economists and policymakers worry that concentration and market power discourages the investments, innovations and productivity increases necessary for long run economic growth and development.[4]

The fact of rising concentration and market power occupies the minds of competition law practitioners and the makers of competition policy. How did it come about in the presence of active competition law enforcement, competition policy, and pro-competitive *ex ante* regulation in several sectors? If concentration reduces growth and increases inequality, and competition law is the primary defence against rising concentration, is competition law as we currently know it fit for purpose?[5]

Digital markets have provided the leading case study in this debate. Several recent reports have assessed the reasons why markets in these industries tend towards high levels of concentration,

[3] Ibid.; Shapiro, C. (2018). "Antitrust in a Time of Populism", *International Journal of Industrial Organization*, Vol. *61*, pp. 714-748; Baker, J., & Salop, S. (2015), "Antitrust, Competition Policy, an Inequality", *Georgetown Law Journal Online*, Vol. *104*.; Zingales, L. (2017). "Towards a political theory of the firm", *Journal of Economic Perspectives*, Vol. *31*(3), pp. 113-30; Ennis, S. F., Gonzaga, P., & Pike, C. (2019), "Inequality: A hidden cost of market power", *Oxford Review of Economic Policy*, Vol. *35*(3), pp. 518-549.

[4] De Loecker, J., Eeckhout, J., & Unger, G. (2020). "The rise of market power and the macroeconomic implications." *The Quarterly Journal of Economics*, *135*(2), pp. 561-644.

[5] These debates are obviously more complex – many forces beyond the ambit of competition law and policy have contributed to rising concentration. See for example Shapiro (2018), *op cit.*

the consequences for economies and societies, and what if anything could and should be done about it.[6] South Africa's Competition Commission has recently added to this literature.[7]

A theme common to most of the international reports is that competition law as we have known it for the past few decades has not been able to prevent the emergence of significant levels of concentration and market power. The dominant merger law framework has been unable to prevent so-called "killer acquisitions" that, in hindsight, probably did prevent the emergence of more effective competition and less-concentrated markets.[8] Similar issues have been raised in South Africa with regards to "creeping mergers" in hospitals – can a competition authority prevent the accumulation of market power by an acquiring firm over a series of small mergers, which, individually, present no significant concerns under standard merger tests?

In the context of digital markets, a similar diagnosis has been applied to abuse of dominance or 'anti-monopolisation' laws. Competition authorities seem to have been largely unable to address dominant firm practices that may exclude competitors but seemingly do not harm consumers, at least in the short run. These and other reasons are why some of the reports have recommended the creation of new regulators or task teams with a wider ambit and set of powers to play a more pro-active role.[9]

Ultimately, current debates are asking whether the 1990s view that liberalization, the promotion of competition through competition law as we know it today and through *ex ante* sector regulation

[6] See for example: Scott Morton F., Bouvier P. Ezrachi A., Jullien B., Katz R., Kimmelman G. Melamed D. & Morgenstern J*., Report of the Committee for the Study of Digital Platforms, Market Structure and Antitrust Committee*, 15 May 2019, Chicago Booth Stigler Center, available at https://www.judiciary.senate.gov/imo/media/doc/market-structure-report%20-15-may-2019.pdf; Cremer J., de Montjoye Y. & Schwitzer H. (2019), *Competition Policy for the Digital Era*, DG Competition, Report for the European Commission, available at https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf. Since digital markets vary, tipping in market power or dominance can be driven by "a combination of economies of scale and scope; network externalities, integration of products, services and hardware, behavioural limitations on the part of consumers...; difficulty in raising capital; and the importance of brands." Furthermore, concentration in digital markets can "raise effective prices for consumers, reduce choice and impact quality. New entry and innovation could also be impeded (Furman J., Coyle D., Fletcher A., Marsden P. McAuley D., *Unlocking Digital Competition, Report of the Digital Competition Expert Panel*, March 2019, UK Treasury, pg. 4, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf) .

[7] Competition Commission South Africa (2020). *Competition in the Digital Economy*, available at http://www.compcom.co.za/wp-content/uploads/2020/09/Competition-in-the-digital-economy_7-September-2020.pdf

[8] Cabral (2020) also found more than 800 mergers since 2000 involving Google, Amazon, Facebook, Apple (GAFAM):"Merger Policy in Digital Industries," 2020, CEPR, available at http://luiscabral.net/economics/workingpapers/hightech2.pdf. In an online seminar earlier this year, Tommaso Valletti added, "Taken together the 'GAFAM' platforms have engaged in over 800 mergers since 2000, 98% of which were not investigated and none of which were blocked": Tommaso Valletti, *IIC UK CHAPTER ONLINE SEMINAR: Competition in Digital Markets*, 29th April 2020, event report available at https://www.iicom.org/wp-content/uploads/Competition-in-Digital-Markets-2904-event-report.pdf.

[9] See for example the Furman report (2020), *op cit*; Schallbruch, M., Schweitzer H.; Wambach A., 18 December 2019, *A New Competition Framework for the Digital Economy – Report by the Commission "Competition Law 4.0",* available at https://www.competitionpolicyinternational.com/a-new-competition-framework-for-the-digital-economy-report-by-the-commission-competition-law-4-0/

– which prevailed in South Africa in the 1990s[10] – is any longer "enough" to deliver economic and market outcomes that society values.

3 How COVID-19 has affected these debates

The economic impacts of COVID-19 have introduced new urgency as well as novel elements to these debates. The immediate question has concerned whether and to what extent competition law should (or should have) accommodate(d) the economic impacts of COVID-19. A related question is how competition law and policy, and competition authorities, can aid economic recovery efforts. Internationally, opinions can be divided into roughly three categories.

