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MEDIA AND DIGITAL PLATFORMS MARKET INQUIRY FACES CRUCIAL JUNCTURE AMID GLOBAL MEDIA TURBULENCE

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EDITORIAL NOTE

As we reach the halfway point of our financial year, the Commission remains dedicated to advancing competition law enforcement in South Africa through excellence and high performance. Our work is grounded in the conviction that robust competition drives innovation, safeguards consumer welfare, and promotes sustainable economic growth across sectors.

This edition assembles a curated set of articles on market inquiries, competition research, and pivotal cases in cartel conduct, mergers, and acquisitions. We also reflect on developments from the Media and Digital Platforms Market Inquiry Provisional Report, which assesses the impact of global digital platforms on competition - examining whether market dynamics are being impeded, distorted, or restricted.

Our research section shines a light on the complexities of merger analysis in declining markets. The analysis highlights the challenges regulators face when economic conditions are uncertain, offering practical perspectives for policymakers and industry stakeholders alike. In tandem, we present the Mergers and Acquisitions Quarterly Performance Report. This quarter's data show the number of mergers notified and finalised - and notably, there were no prohibition decisions, and one case was abandoned. These figures underscore the Commission's careful and case-by-case approach to merger scrutiny.

Attention is also given to price-cost margin calculation guidelines, which provide valuable guidance for practitioners and policymakers. By clarifying pricing dynamics, these guidelines help ensure that market participants operate within fair and competitive parameters, reinforcing informed decision-making across enforcement and policy realms.

Our ongoing initiatives to promote collaboration with stakeholders across sectors remain a priority. Through constructive engagement with businesses, consumer groups, and regulatory bodies, we aim to build a more holistic approach to competition law enforcement - one that addresses current challenges while anticipating future developments in the marketplace.

Throughout this edition, our writers offer practical tools, rigorous analysis, and thoughtful reflections designed to deepen understanding of the evolving landscape of competition law and economics. We hope these contributions spark informed discussion and actionable insight for regulators, industry players, and the public alike.

Thank you for your continued interest and engagement. Enjoy this edition, and happy reading.

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Disclaimer: *The articles, views and opinions expressed in this edition are those of the authors and do not necessarily reflect the official policy or position of Competition Commission (SA).*

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MEDIA AND DIGITAL PLATFORMS MARKET INQUIRY FACES CRUCIAL JUNCTURE AMID GLOBAL MEDIA TURBULENCE

By Chandre Prince

The Media and Digital Platform Market Inquiry (MDPMI) is entering a crucial phase following the release of its Provisional Report on 15 February 2025. The provisional report raised key concerns about the imbalance between traditional media players and global digital platforms and highlighted issues around market dominance, ad revenue distribution, and journalism sustainability.

The provisional report's remedy package sparked over 40 stakeholder submissions, including those from tech giants such as Google, Meta, TikTok, and X, as well as local publishers (Arena Holdings, Caxton, Daily Maverick, and Independent Media), media associations, academic experts, and civil society representatives.

STAKEHOLDER SUBMISSIONS REFINE ROADMAP

Submissions offered substantive feedback on the feasibility and impact of remedies and further proposed supplementary measures aimed at enhancing the remedies and ensuring their practicability, effectiveness, and reasonableness. Since then, targeted engagements have been underway with affected stakeholders to test the practical implications of the proposed remedies that address generative AI, data sharing, and content moderation. With the fourth round of Requests for Information near completion, the Inquiry is closing gaps ahead of its final report.

WORKING PAPERS TO EXPLORE LEGISLATIVE PROPOSALS

Ahead of the completion of the final report, the Inquiry team is also finalising two working papers that explore legislative and regulatory reforms:

Content Moderation and Harmful Content: Analysing global models of platform accountability around disinformation and censorship, the Inquiry aims to balance takedown processes with free speech safeguards.

Data Access and AI Governance: Aiming to improve publishers' access to audience analytics and ad performance data. Collaborative work with the Department of Communications and Digital Technologies (DCDT) seeks to build a generative AI policy regulating chatbots and AI-generated content.

The papers will be released on the Commission's website (www.compcom.co.za) for public comment in the coming weeks, ensuring sector-wide input before the final Inquiry report.

GLOBAL AND SOUTH AFRICAN MEDIA UNDER STRAIN: CONTEXTUAL TRENDS

The MDPMI's work is unfolding against the backdrop of intensifying structural pressures on both global and South African media ecosystems:

Traditional media losing ground: The *Reuters Institute Digital News Report 2025* highlights steep declines in audience engagement with television, print, and news websites globally. For the first time, social media surpassed television as Americans' top news source (54% vs 50%). Similar patterns are visible in South Africa, where audience migration to platforms like Facebook, YouTube, TikTok, and WhatsApp continues to grow - particularly among younger demographics. Locally, broadcasters such as the SABC have reported audience losses, while traditional newspaper readership has been in sustained decline for over a decade.

AI and social platforms disrupting traffic: Global publishers face traffic losses as platforms like Google roll out AI-generated summaries in search results, reducing referral clicks. According

to *The New York Post*, outlets such as *Business Insider, HuffPost, and The Washington Post* have seen declines of up to 55%. In South Africa, major digital publishers - including News24 and TimesLIVE—have raised concerns over declining organic traffic from search engines and social platforms, which threatens their ability to monetise quality journalism.

Digital ad spend siphoned by Big Tech: As Google and Meta dominate digital advertising markets, news publishers across the world face shrinking ad revenues. In the U.S., thousands of local newsrooms have closed due to this trend. The same pattern is evident in South Africa: Media24 discontinued print editions of *City Press, Rapport, and Beeld,* transitioning them to digital-only formats, while *Weekend Post* (Arena Holdings) ceased operations entirely. Many community newspapers have also closed, exacerbating information inequality in rural and low-income areas.

Rising momentum for platform regulation: Globally, policymakers are seeking to redress the imbalance between Big Tech and media. Australia's *News Media Bargaining Code* was the first to mandate payment for news content, while Canada and the European Union have enacted similar legislation. Whilst there have been initiatives around media bargaining with digital platforms in other jurisdictions, the MDPMI has been far more inclusive and ambitious by extending the terms of reference to include radio and television broadcasters, both commercial and public or community media, the impact of artificial intelligence (AI) chatbots and AI-powered search, and the AdTech industry which affects the monetisation of traffic on news websites.

