

Speaking notes of Deputy Commissioner Hardin Ratshisusu for the session - “Fair Competition and Post-epidemic Economic Growth”

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Background

Competition regulation in post-pandemic South Africa is a key driver for economic reforms. The COVID-19 pandemic has highlighted and exacerbated inequalities in South Africa. The question is whether the pandemic and its associated responses offer the opportunity to foster economic growth and improve the socio-economic conditions of society.

On 19 May 2021 the South African government published a statement on “Competition policy for jobs and industrial development” which outlines competition policy priorities. The statement notes:

Our competition policy provides a range of tools to increase competitive dynamism, including through regulation of mergers and acquisitions; tackle high concentration and abusive behaviour by dominant companies; proactive measures to open markets and develop a more inclusive and transformed economy; and measures to advance the public interest – and complements other industrial policy tools like industrial support and trade policy

Specific policy priorities are:

- Pursuing public interest in merger control with specific focus on five areas - employment, broad-based ownership, supplier development and localisation measures, investment, and downstream beneficiation. Other areas can be considered such as those specific to the value chain merger parties operate as well as measures to promote the green economy and growing exports.
- Market inquiries to address harmful effects of economic concentration.
- Cartel and abuse of dominance investigations to address anti-competitive behaviour by large firms.
- New areas for competition with focus on digital markets, cross-border coordination and national security considerations.

The Competition Commission’s recent study on market concentration in the South African economy points to growing concern about high levels of concentration and its impact on markets and entry of new firms. There is evidence that highly concentrated markets do not only weaken competition but can also stifle innovation and inclusive economic growth.

With the advent of digitisation, markets are evolving quite rapidly. The rapid growth of firms in e-commerce and the digital economy poses challenges for all economies – be it high income, low income or middle-income countries. However, for low- and middle-income economies these developments may have the most dire consequences.

Therefore, competition regulation must sharply speak to concerns of sustainability and inclusive economic development. What this means is that competition regulation should fully respond to issues of sustainability and inclusion as well as emerging issues in e-commerce and

digital markets. This, given some of the common challenges the BRICS countries face, can be a defined agenda for the BRICS competition authorities.

Competition regulation in response to COVID-19

From a competition perspective, on 19 March 2020, the Minister of Trade, Industry and Competition published the *Consumer and Customer Protection Regulations and National Disaster Management Regulations and Direction* dealing primarily with the assessment of excessive pricing cases during the national disaster period and responding to the impact of panic buying which lead to increased demand and corresponding rise in prices for mainly basic food and consumer items, medical and hygiene supplies, and other emergency products and services.

In further anticipation of the impact of COVID-19 on the operation of business, the Minister also published Exemption Regulations for restrictive horizontal and vertical agreements in key sectors:

- **Healthcare** sector: coordination on the supply for essential health services and products
- **Banking** sector: relating to debt relief measures and payment systems
- **Retail Property** Industry: relating to the collective negotiations for rental relief measures
- **Hotel industry**: coordinating the supply of space for potential quarantine premises

From 17 March 2020 the Commission received approximately 2000 complaints and tip offs from the public (in the past roughly 300 complaints a year).

Most complaints alleged excessive pricing for masks, sanitizers, personal protective equipment, some essential goods and services, basic food items by retailers, traders,

Lessons from the pandemic for future Competition Regulation

The pandemic has taught us one thing - that there is a need to urgently address the pressing challenges we face.

In South Africa, the main challenges are:

- High income inequality.
- Stagnant economic growth.
- High market concentration in several sectors.
- Historically unsustainable economic interventions.

There is therefore a need to design our interventions in the economy with these challenges in mind.

From an enforcement perspective we had to be responsive:

- Review mergers of companies in distress.
- Companies falling behind on payment of penalties.
- Need for exemptions to enable the required coordination to stabilise the economy, here government was proactive in granting block exemptions in such sectors as healthcare, banking and retail property sector.

Conclusion

As noted earlier, the main challenges we face in South Africa:

- High income inequality.
- Stagnant economic growth.
- High market concentration in several sectors.
- Unsustainable economic interventions.

Unfortunately, the pandemic has exacerbated these challenges, but it is issues we have been confronted with before the pandemic.

For South Africa we require a concerted effort to ensure markets remain competitive but also boost the participation of SMMEs in markets through measures such as:

- Ensuring meaningful support for SMMEs as well as target measures to promote the inclusion of SMMEs in value chains.
- Need to recognise that competition issues do not only require competition regulation interventions but equally important, a whole government approach to competition policy. Meaning that government should remove barriers and restraints to competition, which many have been flagged in a number of market inquiries the Commission has finalised in healthcare, LPG and other sectors.
- Need to facilitate procompetitive measures to promote efficiency in markets. In this regard, for example, the Commission has published draft “Guidelines on collaboration between competitors on localisation initiatives.” The guideline will seek to regulate agreements or arrangements between firms that otherwise may potentially raise competition concerns, in a manner that mitigates the potential risk to the competitive process, which in this case would be those arrangements that promote localisation initiatives through local procurement or production. These initiatives may be initiated by Government or private players. However, there’s an express exclusion in these guidelines, that they do not provide for any localisation initiative that may contravene section 4(1)(b) of the Competition Act (namely, price fixing, market allocation or bid rigging).
- Strict enforcement of anticompetitive conduct that hinder the participation of SMMEs in markets and overall efficient functioning of markets.

There's a need to constantly rethink competition regulatory measures and to continuously review priorities to ensure that adopted measures achieve maximum impact to benefit society.

Finally, it is worth noting that in Africa the Africa Continental Free Trade Area (AfCFTA) presents a huge opportunity. Deepening regional integration has the potential to increase the market size, trade opportunities and resource allocation across member states. Markets grow and consumers benefit from inter-member-state competition due to increased choice and rivalry between firms.