The **first** grows directly from the major concerns outlined above. It holds that the largest and longest-lasting impact of the pandemic will be less-competitive markets and economies. Three main reasons are given for this: temporary suspension of traditional competition rules to accommodate the impacts of COVID-19[11]; inefficient business support and bailout programmes; and reductions in international trade and associated import competition.[12]

The concern raised is that this softening of competition will favour larger firms, who are more likely than smaller firms to survive a significant negative economic shock. Large firms will be more insulated from competitive disciplines than they were previously, contributing to further increases in concentration and market power. Digital markets again get special mention in this context given how much of the economy and "life" has moved online.[13]

Accordingly, under this view, traditional competition law enforcement and policy needs to be as vigorous as ever, and competition authorities at the centre of most of the recovery effort. Governments must ensure that temporary relaxation of anti-cartel laws do not allow new cartels to form. Merger control needs to scrutinise failing firm defences very carefully. This needs to be complemented by and balanced against careful use of government assistance. Governments need to be able to distinguish between firms that are insolvent and those that are merely facing a liquidity problem.[14]

However, all this needs to be done bearing in mind the other pressing concern from the pre-COVID era: the traditional approach to competition law and policy was producing increasingly undesirable market and social outcomes. For example, competition authorities can aid the recovery by more urgently finding a way to prevent "killer acquisitions" given that many smaller firms may be failing or flailing as a result of the crisis.

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[10] See for example Joffe, A., D Kaplan, R. Kaplinsky & D. Lewis, (1995), *Improving Manufacturing Performance in South Africa: The report of the industrial strategy project.*

[11] Examples include allowing competitors to coordinate supply responses to avoid shortages.

[12] Tyrie, A (2020), "How should competition policy react to coronavirus?", IPPR, available at https://www.jstor.org/stable/pdf/resrep25699.pdf. See also comments by John Vickers in a Royal Economic Society webinar, where he noted that similar concerns arose during the response to the global financial crisis of 2008-09, available at https://www.youtube.com/watch?v=hDrt7hnUmak.

[13] Tyrie (2020), *op cit*.

[14] Ibid.

Lastly, the crisis is re-opening or rapidly progressing nascent debates about the extent to which industrial policy and competition policy should and can work together. In the UK, industrial policy in the recent past has largely been an extension of competition policy or, more specifically, industrial policy has focused on maximising competition in as many sectors as possible. Selective assistance to sectors or firms deemed strategically important has not featured prominently. In continental Europe, industrial policy has always been less-explicitly "pro-competitive", and selective assistance more common. Protectionism and economic nationalism were growing before the crisis and that growth is arguably now gathering pace.

The key point is that whichever direction is chosen for industrial policy in efforts to promote economic recovery from COVID-19, competition authorities can, "*help to clarify the economic trade-offs involved in protecting domestic industry from competition. [They] can play a role in explaining the strong link between a pro-competitive industrial strategy and higher levels of economic welfare. And [they] can show how a more pro-competitive approach can contribute to other public policy objectives, such as reducing inequality and promoting innovation.*"[15]

The **second** holds that Western governments should consider pushing the promotion of competition down the list of key economic policy priorities in the recovery.[16] According to this argument, the important problem is no longer ensuring, "… *that the competitive process in the short run guides the allocation of resources to maximise consumer welfare*."[17] It is now about ensuring recovery in demand, employment, firm numbers, and other elements of supply side capacity. It is also about ensuring greater resilience, dynamism, and capabilities in production, given the gaps and weaknesses in supply chains and other areas exposed by the pandemic.[18] This view holds that:

> *"The promotion of competition may not be as central an economic preoccupation in the near future as it was during the first two decades of the 21st century … and to the extent that it is still useful we will have to think again about the trade-offs between static efficiency, reallocation of resources through industrial policies, dynamic efficiencies and economic resilience ... At the very least, competition authorities will have to take a longer and more dynamic view of the process of competition than they have had until now, and adapt their*

[15] Ibid, pp. 26-27.

[16] Jenny, F., (2020), "Economic resilience, globalisation and market governance: Facing the Covid-19 test", In *COVID Economics: Vetted and Real-Time Papers*, Issue 1, 3 April 2020, available at https://cepr.org/content/covid-economics-vetted-and-real-time-papers-0.
Others have taken this further, arguing stridently that the promotion of competition in the traditional manner should be scrapped altogether, and that the COVID-19 crisis provides the opportunity to do so. They suggest that the benefits of competition are overstated in general, the risks or costs hidden or ignored, and that the pandemic is an opportunity to reset: *"… It is time that our policymakers and courts acknowledge that competition, while often beneficial, is not always good ... We must also recognize that competition, even in its good forms, may lead to an efficient outcome, but not necessarily the fair, just, or wise outcome."* Stucke, M.E. and Ezrachi, A. (2020), *Competition Overdose - How Free Market Mythology Transformed Us from Citizen Kings to Market Servants*, HarperCollins, pg. 315.

[17] Jenny, 2020, pg. 76.

[18] For example, shortages in essential goods or, put differently, lengthy adjustment processes to meet elevated demand for such goods.

reasoning with respect to state aid, cartels and mergers to circumstances of disequilibrium caused by an exogenous shock to the economic system."[19]

The **third** is difficult to categorise – on some readings it may be a variant of the first or the second views above, or it could sit in its own category. It agrees that increases in concentration should be tolerated as long as they reflect efforts to re-allocate resources away from inefficient firms and to realise greater dynamic efficiency.[20] Written in the European context, the argument is that several factors have contributed to the survival of low-productivity "zombie" firms[21], and that the COVID-19 shock is an opportunity to "cleanse" the economy of these firms. "Cleansing" will reallocate resources to more productive activities, contributing to growth and recovery.

This view differs from the second, summarised above, in believing that this should occur via an orthodox application of traditional competition law tools, rather than by relaxing them and considering alternate means, for example through industrial policy. Competition authorities and governments should focus on reducing barriers to exit by firms whose inefficiencies have been exposed by the crisis. Governments should minimise assistance to ailing firms rather than increase it, and allow them to merge with stronger, more efficient firms even when they are competitors.[22] The latter comes with the obvious proviso that anti-competitive mergers must still be prohibited; in other words, the failing and flailing firm tests need to be applied strictly.[23]

The above seems to boil down to three broad options:

- Continue to prioritise the promotion of competition and enforce competition law vigorously, to guard against the lessening of competition that will likely be one of the enduring impacts of COVID-19. This includes playing a role in industrial policy responses to the crisis. However, competition authorities should do this subject to the concerns that were identified before COVID-19 began, and the "fundamental rethink" that was being discussed in response to those concerns. This is the "Tyrie view".