WHY MDPMI'S TIMING MATTERS

South Africa's media sector is not insulated from these global pressures. The MDPMI's proposed provisional remedies aim to:

- Regulate platform revenue sharing to ensure fair compensation for local journalism.
- Ensure that AI tools and data platforms operate with transparency and accountability.
- Shape content moderation laws that balance free expression with protections against harmful content.

The Inquiry's forward-looking approcah echoes international efforts to modernise journalism's legal and fiscal infrastructure in a digital age. As traditional media continues to lose ground to social platforms and AI-driven ecosystems, the Inquiry's work takes on heightened urgency.

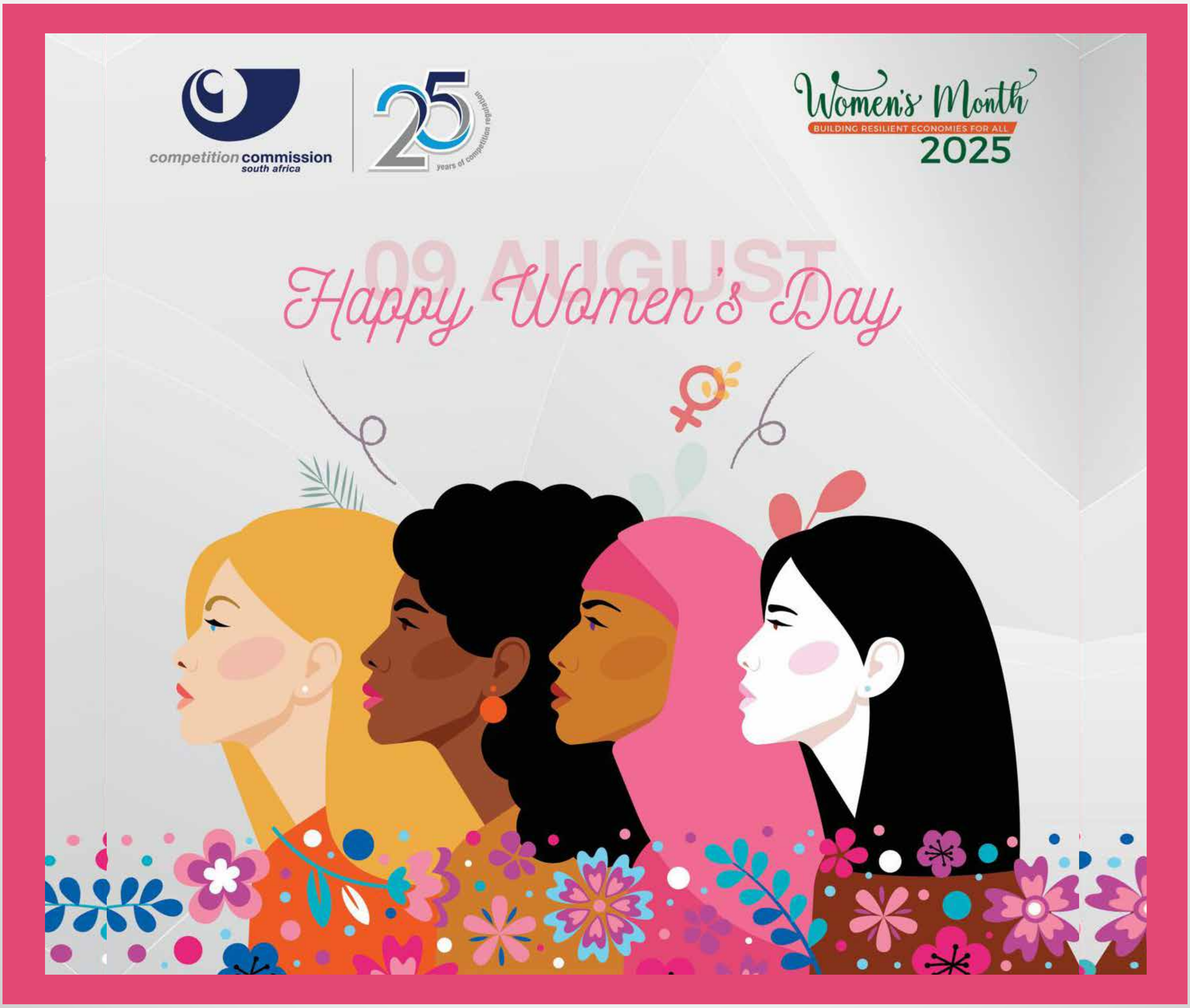
The Inquiry is scheduled to publish its final report within the next few months.

NEGOTIATION SPARKS ACROSS TECH PLATFORMS

- **Google** remains at the centre of the conversation. The MDPMI estimates that Google's algorithmic practices and "zero-click" features stripped away R300 million-R500 million from South African publishers in 2023 alone. As part of its provisional remedies, the Inquiry proposed an annual payment of R300-500 million for three to five years, alongside algorithmic adjustments intended to improve referral traffic to local and vernacular media.

- **Meta and X** are under intense scrutiny for downgrading news links in user feeds. The Inquiry has recommended that these platforms restore referral traffic to peak levels.

- **YouTube** to substantially increase its revenue-sharing model for news content from the current 55% to a minimum of 70%. Additionally, YouTube would need to extend its monetisation program to include all eligible South African news publishers, expanding access to this crucial revenue stream. A similar target is set for Meta for its in-stream videos.



PRICE-COST MARGIN CALCULATION GUIDELINES RELEASED

By Makhaya Kekana

On 28 March 2025, the Commission published its price-cost test computation guidelines, in line with section 79(1) of the Competition Act 89 of 1998 (as amended) (the Act).

According to section 8(1)(a) of the Act it is prohibited for a dominant firm to charge an excessive price to the detriment of consumers or customers. Section 8(3)(a) instructs that to assess whether a price is excessive determination of (i) whether the price charged by the respondent firm is higher than its competitive price, and (ii) whether such difference is reasonable must be made. The assessment must consider all relevant factors which may include the respondent's price-cost margin, internal rate of return, return on capital invested or profit history.