- Shift the promotion of competition[24] down the list of priorities in the short to medium term, because promoting it in the traditional manner of the past few decades won't contribute as much to the recovery as other policy levers. Be prepared both to "bend" competition rules in the short run and also fundamentally reconsider short run versus long run issues in the approach to enforcement going forward. This is the "Jenny view."

- Turn the COVID-19 impacts into an opportunity to cleanse economies of low-productivity or inefficient firms by avoiding the temptation to use state aid (subsidies). Instead, allow stronger firms to acquire weaker ones by minimising barriers to exit. This will reallocate

[19] Jenny 2020, *op cit.*, pg. 77.
[20] Padilla, J. and N. Petit (2020), "Competition policy and the Covid-19 opportunity", Concurrences No. 2-2020.
[21] For example, low interest rates since the Global Financial Crisis, and rigid product and labour market regulation.
[22] This assumes that the cleansing effect of the recession will select the most efficient firms, which is not necessarily the case. The lack of state support may result in only large firms having access to capital to finance the periods of disruption. In both these cases, large monopolies are in a better position than efficient challenger firms.
[23] Padilla and Petit (2020), *op cit*.
[24] In this context, we understand "promoting competition" to mean the prioritisation of traditional competition law enforcement.

resources to firms that can use them more efficiently, contributing to economic recovery and improvements in longer run growth and economic dynamism. This is the "Padilla-Petit view".

As far as we can tell, South Africa's approach to COVID-19 – from a competition law and policy perspective – has focused on accommodation and mitigation of the impacts of COVID-19 while remaining vigilant and maintaining a commitment to strong competition law enforcement. Several exemptions were granted allowing competitors to coordinate responses to demand and supply shocks. Furthermore, regulations targeting price "gouging" were passed, which the Competition Commission implemented vigorously. The Competition Commission has also communicated that it will adopt a strict approach to the failing firm test in mergers.[25]

Government's views on the role competition law and policy should take in the recovery from COVID-19 appear to be less clear. For example, public debates along the lines of those that have taken place in Europe, outlined above, do not appear to have developed.[26]

4 South African perspectives

Concentration has been a concern in South Africa for a long time – far longer than it has been in international debates. The preamble to the 1998 Competition Act states that apartheid policy and laws created 'excessive concentrations' of ownership and control and did not seriously attempt to combat anti-competitive behaviour. South Africa's first industrial strategy of the democratic era, published in 1995, was predicated on exactly the same concern, arguing that high levels of concentration would undermine international competitiveness and economic development.[27]

Consequently, post-apartheid South Africa focused on promoting competition. Merger control and anti-cartel enforcement became much stricter alongside external and internal liberalisation.[28] Significant economic restructuring followed.

Despite these efforts, concentration appears to have increased in the past 20 years rather than decreased.[29] In addition, economic growth slumped after the 2008-09 global financial crisis and never really recovered, driving high levels of unemployment and inequality even higher over the past 10 years. The pace of economic transformation had not been high before the global financial crisis and perceptions grew that it too had begun to suffer in the years thereafter.

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[25] Darji, R. and Leuner, R. (2020), "The failing firm doctrine during COVID-19", *Competition News*, September 2020, available at https://user-zfccc1y.cld.bz/Competition-News-September-2020/28/#zoom=z

[26] The government's reconstruction and recovery plan does not contain clear views on this question. For now, it would appear that emphasis is being placed on the role the new industrial policy masterplans can play in the recovery.

[27] Joffe et al. (1995), *op cit*.

[28] Ibid.

[29] Buthelezi, T., Mtani, T. and Mncube, L. (2019), "The extent of market concentration in South Africa's product markets", *Journal of Antitrust Enforcement*, Vol. 7(3), pp. 352–364.; Driver, C. F. (2019), *Trade liberalization and South African manufacturing: Looking back with data* (No. 2019/30), WIDER Working Paper; World Bank (2016), *South Africa Economic Update: Promoting Faster Growth and Poverty Alleviation Through Competition*, available at http://documents1.worldbank.org/curated/en/917591468185330593/pdf/103057-WP-P148373-Box394849B-PUBLIC-SAEU8-for-web-0129e.pdf.

Accordingly, the faith of the mid-1990s in the promotion of competition via liberalisation and competition law enforcement began to wane following the global financial crisis. Interventionist industrial policy, which was was already coming back into fashion by this point, moved further to the centre of efforts to grow the economy. But if growth and development of manufacturing activities and capabilities is the right benchmark, it also showed limited success.[30] Its redevelopment is ongoing and is partly targeted at South Africa's COVID-19 recovery.[31]

Where did competition law and policy go wrong? The first part of the answer to that question is that many things did not go wrong. Countless cartels have been uncovered and prosecuted, and anti-competitive mergers prohibited. The deterrence effect of this work should never be under-estimated. It is conceivable that, absent these interventions, the South African economy would be worse off today than it is. It is also likely that, had the South African economy continued to grow after 2008-09, rather than stall almost entirely, criticism of competition (and industrial) policy would be lower.

The above notwithstanding, competition law and industrial policy are meant to cause higher rates of growth and economic transformation, and lower rates of unemployment and inequality. Competition law is meant to do this by preventing the accumulation of market power or its abuse of firms that already have it. Alongside that, competition and industrial policy is meant to promote entry, new forms of domestic competition, and international competitiveness. At the very least, competition law was expected to prevent an increase in concentration levels over those seen in the mid-1990s. That it appears to have been unable to do so raises difficult questions, and now doubts as to whether it can contribute meaningfully toward COVID-19 recovery efforts.