With section 8(1)(a) and 8(3) in mind, the Commission-developed the price-cost computation guidelines to provide guidance to firms and competition law practitioners by outlining how it intends to undertake the price-cost assessments. It is however, worth noting that price-cost margin test may not always be the relevant test for excessive price assessment. Therefore, the Commission will apply its discretion on the use of the price-cost margin test.

The main purpose of issuing these guidelines on the computation of price-cost test was to create transparency and clarity in terms of the key considerations the Commission will take into account when it conducts assessment. The guidelines were also used to as an opportunity for the Commission to solicit views from market participants on its approach to conducting the price-cost assessments. This was done in order to try and close the gap between the Commission's approach and those of market participants. The other aim of these guidelines is to provide firms with a basis for conducting their own price-cost assessment, where the firms themselves may test if their pricing might be deemed excessive or not. The guidelines are meant to be used by any party that wishes to conduct a price-cost assessment.

It is also worth noting that the guidelines focus purely on the computation of a price-cost and do not touch on the reasonableness of any excess or what other factors may impact on the reasonableness assessment. The guidelines also do not discuss the economic and legal aspects relating to the appropriateness of the test.

The guidelines were based on a series of practice notes; public comments and the Commission's experience from investigating excessive pricing allegations. It is worth noting there are not many excessive pricing cases in the context of South Africa to offer firms guidance on the calculation of the price-cost margin test.

As previously indicated, the guidelines outline the Commission's approach to carrying out the price-cost margin test. The guideline set out the Commission's view to the below:

- Operational costs. Which includes *principles around cost classification, cost allocation and transfer pricing.*
- Capital employed. That focuses on the valuation methods for tangible assets and the treatment of leased assets. This also addresses the treatment of intangible assets, research and development costs as well as the working capital.
- Reasonable rate of return on capital employed. This focus on the calculation of a reasonable rate of return, considering the inclusion of added risk premiums and weights attached to each source of capital.

In developing these guidelines, the Commission received input from the public in terms of comments on its draft. Accordingly, the Commission wishes to extend its gratitude to the members of the public that took part and provided comments in the process. To those who wish to have a look at the guidelines, a copy of the final guidelines is available on the Commission website.

THREE-TIER COMMISSION STRUCTURE LEVELS FIELD FOR EATERIES

By Siyabulela Makunga

The Competition Act as amended envisions the competition policy as a pivotal instrument through which economic redress can be attained.

"The people of SA recognise… that an efficient, competitive economic environment, balancing the interests of workers, owners and consumers and focused on development, will benefit all South Africans," the Act states.

And that such an instrument should be able "to provide all South Africans equal opportunity to participate fairly in the national economy; achieve a more effective and efficient economy in SA".

So among its significant interventions, the Competition Commission published its Online Intermediation Platforms Market Inquiry (OIPMI) final report on July 30 2023, which was the culmination of almost two years of investigation into local and international business to consumer (B2C) online platform markets.

The report identified features that adversely affected competition in these markets. It included a set of remedial actions that platforms, and some businesses, are required to implement to remedy the identified market features that adversely affect competition.

This included outcomes stemming from the business models utilised by digital platforms, rather than necessarily deliberate efforts to stifle competition.

Once the commission has published a market inquiry report, further engagements with the sector and industry stakeholders on the findings listed and the implementation of the remedial actions ensue.

During this process, businesses or stakeholders may disagree with the findings or remedial actions and are able to launch an appeal with the Competition Tribunal.

Recently, the commission finalised engagement with Famous Brands, a restaurant franchisor whose portfolio includes Salsa Mexican Grill, Steers and Wimpy, and Uber Portier B.V. and Uber Eats South Africa Proprietary Limited (collectively, "Uber Eats") to resolve their respective appeals of the remedial actions listed in the OIPMI.

In relation to Famous Brands, the report noted that small and emerging food delivery platforms face significant barriers in the provision of food delivery services, including difficulties with onboarding restaurant chains.

To address this concern, the OIPMI's remedial actions prohibit international and national restaurant chains operating in SA from restricting or dictating the choice of food delivery platform by their franchisees, including through setting selection requirements that are exclusionary (such as the requirement to have national presence).

Though it does not agree with the findings of the OIPMI, Famous Brands has removed discriminatory and exclusionary elements from the selection requirements applied by its franchisees.

With regard to Uber Eats, the report indicated that the two leading food delivery platforms in SA broadly categorise the restaurants that list on their platforms between chain (local and international) and independent restaurants.

Independent restaurants are generally charged higher commission fees in comparison to restaurant chains.

The OIPMI was concerned that the extent of the differentiation and the lack of transparency in commission fees distorted competition between independent and restaurant chains.

In rectifying these and following further constructive engagements, Uber Eats and the commission have agreed on the circumstances and way Uber Eats will implement a three-tier commission structure which allows independent restaurants to choose from options with lower commission fees.

This provides contracting independent restaurants with transparency and options and/or flexibility to choose the commission fee tier that meets their business needs.

The remedial actions explained above are intended to provide the following benefits to platforms, businesses, and consumers: greater visibility and opportunity for smaller South African platforms; enable more intense platform competition; level the playing field for small businesses selling through these platforms; and provide a more inclusive digital economy. Finding mutual solutions with stakeholders mark a positive step towards enhancing competition and fairness in the online food delivery sector.

It has been encouraging for the commission to find common ground with parties and collaboratively identify solutions that will increase transparency in this sector.

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THE COMPLEXITIES OF MERGER ANALYSIS IN DECLINING MARKETS – SIFTING THROUGH THE NOISE

By Hlumani Mandla and Khalirendwe Ranenyeni

INTRODUCTION

In the landscape of business, mergers and acquisitions are strategic investment moves by firms with intentions to improve their market position, expand their capabilities through the combination of skills and/or assets, or enhance their financial performance. Competition authorities (regulators) concern themselves with mergers and acquisitions to ensure that these transactions do not have any anti-competitive consequences, and/or negative socio-economic spillovers (public interest).[1]

Merger regulation tends to be slightly more complex than other forms of competition regulation, since it is generally concerned with potential future conduct and aspects of the market rather than past or current behavior.[2] The analysis of possible impacts of mergers and acquisitions becomes particularly complex in declining markets, mainly due to uncertainty regarding the future of the market, as well as the need to stabilize and/or improve the relevant industry. Regulators need to strike an intricate balance between the benefits of mergers which occur in markets that are already in distress, and the possible negative impacts of such transactions on competition and public interest. Moreover, regulators need to separate declining market impacts, which may include declining demand, increasing firm costs, increasing concentration and firm exit, and job losses, from merger specific impacts.[3]

Merger regulation tends to be slightly more complex than other forms of competition regulation, since it is generally concerned with potential future conduct and aspects of the market rather than past or current behavior

This article unpacks some of the issues faced by regulators in assessing mergers in declining markets. The article also highlights the relevant issues and questions that need to be asked by regulators when dealing with such transactions.

1 OECD. (2020), Economic analysis in merger investigations, 2020 OECD Global Forum on Competition Discussion Paper.

2 Ibid.

3 Angerhofer, T. (2024). Mergers in Declining Industry. Review of Industrial Organization. 65, pp 255-267. https://doi.org/10.1007/s11151-024-09966-w.

WHAT ARE DECLINING MARKETS AND HOW CAN THEY BE IDENTIFIED?

A declining market refers to sectors, industry or a segment thereof, where overall demand for goods or services is continuously shrinking. Declining markets form part of an essential cycle for progress, where innovation spurs the creation of new industries whilst older ones fade away. Market declines can be due to a range of factors including, but not limited to, technological advancements, shifts in consumer preferences, regulatory changes, globalization, resource scarcity, demographic shifts, economic downturns, and financial viability of the industry.[4]

As the market continues to shrink, firms in declining markets face challenges such as:

- Continuously declining demand, resulting in reduced revenues.
- Asset underutilization/excess capacity which may result in increased maintenance costs.
- Rising costs, from reduced economies of scale, increased transportation costs per unit as less volumes are transported, and/or higher material costs resulting from reduced bargaining power.
- Firms may also face increased competition, which may lead to price wars. Price wars in declining markets put further pressure on revenues, and as such may result in firm(s) exit. As such, although these price wars result in competitive prices in the short run, they tend to result in limited choice as firms exit the market and may also accelerate the demise of the industry.

It is important to note that firms in a declining market are not necessarily failing, although they may show declines in revenues. As such, firms in declining markets do not often meet the failing firm defense, and they rarely use it as a rationale for their transactions. Examples of declining markets include (i) print media,[5] (ii) coal mining,[6] and (iii) the traditional brick-and-mortar retail sector.[7]

It is important to note that firms in a declining market are not necessarily failing, although they may show declines in revenues. As such, firms in declining markets do not often meet the failing firm defense, and they rarely use it as a rationale for their transactions.

Below we look at the various challenges that are likely to be presented by transactions in declining markets.

CHALLENGES IN ASSESSING ANTI-COMPETITIVE IMPACTS OF MERGERS IN DECLINING MARKETS

Mergers in declining industries may be beneficial to the survival of firms, through amongst others retaining essential resources and/or efficient allocation of resources. These transactions can have positive spillovers, for example by saving jobs that would otherwise be lost if firms merely exited the market. Some economic literature argues that firms in declining industries are already facing declining demand, as such the market itself may act as a disciplining mechanism, limiting the ability of the merged firm to exercise market power.[8] In 2009, the Brazilian Council for Economic Defense ("CADE") unconditionally cleared a transaction between Companhia Brasileira de Cartuchos (CBC), Amadeu Rossi S.A (Rossi) and Metal Craft Metalurgica Ltda. (Craft) in the declining[9] Berdan detonator market (the CBC/Rossi[10] case).

In its decision CADE concluded that the declining market would be a disciplining mechanism, such that CBC would have no incentive to abuse its monopoly.

This seems to suggest that mergers in declining industries need to be given less scrutiny. However, experience and theory have shown that market self-correction may take time, such that mergers and acquisitions in declining markets still require scrutiny.[11] Whether to apply traditional merger theories of harm to such markets may be the relevant question.

Punishing firms for declining industry outcomes – the dilemma of unilateral theory(s) of harm

Traditional merger theories of harm and analysis are concerned with whether a merger reduces competition or increases the market power of the firms involved. Potential harm considered in merger regulation depends on the nature of current and future relations between the firms involved, as well as the current and future structure of the market(s) in question. In most instances it is also important to consider what the market would look like without a proposed transaction, referred to as the counterfactual.

The common theories of harm in merger analysis are unilateral & coordinated effects, vertical effects, and conglomerate effects. Unilateral effects arise where

4 Industry Decline: Sunset Industries: Recognizing Industry Decline and Avoiding value Traps. (2024) Accessed at: https://fastercapital.com/content/Industry-Decline--Sunset-Industries--Recognizing-Industry-Decline-and-Avoiding-Value-Traps.html

5 For example see: Newspapers and magazines are rapidly dying in South Africa – BusinessTech

6 Likely declines in demand as the world moves to greener energy sources.

7 Declines in the wake of growth in e-commerce has led to store closures and bankruptcies.

8 Einer, E. (2012). Tying, Bundled Discounts, and the Death of the Antitrust Consumer Welfare Standard. Harvard Law Review.

9 The market decline assessment included (i) entry in past 5 years, (ii) declining volumes, and (iii) Rossi's loss of interest in the market.

10 Amadeo Rossi S.A. Metalúrgica e Munições / Companhia Brasileira de Cartuchos. Concentration Act No. 08012.007520/2009-62, introduced in September 2009, and cleared in January 2011.

11 Phillips, H. (2014). Declining industry not an excuse for tie-ups, says DoJ litigator. Accessed at: https://globalcompetitionreview.com/gcr-usa/article/declining-industry-not-excuse-tie-ups-says-doj-litigator

the merger is between competitors. Traditionally, whether the removal of a competitor is of concern will depend on the expected effect of such a removal on the prices, quality or other non-price dimensions of the products or services offered by the merged firm. Whereas the coordinated effects theory of harm hinges on how a merger may increase a market's vulnerability to coordinated behavior by competing firms.[12 13]

The key question in declining industries becomes how regulators should distinguish merger specific impacts from broader market dynamics caused by declines in the industries.