5 What is changing in South Africa's competition law and policy?

The 2018 drive to amend South Africa's competition law largely reflected concerns about increasing concentration and low rates of transformation. Inclusive growth was not being achieved. Of the ten issues that the amendments sought to address, six sought to address the challenges of concentration and support entry and expansion of smaller firms. These include explicit consideration of concerns relating to SMEs and firms owned by historically disadvantaged individuals ("HDIs"), employment and economic transformation; increased market inquiry powers; new provisions aimed at making "creeping mergers" harder; and more flexibility in allowing firms to collaborate[32] in the pursuit of South Africa's economic development goals.

Debates concerning the cause of the increase in concentration focused on the limits of competition law and the approach to its enforcement that had been adopted since 1998. Those debates are largely about the appropriate welfare standard to be applied in South African

[30] Kaplan, D. (2019), "South Africa's Industrial Policy Time for a review and a Rethink", Viewpoints, No. 8, August 2019, Centre for Development and Enterprise.

[31] The new masterplans are targeted industrial policy tool that seeks to foster collaboration between firms and government to achieve pre-determined goals. The success of the masterplans relies on the implementation of commitments by the stakeholders involved.

[32] The amended Act broadens the criteria for exemptions from competition law. The new criteria broaden the scope to include entry and expansion my medium sized firms (previously the focus was on small firms); expands the objective of the conduct (to be exempted from competition law) to include competitiveness and efficiency gains that promote employment or industrial expansion.

competition law enforcement. Had the standard applied since the commencement of competition law in South Africa delivered on the objectives of the Competition Act? The policymakers and legislators backing the amendments concluded that in several important respects the answer was 'no'.

A clear expression of this is seen in the amendments aimed at promoting the chances of SMEs and firms owned by HDIs to participate more effectively in the economy.[33] This could be viewed as "protecting competitors" by *inter alia* tolerating higher prices. This is controversial in a world where competition law enforcement is meant to strive for the lowest possible prices and the highest possible output with almost no exceptions.[34] Even factoring in the public interest tests in merger control and the increased focus on employment after *Walmart*, competition law enforcement in South Africa since 1998 has been largely defined by this objective. Some of the amendments clearly call for a different approach. For example, under the new price discrimination provisions, *Nationwide Poles* may have been decided differently.[35]

Another example is seen in the amended market inquiry provisions, which introduce a new test for anti-competitive harm, the "adverse effect on competition" ("AEC") test. While this has not yet been used it must differ from the "substantial lessening or prevention of competition" ("SLC") test already in section 8 of the Act, and it could be considered a "weaker test" or "lower bar" for showing anti-competitive effects.[36]

In short, the amendments sought to alter some of the largely neo-classical approaches to competition law enforcement that South Africa adopted from 1998 – so as to improve the ability of competition law to proactively reduce concentration and increase effective competition.[37] In the neoclassical framing, competition law focuses on short run static impacts to consumer welfare

[33] This is seen in the amendments to price discrimination laws and the introduction of new buyer power laws, which explicitly require the consideration of dominant firm conduct on small and medium firms as well as those owned by historically disadvantaged individuals. A closely related concept that is actively debated in the US today is the extent to which higher prices should be tolerated to support entry and growth by firms that seemingly cannot enter competitively under current conditions. Some have labelled this view the "neo-Brandeis" movement, and characterised it as an, "approach that often regards low prices as the enemy, at least when they come from large firms at the expense of higher cost rivals." See Hovenkamp, H. J. (2018), "Is Antitrust's Consumer Welfare Principle Imperiled?", University of Pennsylvania Law School Institute for Law and Economics, Research Paper No. 18-15, available at https://ssrn.com/abstract=3197329.

[34] Hovenkamp, H. J. (2018), *op cit.*

[35] In *Nationwide Poles vs Sasol Oil*, though there was evidence of price discrimination, Nationwide Poles could not demonstrate the likelihood of a substantial lessening or prevention of competition because (i) Nationwide Poles had information only about the impacts of the conduct on itself and (ii) it held a small share of its market, which is the market in which it alleged that the effects of the conduct were playing out. In effect, Nationwide Poles could not show that its exit would likely change prices in the market.

[36] The background here is that relatively few exclusionary abuse of dominance cases have been won (or survived appeal in higher courts) in South Africa. Nevertheless, instead of amending the relevant exclusionary abuse of dominance laws, it seems the preferred approach was to introduce new concepts under the amended market inquiry laws.

[37] Roberts, S. (2020), "Assessing the record of competition law enforcement in opening up the economy", In: Vilakazi, T., Goga, S. and Roberts, S. (eds) *Opening the South African Economy. Barriers to Entry and Competition*, Cape Town: HSRC Press; Goga, S., Mondliwa, P. and Roberts, S. (2020, forthcoming), "Competition, Productive Capabilities and Structural Transformation in South Africa", *European Journal of Development Research*.

using something approximating the perfect competition benchmark.[38] The analysis of competition effects looks primarily at short run impacts on prices and output. Limited account is taken of the dynamic aspects of competition such as rivalry, collaborative learning and innovation.[39]

Another take on the limitations of the "neoclassical" approach including the focus on short term price and quantity effects under the consumer welfare standard is as follows, and is quoted because it seems that the drafters of the amendments would by and large agree:

> *Despite the often brilliant ability of economists to make consumer welfare arguments, the emphasis on measurable harms to consumers still tends to bias the law toward a focus on static harms and, especially, on prices. Such "price fixation" inevitably tends to marginalize parts of the antitrust law concerned with dynamic harms – harms like the blocking of potential competition, slowing of innovation, loss of quality competition, and overall industry stagnation … In theory, such effects are measurable under a consumer welfare standard, but in practice, and particularly before the judiciary, the importance of demonstrated price effects has weakened the law's ability to deal with some of the most serious anticompetitive harms.* [40]

We have also seen changes in the approach taken by the Competition Commission – largely aimed, it seems, at pursuing alternate avenues for affecting changes. For example, in the Grocery Retail Market Inquiry, the Commission came to agreement with two large supermarkets, Shoprite and Pick 'n Pay, to discontinue the use of exclusive leases, which the inquiry had found to raise barriers to entry for independent retailers. The Commission had previously attempted to pursue a case against supermarkets for the same issues but non-referred the case as *"the anti-competitive effects of the conduct could not be demonstrated conclusively".*[41] The amended market inquiry provisions allow the Commission to pursue conduct that is deemed anti-competitive without necessarily going through the standard litigious process. There are also indications that the Commission will address market power concerns in digital markets through a market inquiry.[42]

Something similar has occurred on excessive pricing. Under the amended law a complainant is required to make out only a *prima facie* case before onus transfers to the respondent. Seemingly inspired by this approach, the Data Services Market Inquiry ("DSMI") reached settlements with

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[38] Blaug (2001) and Budzinski (2007) argued over a decade ago that the perfect competition benchmark dominated applied competition economics despite advances in economic theory which have increasingly focused on strategic interactions of firms in oligopolistic markets. To our minds, it still dominates today. Source: Blaug, M. (2001). "Is competition such a good thing? Static efficiency versus dynamic efficiency", Review of industrial organization, Vol. 19(1), pp. 37-48.

[39] Budzinski, O. (2007), "Monoculture versus diversity in competition economics", *Cambridge Journal of Economics*, Vol. *32*(2), pp. 295-324.

[40] Wu, T. (2018), "After Consumer Welfare, Now What? The 'Protection of Competition' Standard in Practice", *Competition Policy International*. Similar questions are discussed in Salop, S. C. (2009), "Question: what is the real and proper antitrust welfare standard-answer: the true consumer welfare standard", 22 *Loy, Consumer L. Rev.*, *22*, 336.; Stiglitz, J. E. (2017), "Towards a broader view of competition policy. *Competition", Policy for the New Era: Insights from the BRICS Countries*, pp. 4-21.

[41] Competition Commission Media Release, 24 January 2014, "Commission non-refers supermarkets investigation", available at http://www.compcom.co.za/2014-media-releases/

[42] Competition Commission. (2020), *Competition in the Digital Economy* draft report for comment, available at http://www.compcom.co.za/wp-content/uploads/2020/09/Competition-in-the-digital-economy_7-September-2020.pdf

MTN, Vodacom and Telkom that included forms price regulation – including *retail* price regulation in the case of MTN and Vodacom – without attempting to pursue excessive pricing cases in court. Instead, the DSMI final report argued that *prima facie* evidence of excessive pricing had been found and invited the relevant parties to settle or go to court.[43]

All this suggests that competition enforcement in South Africa was taking steps to address concerns about the effects of rising concentration prior to the onset of the COVID-19 pandemic. The amendments alter South Africa's approach to competition law in several respects, and the Competition Commission is itself also showing a willingness to experiment and innovate. On the other hand, no real changes were made to the laws governing exclusionary abuses of dominance, which may yet impede the ability of competition law to tackle exclusionary practices by dominant firms. To the extent that such practices maintain high levels of concentration and reduce long term growth potential, this is a potentially serious limitation.

It must also be mentioned that other parts of government do see the promotion of competition as a key driver of growth even if we can't yet clearly see this focus in COVID-19 recovery plans or debates concerning those plans. For example, in 2019 National Treasury called for greater focus on competition as part of its broader call for structural reforms aimed at raising potential growth rates.[44] It argued that pro-competitive structural reforms are long overdue, citing the National Development Plan of 2013. Another example comes from the Independent Communications Authority of South Africa ("ICASA"), which is conducting a competition inquiry into mobile broadband, and is moving forward with spectrum licensing.[45] Given this context, it will be interesting to see whether the COVID-19 reconstruction and recovery plan – and the industrial policy masterplans upon which it will rely (in part) – prioritises traditional competition law enforcement, encourages use of wider competition policy tools, or largely overlooks competition issues.[46]

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[43] Competition Commission South Africa, "Data Services Market Inquiry: Final Report (non-confidential)", 02 December 2019, available at http://www.compcom.co.za/wp-content/uploads/2019/12/DSMI-Non-Confidential-Report-002.pdf. It should also be noted that retail price regulation of the two largest networks, while good for millions of consumers, may well harm prospects for effective competition in the long run. Low prices are often a key competitive advantage for smaller mobile operators, which is eroded when larger incumbents are required to lower their prices.

[44] National Treasury. (2019), *Economic transformation, inclusive growth, and competitiveness: Towards an Economic Strategy for South Africa,* available at: http://www.treasury.gov.za/comm_media/press/2019/Towards%20an%20Economic%20Strategy%20for%20SA.pdf

[45] The extent to which the latter is expressly intended to be pro-competitive is unclear. The ICASA chairman has stated that licensing will not address competition problems and is rather aimed merely at not making them worse. Modimoeng, K. (2020), "Chairperson of ICASA announcing plans for the licensing of high demand spectrum and the wireless open-access network," available at https://www.icasa.org.za/news/2020/plans-for-the-licensing-of-high-demand-spectrum-and-the-woan

[46] Indications regarding the steel masterplan suggest the latter, in particular, a return to protecting the dominant upstream supplier of basic steel products, Arcelor Mittal South Africa ("AMSA"), from import competition. This follows nearly two decades of government including the competition authorities seeking ways to reduce AMSA's prices. See for example Bruce, P., "Cyril's Master Plan: Economic conceit in the time of COVID," 13 October 2020, available at https://www.businesslive.co.za/fm/opinion/bruces-list/2020-10-13-peter-bruce-cyrils-master-plan-economic-conceit-in-the-time-of-covid/.

6 Will these changes promote recovery from COVID-19?

The impacts of these changes and efforts are hard to predict and it seems unfair given how recent they are to question whether further changes are needed. On the other hand, the impacts of COVID-19 make it hard not to continue precisely this discussion.