Particularly, shrinking markets tend to already be subject to continuously declining demand, firm exit, and excess capacity. Due to these pressures, declining markets may already be heading towards or exhibit some factors regulators look for in assessing unilateral theories of harm including increased prices, due to declining revenues and increasing costs,[14] with the question being whether the merger fast tracks this process. The future of declining markets may, in certain instances, also be unclear. This makes it challenging for regulators to predict the long-term effects of a merger in such instances.

Considering the above, it may be important for regulators to assess existing market trends prior to any merger in a declining market to establish non-merger specific price increases, increases in concentration, firm exit and decreases in volumes. It would also be important to understand the counterfactual, for example:

- Based on evidence would the target firm(s) have exited the market, resulting in an increase in concentration even without the merger?[15]
- What is the trajectory of prices in the market, absent the merger?
- Does the merger have the potential to change the market's trajectory?
- Are there alternative strategies that may change the market's trajectory?
- Developments within similar markets in other jurisdictions.

The detailed understanding of underlying market dynamics and the counterfactual should influence the assessment of mergers in declining markets. The Competition Commission South Africa's (CCSA) findings and resulting conditional approval of the *Ostrich Merger*[16] shows how important a detailed analysis of market trends, and the counterfactual can be in the analysis of mergers in declining industries. In the *Ostrich Merger*, the CCSA found that there was no evidence that the merger would lead to market stability.[17 18]

Protecting inefficient firms – a possible pitfall of non-horizontal theories of harm in declining markets.

In declining markets, merging parties may seek to vertically integrate to reduce costs, or reserve assets that are essential to the delivery of their goods/services, which might otherwise exit the market. Retaining essential vertical assets in declining markets is important as new entry tends to be unlikely. As such, it may be difficult to find a profitable replacement for such assets. Acquisitions may also be cheaper than vertical integration through new entry into the relevant value-chain level, for existing market participants, in the face of uncertain prospects of the market.[19]

Although it is common cause that non-horizontal mergers are less likely to raise competition concerns than horizontal mergers, it may still be important to scrutinize these transactions. The two

12 OECD. (2020), Economic analysis in merger investigations, 2020 OECD Global Forum on Competition Discussion Paper.

13 Hovenkamp, H. (2023). The 2023 Merger Guidelines: Law, Fact, and Method.

14 For example see: https://themediaonline.co.za/2024/07/print-publications-face-a-challenging-future-in-south-africa/

15 Recently, merging parties have been submitting sworn statements to confirm their inevitable exit from the market absent a proposed merger transaction. In some instances, these affidavits contradict evidence available to regulators. It would be interesting to have legal guidance on the matter, to provide a way forward on the weighing of factual evidence against legal undertakings, such as an affidavit/sworn statements.

16 Klein Karoo International (Pty) Ltd, Mosstrich (Pty) Ltd and Cape Karoo (Pty) Ltd vs The Competition Commission. Case No.: IM238JAN19.

17 The CCSA's had initially decided to prohibit the intermediate transaction. During the review in the Tribunal the merging entities refined and enhanced proposed conditions they had submitted to the CCSA during the investigation. As such, the Tribunal decided that the updated conditions would be sufficient to alleviate the competition concerns raised by the CCSA.

18 The Tribunal did not make any decision on the debate on the counterfactual, and or the competition concerns between the CCSA and the merging entities. The reasons were focused on how the enhanced conditions would suffice in alleviating each of the CCSA's concerns.

19 Angerhofer, T. (2024). Mergers in Declining Industry. Review of Industrial Organization. 65, pp 255-267. https://doi.org/10.1007/s11151-024-09966-w.

It is also important to note that some firms in declining industries may be at their tipping point, such that any increase in input costs, or unfavourable changes in trading conditions may result in an exit.

main theories of harm in non-horizontal mergers are vertical effects and conglomerate effects. Vertical effects theories of harm assess the possible leveraging of market power in one level of a vertical value chain, on another level.[20] Leveraging in vertical effects theories can either occur through customer or input foreclosure. In assessing vertical effects, regulators adopt the ability and incentive framework, inquiring whether the merged entity will have the ability to foreclose rivals or raise their costs; and the incentive to do so. Incentive analysis begs the question of whether the merged entity will gain more by foreclosing rivals. Conglomerate mergers can also raise competition concerns that resemble vertical mergers, in instances where the merging parties supply complement goods or services.

Due to their nature, non-horizontal theories of harm run the risk of protecting inefficient firms from market exit. Firms in declining markets are in a constant battle for survival, where they are required to either adapt or exit.[21] A false-positive, in relation to vertical or conglomerate effects analysis may result in the protection of an inefficient firm that would have exited the market even without the merger.

As such, an important question to ask is whether the firm(s) that is likely to be affected by the merger would have survived the market decline. This may involve an assessment of trends in profits and losses of firms that are likely to be affected by the merger, to distinguish shrinking market effects from merger specific impacts. A review of an affected firm's financials may assist regulators in establishing whether it would have survived the shrink absent the merger. It may also be important to review the firm's strategic documents to, amongst others:

- Establish, whether plans were made to adopt new strategies for survival in the declining market.
- Review reports on the results of turnaround strategies.
- Evaluate any mention of exiting the market.

It is also important to note that some firms in declining industries may be at their tipping point, such that any increase in input costs, or unfavourable changes in trading conditions may result in an exit. As such, understanding possible reactions by affected parties in the face of foreclosure is also key in establishing non-horizontal theories in declining markets. For example, it would be self-defeating to foreclose rivals, when the volumes and profits generated from them cannot be replaced by the merged firm.[22]

South African merger regulations have recently been updated to ensure, that mergers do not negatively affect the ability of small and medium businesses (SMMEs), or firms controlled or owned by historically disadvantaged persons (HDPs), to effectively enter, participate or expand within a market. As such in the South African context, the CCSA needs to consider whether the inquiry suggested above meets the statutory requirements of merger impacts on SMMEs or firms controlled by HDPs.[23]

Public interest assessment in declining industry mergers

Public interest assessments required in merger assessment may also be complex in declining markets. Moreover, declining markets may be characterised by high retrenchment. For example, the South African print media industry has been subject to large retrenchments as firms attempt to stay abreast of declines in print volumes and revenue.[24] A hypothetical merger in this industry would require the regulator to separate market decline, from merger specific impacts on public interest. Various cases and guidelines across jurisdictions provide guidance on how merger specificity of public interest impacts can be tested within the specific jurisdiction.[25]

Recent updates to South African legislation have put equal weighting on public interest and competition concerns relating to merger transactions. As such, the CCSA can prohibit/approve or recommend such approval/prohibition of a proposed merger based on either public interest and/or competition concerns. Mergers in declining industries are likely to be even more complex in the South African context, as these transactions tend to hinge on public interest. Defences and/or benefits that are likely to be presented by merging parties in such transactions include:

- Stabilization or improvement of a specific industry.
- Positive impacts on employment.
- Improving international competitiveness of national industries.