Broadly speaking, South Africa's actions before and since COVID-19 are in line with the "Tyrie view" of what competition law and policy ought to seek to achieve. That is, South Africa has recognised the need for changes to the way in which competition law is enforced; and has acted upon that recognition – by changing the law and the approach of the Competition Commission to enforcement. These changes may not represent a "fundamental rethink" but are nonetheless significant. South Africa has also "bent the rules" in the short term to cushion the impacts of COVID-19[47], and the Competition Commission has since indicated an interest in strong enforcement to mitigate the risks of that "rule bending". This includes a strict approach to the failing firm test given that firm failure and exit caused by the impacts of COVID-19 could easily result in further increases in concentration.

An observation on this latter point is warranted before continuing. The cleansing effect of the recession may not necessarily lead to the exit of inefficient firms only, an assumption embedded within the "Padilla and Petit view."[48] Some instances of exit may have negative implications for the competitiveness of the broader ecosystems within which they operate, particularly if their assets exit or come to be controlled by management teams of larger firms with different incentives regarding their use. This is because the production process takes place in industrial ecosystems whereby a firm's value creation process is linked to interdependent activities involving multiple heterogeneous actors (i.e. business organisations, institutions, governments, academia and markets).[49]

Elements of the "Jenny view" are also evident in South Africa's approach before and since COVID-19. As mentioned earlier, the main driver behind the amendments was a debate over the appropriateness of the "traditional" approach South Africa has taken to competition law enforcement since the inception of competition law in 1998. As Jenny has observed, countries in the West may see merit in reconsidering whether such an approach is helpful now that economies are operating well below full employment:

> *As is widely known, competition is a virtuous economic mechanism when economies are at full employment of their resources because it allows them, in a static perspective, to grow through a more efficient use of scarce resources. But with the aftermath of the Covid-19 pandemic, in the medium run we face the risk of an economic depression and a high level of bankruptcies and unemployment for a number of years. In such an environment, the important goals are to quickly stimulate economic growth, to engage in the kind of*

[47] For example, regulations were passed to allow coordination between competitors that would not ordinarily be allowed.

[48] Fumagalli, C., Motta, M., & Peitz, M. (2020), "Which Role for State Aid and Merger Control During and After the Covid Crisis?", *Journal of European Competition Law & Practice*, Vol. *11*(5-6), pp. 294-301.

[49] Andreoni, A. (2018), "The architecture and dynamics of industrial ecosystems: diversification and innovative industrial renewal in Emilia Romagna", *Cambridge Journal of Economics*, Vol. *42*(6), pp. 1613-1642.

redistribution mechanisms which will alleviate the economic suffering of the poor, and to ensure that the economic framework that we create will be more resilient in the future. It will thus be necessary to stimulate employment and to prevent firms in the sectors affected by the crisis – particularly SMEs but also a number of larger firms – from going bankrupt.[50]

It goes without saying that South Africa has operated well below full employment for decades. If this diagnosis of Western economies in the present moment is correct, South Africa arguably should continue to debate whether further, deeper changes in approach to competition law and policy, indeed overall economic policy priorities, are needed.

In the short to medium term, however, more potential is likely to exist in looking beyond the law or innovative approaches to its enforcement. The next section looks at a key component of the Tyrie "view" that appear to be lacking in South Africa's approach before and in response to COVID-19, namely the role of competition policy in shaping the objectives and methods of, and coordinating with, industrial policy.

7 Competition and industrial policy

The "Tyrie view" is concerned primarily with the likelihood that increased concentration and reduced competition will be a major consequence of COVID-19. This is concerning because rising concentration was the leading "pre-COVID" concern not just in competition policy circles but in economic policy more broadly. South Africa's actions and policy views would appear to agree squarely with this proposition.

The "Tyrie view" is also concerned that industrial policy responses aimed at promoting recovery will be tempted to make use of "selective assistance" (i.e., protection and related tools), which may exacerbate rather than mitigate underlying upward pressure on levels of concentration and market power.

Accordingly, the "Tyrie view" argues that competition authorities and policymakers concerned with competition issues have a duty to go beyond ensuring that their own responses to COVID-19, such as the granting of exemptions from anti-cartel law, or a weakening of the failing firm test in merger control, minimise increases in concentration. They should also see it as their duty to promote the same objective in the context of industrial policymaking processes; they should work with makers of industrial policy to guard against the risk that new industrial policy initiatives increase concentration or market power without good justification for doing so, or a clear understanding of the economic trade-offs at stake.

This suggests a "defensive" role for competition authorities in the industrial policy arena in the COVID-19 recovery effort, and probably also over the longer term. This is especially true where industrial policy initiatives seek cooperation or commitments from large or dominant firms in exchange for "selective assistance" from the state. It is conceivable that a large firm could convert state support in one or a handful of its product lines into an unfair competition advantage in adjacent markets, to the detriment of competition in those markets. Commitments would need to

[50] Jenny (2020), *op cit.*, pg. 76.

be carefully considered from a competition perspective and enforced effectively. One could characterise such an endeavour as an effort to promote the "agenda" of section 8 of the Competition Act (governing abuses of dominance) in an industrial policy setting. Deals struck with large firms should be tested against all the exclusionary abuse theories of harm that might apply in a section 8 case.

It is also widely accepted that import protection, if it is to be used, should be applied as low down the supply chain as possible: "Excessive tariffs on intermediate products make countries less attractive to global investment and are detrimental to the localization of production processes … Tariff escalation is often used to provide an advantage to domestic firms engaged in the assembly of the higher value added final product[s] rather than in the provision of low value added intermediate products."[51] Policy efforts to protect large firms operating high up in local supply chains should be made based on a clear understanding of these potential trade-offs.

These are not abstract concerns in South Africa. The experience from the 'Grand Bargains' in the steel value chain show how such deals can undermine competition in the long run and undermine development of downstream industries.[52] Similarly in the petrochemicals value chain, state support and *ex ante* regulation of firms in upstream industries failed to grapple with the implications for downstream industries.[53] In both of these value chains, state support and intervention further entrenched the market power of dominant firms and weak or absent conditionalities left downstream customers exposed to market power.

These lessons may be useful in the industrial policy masterplans that are currently under development and are being partly targeted at COVID-19 recovery.