20 OECD. (2020), Economic analysis in merger investigations, 2020 OECD Global Forum on Competition Discussion Paper.

21 Industry Decline: Sunset Industries: Recognizing Industry Decline and Avoiding value Traps. (2024) Accessed at: https://fastercapital.com/content/Industry-Decline--Sunset-Industries--Recognizing-Industry-Decline-and-Avoiding-Value-Traps.html.

22 The merging parties in the Ostrich merger raised a defense of this nature. However, the Tribunal did not decide on the matter and instead focused on remedies to alleviate any foreclosure.

23 For guidance, see: CCSA. (2024). Revised Public interest guidelines relating to merger control. Government Gazette No. 50323, Notice No. 4544. pp21-48.

24 https://www.satorinews.com/articles/2023-11-08/independent-newspapers-implements-large-scale-retrenchment-amid-financial-strain.

25 In South Africa these include: CCSA. (2024). Revised Public interest guidelines relating to merger control. Government Gazette No. 50323, Notice No. 4544. pp21-48. BB Investment Company (Pty) Ltd and Adcock Ingram Holdings (Pty) Ltd (case:18713). Coca-cola Beverages Africa (Pty) Ltd v Competition Commission and Another (case: CCT 192/22).

A fact-based balancing exercise between public interest and competition concerns may as such be required by the CCSA in mergers in declining industries.[26]

CONCLUSION

Competition regulation in declining industries requires a delicate balancing act. Mergers in declining industries may be necessary to preserve jobs/ market segments/industries, and sustain economic activity, but they should not come at the cost of significantly reduced competition or consumer harm. Regulators need to consider the dynamic efficiencies created by consolidation, carefully separate the effects of the merger from broader industry decline, evaluate labour-market consequences, and avoid shielding inefficient firms from market forces. By integrating insights from economic theory and maintaining a facts-based approach to competition regulation, regulators can navigate the challenges posed by declining industries, fostering both economic efficiency and consumer welfare in the long run.

26 For guidance on public interest considerations see: CCSA. (2024). Revised Public interest guidelines relating to merger control. Government Gazette No. 50323, Notice No. 4544. pp21-48.

CREATING AN INCLUSIVE ECONOMY FOR WOMEN ENTREPRENEURS

By Siyabulela Makunga

The momentous G20 Presidency in 2025 occasioned the celebration of 10 years of engagement at the G20.

It also affirmed Women 20 (W20), "an official engagement group of the G20 dedicated to gender equality and women's economic empowerment, annually developing consensus-based recommendations to ensure that gender is mainstreamed and included in the G20 leaders' discussions and ultimately the Leaders' Declaration".

Women 20 South Africa was tasked with the responsibility to "consolidate data-based records of the W20 recommendations from the past 10 years, which document successes in promoting actionable policy recommendations, especially from the Global South as well as guidelines for areas for further development to support the US Presidency 2025".

While fulfilling the commission's mandate of fostering a growing, inclusive and deconcentrated economy, we need to be mindful of the vital role women play in shaping the country's economy.

In August 2024, I highlighted research projects that the commission had undertaken, such as the Women in Business (WIB) or other initiatives we have supported to gain a deeper understanding of the barriers women entrepreneurs face.

In 2025, our work has extended to participation in the Property Sector Working Groups of the Consumer Protection Forum (CPF) and the Women Economic Assembly (Wecona).

The purpose of the CPF is to facilitate greater collaboration between all regulatory authorities to ensure that consumer protection and welfare remain paramount in the work that each entity is mandated by the legislature to complete.

Wecona advocates for women's economic empowerment in core industries such as the property sector in SA.

Through WIB, the commission has participated in various Wecona initiatives aimed at advancing the entry and effective participation of women in the economy. Recently, the commission participated in a workshop organised by the Wecona Property Sector aimed at promoting gender equity, empowerment, and inclusivity within the property sector.

Under the theme Supplier Development and Market Access, the workshop explored how women-led businesses could effectively plug into procurement pipelines, navigate supplier readiness processes and access meaningful market opportunities across public and private supply chains.

Given the commission's regulatory mandate, its work in public procurement and its role in ensuring market access and effective participation in the economy, we are supporting Wecona's procurement and market access working group, which focuses on addressing procurement design challenges and the removal of structural entry barriers for women-led and small-to- medium enterprises.

We look forward to participating in this working group and believe our technical insights will be valuable to ensuring pro-competitive principles are embedded in the proposed solutions that will emanate from Wecona's working groups.

This work foregrounds the annual celebration of Women's Month, during which South Africans "celebrate women as active agents of change and social transformation. The commemoration also allows us to take stock of achievements and the challenges that remain while mobilising support for the further development of women".

As we continue to commemorate Women's Month, I look forward to sharing with readers, in my next columns, the impact of the commission's work in creating a more inclusive economy for women entrepreneurs, the ability of women-led businesses to expand across sectors, and the incredible staff complement who ensure that our work makes a difference every day.

Published by Sowetan

INTERNATIONAL RELATIONS
QUARTER 3 REPORT

By Thabelo Masithulela

INTRODUCTION

The Commission's international relations mission is to strengthen bilateral and multilateral engagements with key international partners, including BRICS nations, African jurisdictions, and the broader global competition community. We outlines the Commission's key international relations activities and achievements during the reporting period.

These activities reflect the Commission's commitment to promoting fair and competitive markets through strategic cooperation, capacity building, and active participation in international fora.

By the end of Q1, the Commission took part in several regional, continental, and global engagements, as reflected below.

KEY ACHIEVEMENTS AND ACTIVITIES IN AFRICA

AFRICAN COMPETITION FORUM (ACF)

The ACF Steering Committee Meeting was held on the sidelines of the 24th ICN Annual Conference, in Edinburg, Scotland in May. The meeting brought together representatives of ACF members to assess ongoing initiatives, align plans, and explore strategies to enhance the ACF's visibility, sustainability, and coordination.

Key discussions included updates on the ACF Work-plan, capacity-building initiatives, the 2025 ACF publication (including the Commission's contribution), and strategies for addressing funding challenges. The Commission reaffirmed its commitment to advancing the ACF's work program.

ACF Advocacy and Research Working Group Workshop 2025, Nairobi.

The Commission co-hosted the ACF Advocacy and Research Working Group Workshop 2025 in Nairobi, Kenya, from 9-10 June 2025. This workshop, held on the sidelines of the COMESA Case Handlers' Workshop, focused on critical topics such as the proposed research study on Global Commodity Trade Networks, approaches to merger review in agriculture and food markets, and regulating competition in digital markets.

The Commission played an active role, presenting on the global commodity trade networks and trade flow patterns in the agriculture and agro-processing sector and taking part as a panellist in the discussion on digital market regulation.

AFRICAN CONTINENTAL FREE TRADE AREA (AFCFTA) MEETINGS AND COMMISSION'S CONTRIBUTIONS

Tenth (10th) AfCFTA meeting of the Committee on Competition Policy

The 10th meeting of the Committee on Competition Policy took place from 15-17 May 2025 in Cape Town, South Africa. Doris Tshepe, Competition Commissioner of South Africa welcomed delegates and emphasised the role of South Africa, including those from other African authorities, in developing the AfCFTA's competition framework.

This meeting discussed the revised draft regulations on the following: thresholds for mergers and acquisitions and dominant position; powers and procedures of the AfCFTA Continental Competition Authority; composition and modalities of the functioning of the AfCFTA Competition Tribunal; and establishment of the AfCFTA Competition Network.

There was also a presentation of the technical note on the appropriate thresholds for mergers and acquisitions and market share for dominant position.7. The Commission maintained its strategic trajectory by making substantial contributions to the deliberations.

First AfCFTA meeting of the Committee of Heads of Competition Authorities

The inaugural meeting of the AfCFTA Committee of Heads of Competition Authorities took place on 19 May 2025 in Cape Town, South Africa. Commissioner Tshepe delivered welcoming remarks, highlighting the importance of forging an integrated and competitive African market at the meeting. The Commission stressed the collective responsibility to build a robust continental competition framework and establish the AfCFTA Competition Authority and Tribunal on firm foundations.

Deputy Commissioner Hardin Ratshisusu also took part in discussions on competition regulation in African digital markets, contributing under the topic: "The state of play in regard to competition and its drivers in Africa's digital economy".

Signalling the potential focus of the AfCFTA Heads of Competition Authorities, the Commission highlighted that the AfCFTA Competition Protocol must become the AfCFTA Competition Policy Committee's platform to catch up, building pan-African capacity, driving coherent enforcement, and guiding regulatory development tailored to Africa's digital economy.

The Commission also assisted in the form of logistical support and facilitation, amongst others.

Bilateral discussions: South Africa and Angola

Following the Memorandum of Understanding (MoU) signed in September 2024 between the Commission and the Angolan Competition Regulatory Authority (ARC), several immediate and medium-term activities have been implemented.

Immediate remote activities include technical meetings on the Canal+ and Multichoice merger, a technical exchange on market study methodologies, a presentation on the Commission's antitrust investigation training program, and a meeting on advocacy techniques.

Medium-term in-person activities include Angola's participation as a speaker at the joint Annual Conference on Competition Law, Economics and Policy of the Commission and the Competition Tribunal of South Africa, a high-level technical mission from ARC to the Commission, and the deployment of the Commission's expert for training and capacity-building in Angola.

This work is currently underway between the two authorities.

Egyptian Competition Authority Annual Conference

In April 2025, the Commission was invited to the Egyptian Competition Authority's 20th anniversary conference. Deputy Commissioner Ratshisusu represented the Commission.

and took part in a plenary session titled "Bridging law and policy: how courts and parliament drive effective competition enforcement".

Zimbabwe IT benchmarking exercise

In April 2025, the Commission received a formal request from the Competition and Tariff Commission of Zimbabwe seeking technical guidance on the procurement and implementation of an Electronic Document Management System. The request, which reflects the ongoing cooperation between the two authorities and seeks to draw on the Commission's implementation experience, was referred to the relevant internal stakeholders for consideration and engagement

Namibia's request

In June, the Commission received an invitation to the 10th African Competition & Economic Regulation ("ACER") Week scheduled to take place 29 September - 3 October 2025 in Windhoek, Namibia.

The Namibian Competition Commission and the University of Johannesburg's Centre for Competition, Regulation and Economic Development will host the 10th ACER Week.

This will be an essential platform for competition authorities, regulators and practitioners to share knowledge, keep abreast of key developments across the region, and build networks for collaboration between agencies. The week combines two targeted Professional Training Programmes, which run concurrently from 29 September to 1 October 2025, and the conference on 2 & 3 October 2025.

The Commission annually takes part in the ACER activities.

KEY ACHIEVEMENTS AND ACTIVITIES GLOBALLY

BRICS ENGAGEMENTS

BRICS joint market inquiry in global grain value chains (GGVC) survey submission17. In February 2025, the Commission contributed to the BRICS GGVC survey designed by the BRICS Competition Law and Policy Centre. This survey aims to assess competition in the GGVC and its effects on BRICS countries, collecting crucial data for a joint sector inquiry.

South Africa's contributions detailed its grain export/import channels, reliance on the South African Grain Information System (SAGIS) and experiences with merger reviews in GGVC (e.g., Afgri Operations, Louis Dreyfus). 7.2 XIII St.

St. Petersburg International Legal Forum and the BRICS Working Group Meeting: Focus on Artificial Intelligence ("AI")18.

In April 2025, the Federal Antimonopoly Service of Russia invited the Commission to take part in the XIII St. Petersburg International Legal Forum, held in commemoration of 35 years of competition law enforcement in Russia. Deputy Commissioner Ratshisusu represented the Commission at the BRICS Working Group session on competition issues in digital markets, which focused on the implications of AI for competition in BRICS economies.