Then there is the question of a "proactive" or "positive" role for competition policy in industrial policy formulation, and how coordination can be fostered.

In his reflections on competition enforcement during his tenure as chairperson of the Competition Tribunal, David Lewis noted a paradoxical approach to competition policy in South Africa where there is 'heightened importance' placed on enforcement of the law but 'weak and incoherent' specifications of the role of the state promoting competition in the economy.[54]

This is echoed in the 20-year review of competition conducted in 2013, where it was argued that part of the reason for the poor track record in dealing with concentration and resultant market power in the economy is the separation of competition enforcement from other state functions,

[51] UNCTAD (2013), *Global Supply Chains: Trade and Economic Policies for Developing Countries*, Policy Issues in International Trade and Commodities Study Series No. 55. Geneva, pg. 11.
[52] Zalk, N. E. (2017), *The things we lost in the fire: the political economy of post-apartheid restructuring of the South African steel and engineering sectors* (Doctoral dissertation, SOAS University of London); Rustomjee, Z., Kaziboni, L. and Steuart, I. (2018), *Structural transformation along metals, machinery and equipment value chain – Developing capabilities in the metals and machinery segments,* CCRED Working Paper 2018/7.`
[53] Goga et al., 2020. Mondliwa, P., Ponte, S. and Roberts, S. (2020, forthcoming), "Power and competition in Global value chains," *Competition and Change* Journal.
[54] Lewis, D. (2012), *Thieves at the dinner table*, Jacana: Johannesburg

particularly industrial policy.[55] Whereas competition law presumes well-functioning markets in the absence of illegal activity (such as cartels or abuses of dominance), the review suggests that the high levels of concentration in the South African economy taken together with entrenched market power in some markets mean that market failures are intrinsic to the South African economy regardless of the presence of illegal behaviour.[56]

In other words, competition does not automatically flourish from the enforcement of *ex post* competition laws. *Ex ante* sector regulation and industrial policy instruments play an important role. South Africa has largely failed to coordinate different policy instruments to overcome the limitations of competition law enforcement.[57]

The cement industry provides a good but rare example in the South African context. Though the competition authorities had found and prosecuted a cartel in the cement industry, the competitive dynamics in the market did not change significantly until the entry of Sephaku Cement in 2014.[58] This entry was made possible by the adoption of the 'use it or lose it' mineral policy, which allowed Sephaku to acquire the main input in the production of cement, limestone. Previously these limestone reserves had been owned by Anglo but not used. This illustrates an important point about the limitations of *ex post* competition law enforcement in promoting competition. The law is well suited for addressing the behaviour of incumbents that may be undermining entry, but it is limited in addressing more structural barriers to entry. In this example, access to limestone was a barrier to entry and by facilitating this access the 'use it or lose it' policy promoted competition in the market.

The questions are whether a broader approach to policy can be built around the lessons of that example and what should be added to it. The latter part of that question is important because cases exactly like the Sephaku example are not likely to be common. In that example a relatively simple and easy change to rules around mineral rights usage aligned perfectly with private firm incentives to enter and compete, and those incentives were acted upon quickly and effectively. In many other cases entry may be more difficult or less successful, requiring deeper understanding of how value chains work and more sophisticated efforts at the policy level to promote competition.[59]

Accordingly, it may be useful to consider experiences of countries that have successfully coordinated industrial policy and competition policy instruments to both promote competition and

[55] South Africa has conducted a review of progress on key aspects of policy and development every 5 years in the democratic period. The 20 years thus correspond with the time since democracy, the Competition Act was finalised in 1998 and prior to this competition issues were addressed by the Competition board, which formed part of the Department of trade and Industry (now Trade, Industry and Competition).

[56] See also Roberts, S., (2012), "Administrability and business certainty in abuse of dominance enforcement: An economist's review of the South African record", *World Competition*, *35*, p.273.

[57] Vilakazi, T., Goga, S. and Roberts, S. (eds*) Opening the South African Economy. Barriers to Entry and Competition*, Cape Town: HSRC Press; World Bank, (2016). Goga, S., Mondliwa, P. and Roberts, S. (2020, forthcoming), "Competition, Productive Capabilities and Structural Transformation in South Africa", *European Journal of Development Research*.

[58] Vilakazi, T., & Roberts, S, (2019), Cartels as 'fraud'? Insights from collusion in southern and East Africa in the fertiliser and cement industries, *Review of African Political Economy*, *46*(161), 369-386.

[59] Promoting competition here can be understood as all instruments that can support entry and dynamism within markets. This is not limited to competition law enforcement as framed in the "Jenny view", quoted earlier.

drive growth. South Korea, Taiwan and Japan adopted approaches that have come to be known as the pursuit of 'optimal competition'.[60] This approach seeks balance between the promotion of short run static efficiency through orthodox competition law enforcement and the protection of longer run dynamics and incentives. It seeks to achieve *"…an optimal degree of competition which would entail sufficient rivalry to reduce inefficiency in the corporate use of resources at the microeconomic level, but not so much competition that it would deter the propensity to invest."*[61]

It allows increases in concentration where it is necessary to achieve economies of scale and protects domestic firms from import competition as they build capabilities to become internationally competitive. However, acknowledging the potential market power that can arise, it places performance conditionalities and often encourage firms to compete for government support. The target is to ensure that the rents created by state support are used in a productive manner that is aligned with a country's economic goals.

As industries grow and mature, orthodox competition law enforcement is used more stringently to ensure that firms do not abuse their market power. For examples, intervention by the Korea Fair Trade Commission (KFTC) to address market power is grounded on an understanding of the various horizontal and vertical relationships in markets and the power of the 'chaebols'.[62] The KFTC has intervened in commercial subcontracting arrangements between chaebols and smaller firms to limit abuse of stronger bargaining positions.[63] It appears that a similar approach may be used in digital markets as well.[64]

A clear lesson from this is that the tools for promoting competition sometimes lie outside of competition law. In their discussion of 'optimal competition' in East Asian countries, Amsden and Singh point to the importance of industrial policy in stimulating competition. In the Japanese context, they argue that:

> *"…Although MITI [Ministry of International Trade and Industry] fostered oligopolistic rivalry and investment races among large firms, as seen earlier, it was also responsible for weakening Japan's anti-monopoly laws. Nevertheless, as measured by conventional industry concentration ratios, competition increased, i.e., concentration ratios generally declined."*[65]

The ways in which MITI promoted rivalry and "investment races" was through industrial policy instruments with linked conditionalities. For example, the "investment races" were promoted by making firms compete for government support, which was awarded to firms that met export

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[60] Amsden, A. and Singh, A. (1994), "The optimal degree of competition and dynamic efficiency in Japan and Korea", *European Economic Review*, Vol. 38, pp. 940-951.
[61] Singh, A. (2016), "Competition, competition policy, competitiveness, globalization and development", In *Handbook of Alternative Theories of Economic Development*, Edward Elgar Publishing, pg.15.
[62] Industrial champions.
[63] Hur, J.S., 2004, "The evolution of competition policy and its impact on economic development in Korea", in P Brusick, AM Alvarez, L Cernat & P Holmes (Eds*), Competition, competitiveness and development: Lessons from developing countries*, Geneva: United Nations Conference on Trade and Development.
[64] Kim, J. (2020), "KFTC drafts policy to prevent platform monopolies", *The Korean Times*, 29 June 2020, available at https://www.koreatimes.co.kr/www/tech/2020/06/694_291967.html
[65] Amsden and Singh (1994), *op cit*., pg. 9

targets, developed new products or invested in new technologies. This non-market-based competition was complemented with competition for market shares, which were used as a basis for state investment allocations in each industry.[66] Similarly in South Korea, industrial policy instruments were used to ensure sufficient competitive rivalry in an otherwise concentrated economy.

A critical aspect to this approach to competition is the ability to design, monitor and enforce conditionalities. South Africa has not demonstrated strong capabilities in this regard. There are various examples of poorly designed, and un-enforced conditionalities. This implies that a move to this approach to competition should be accompanied by plans on how these capabilities will be built.

If this seems a daunting challenge in the South African context given limited state capacity and a complex political economy, other options exist which focus largely on reducing barriers to entry.[67]

- Regulating for rivalry: using *ex ante* regulation to level the playing field for challenger firms. This is a prominent theme in telecommunications regulation the world over given the characteristics of the telecommunications industry (high fixed costs, economies of scale, network effects, and first-mover advantages). South Africa saw some success in this area when pro-competitive call termination rate regulation was adopted in 2014, but it would seem that more could be done in mobile given the still-high concentration levels seen in that industry.

- Reorienting industrial policy to support entrants, avoid entrenching dominant firms and where necessary use industrial policy instruments to limit abuse of market power.

- Financing for risk and rivalry: Finance including development finance has tended to be disproportionately awarded to incumbent firms. This goes against the objective of deconcentrating the economy.

- Licensing in various industries should always seek to promote competition, subject to a proper understanding of how competition works in the relevant regulated industry and how it can best be promoted.

These are just some of the ways that policy outside of competition law can promote competition and economic recovery. They can be done in the short term without developing new policies and laws.

Other initiatives that do not require new polices or laws but some degree of coordination include support for failing firms. For example, the Department of Trade, Industry and Competition could coordinate interventions by the competition authorities and Industrial Development Corporation (IDC) to ensure that firms that are crucial to domestic industrial ecosystems survive the economic crisis without significantly increasing concentration. This may entail the department keeping track of failing firm mergers, identifying these priority firms and where the Commission cannot approve

[66] Singh, (2016) *op cit*.
[67] Vilakazi et al, 2020; National Treasury, 2019.

a merger, the IDC may consider funding the affected firms to ensure survival and continued competitiveness of the relevant production ecosystem.

8 Conclusions

It seems clear that further changes to competition law and the approach to competition law enforcement will continue to be debated, but are not options available in the short run to assist with efforts to recover from the impacts COVID-19? Amendments and changes in enforcement policy take years to show impacts in case law and the economy. That said, most of these changes are likely to be important in longer run efforts to tackle the problem of rising concentration that dominated discussions before the onset of the COVID-19.

In the short run, the broadened scope of exemptions and the approach to failing firm mergers will be key instruments that the Commission can use to both support economic recovery and ensure competition in the long term. Scrutiny of failing firm defence mergers is important for guarding against increasing concentration and the Commission should continue to be vigilant in this regard. However, consideration of what happens to the target firm's assets in the absence of the merger should take a capabilities view. Recovery from the COVID-19 economic crisis will at the very least mean maintaining the country's productive capacity of the country. Where such mergers do not meet the failing firm tests, the Commission with the DTIC may consider the importance of the capabilities of the target firm for broader production ecosystems and determine if alternative ways to support the target firm should be explored. This requires some coordination between the Commission and the DTIC, in the same way that exemptions will increasingly require coordination with various other policy instruments (mostly within DTIC).

Effective coordination between competition and industrial policy to promote recovery from COVID-19 will inevitably influence debates over the appropriate competition law enforcement policy for South Africa. The case for moving away from the orthodox or "neoclassical" approach to competition law enforcement, and towards the more flexible 'optimal competition' approach will be made stronger the more effective this coordination is made to be. This applies to both the "defensive" and "positive" roles that the Commission can play in economic recovery. The "defensive" role is primarily to ensure that industrial policy strategies adopted during the recovery do not undermine the long-term goal of effective competition in markets. While the "positive" role will seek to promote dynamic competition that is important for driving growth.

But the challenges cannot be ignored. Pressure to protect and support firms and jobs has grown enormously since the onset of COVID-19. There is a real risk that, while broader economic policy officially continues to see a central role for the promotion of competition, industrial policy implementation in the short to medium term will be forced to focus on reducing the risks and uncertainty facing firms that remain solvent, which may necessarily involve protecting them more from competition for a period of time. Understanding the trade-offs involved in these decisions is one key area where the South African competition authorities can seek to contribute.