The Commission highlighted the challenges competition authorities face in keeping pace with rapid AI developments, noting persistent unresolved issues relating to big data and digital markets. The Commission also emphasised the Commission's current focus on the disruptive impact of AI on traditional media, particularly the uncompensated use of media content to train AI models.

Drawing from the Commission's Online Intermediation Platforms Market Inquiry and the Media and Digital Platforms Market Inquiry, the Commission outlined recent recommendations targeting major tech firms, including Google, to ensure regulatory oversight of AI-related transactions. The Commission further called on the BRICS Competition Law and Policy Centre to play aa significant rolein coordinating a collective approach to AI regulation, including potential legislative reforms and collaborative market studies.

INTERNATIONAL COMPETITION NETWORK (ICN) ICN ANNUAL CONFERENCE 2025

The 24th ICN Annual Conference was held in Edinburgh, Scotland, from 7-9 May 2025. Commissioner Tshepe led the Commission's delegation, presenting in two plenary sessions: "The role of competition in driving productivity, innovation and growth" and "New antitrust powers and tools in a fast-changing world". Commissioner Tshepe also led a special ICN Steering Committee project on food value chains. Acting Deputy Commissioner and Chief Economist, Mr James Hodge, presented on global market power in food and agriculture.

The Commission also engaged in many bilateral meetings, including with the Competition Authority of Kenya and the EU-DG Comp. In addition, the Commission won the 2025 ICN-WBG Competition Advocacy Contest Award on Automotives guidelines. This honour is in the Best Soft Laws & Studies category for Africa & Middle East.

ICN Steering Group meetings (May and June 2025)

The ICN Steering Group held significant meetings in May and June 2025. On 9 May 2025, in Edinburgh (Scotland), the agenda and feedback on the Annual Conference were approved, and the host for the 2026 UCWG Workshop was recommended.

A subsequent meeting on 18 June 2025, in Paris, focused on follow-up from the Annual Conference, publication of the new Operational Framework, approval of the framework for competition merger analysis, launch of the Vice Chair selection process, and updates on the 2026 Annual Conference planning in Manila.

As a founding member of the ICN and a current member of the ICN Steering Committee, the Commission plays a strategic role in guiding the ICN's direction and initiatives. Discussions with ICN Working Group Co-Chairs explored the extent and modalities of Non-Governmental Advisor (NGA) engagement. The dialogue covered variations in involvement across project types, engagement protocols, and criteria for agency-only projects and observed long-term trends in NGA participation.

The importance of collecting statistical data on NGA contributions was also highlighted.

ICN Chief and Senior Economist Workshop 202524.

The ICN Chief and Senior Economist Workshop 2025 took place from 23-25 April 2025, in Budapest, Hungary. The Commission's Economic Research Bureau was selected to present in the session "Public interest and fairness tests". Jason Aproskie represented the Commission.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

The Commission made a significant contribution to the OECD Working Party No. 3 on Co-operation and Enforcement in June 2025, specifically for the Roundtable on "Efficiencies in Merger Control". The Commission's submission detailed how efficiencies and public interest considerations are assessed in South African merger control under the Competition Act. It explained that efficiency justifications are considered only after a substantial prevention or lessening of competition is found, with the burden on merging parties to demonstrate merger-specific and outweighing gains.

The submission highlighted that, in practice, efficiency justifications rarely lead to the approval of anticompetitive mergers, often due to strict legal standards and difficulties in verifying "real" efficiencies, but the Commission often approves mergers with remedies to address competition concerns while allowing potential efficiency gains.

It also emphasised that public interest factors are assessed separately and can justify a merger even without competition concerns, though no anticompetitive merger has been approved solely on substantial public interest grounds due to the significant and potentially permanent risks involved.

Raksha Darji presented the submissions virtually before the OECD.D.

OTHER ENGAGEMENTS

MOU ON COMPETITION COOPERATION WITH CHINA

During the period under review, the Commission finalised a memorandum of understanding on competition cooperation with the State Administration for Market Regulation of the People's Republic of China. The MoU aims to promote understanding and cooperation in competition, covering information exchange, technical cooperation (i.e., training, workshops, research), notification of enforcement actions with material effect on the other party, and coordination in mutually related cases.

The MoU, while non-binding, establishes clear contact points and confidentiality protocols to facilitate effective bilateral relations. The MoU will be signed on the sidelines of the G20 Summit scheduled to take place in Johannesburg, South Africa.

GCR RATING SURVEY.

The Commission contributed to the GCR Rating Enforcement 2025 questionnaire, reinforcing its commitment to rigorous competition enforcement. The survey, conducted via a secure in-house tool, ensures data confidentiality and robust access control. The Commission's participation reflects its transparency and standing as a significant antitrust agency.

OECD PEER REVIEW OF KENYA'S COMPETITION AND CONSUMER WELFARE ENFORCEMENT FRAMEWORK

On 4 June 2025, Commissioner Tshepe participated in a virtual meeting as part of the OECD Secretariat's fact-finding mission to peer review Kenya's competition and consumer wwelfare enforcement framework. This engagement allowed the Commission to share insights on the efficacy of Kenya's competition framework, its interactions with the Competition Authority of Kenya (CAK), and broader efforts to enhance competition culture in the region, highlighting the Commission's valuable role in regional competition development.

The first quarter of FY2025/2026 demonstrates the Commisio continued progress in advancing its strategic international objectives. As it gears up for the second quarter of the current FY, the Commission continues to strengthen bilateral and multilateral relations through active participation in BRICS forums, key ICN activities, and significant engagements with African competition bodies like the ACF and AfCFTA.

The finalisation of the MoU with SAMR and contributions to peer reviews further demonstrate a proactive approach to global competition policy. These efforts collectively reinforce the Commission's leadership in fostering fair and competitive markets regionally and globally.

COMPETITION POLICY CAN ADDRESS ADVERSE AI IMPACT, HERE'S HOW

By Donnavan Linley

As digital markets continue to expand and artificial intelligence (AI) evolves, governments and regulators alike need to remain agile when it comes to governance and public strategies in AI. I recently represented the Competition Commission during a panel discussion on AI governance and economic inclusion at a pre-Brics summit in Rio de Janeiro where I explained how competition policy can be an important tool that when effectively applied can regulate adverse effects from the operation of AI and big tech within our respective nation states.

My presentation to the panel highlighted three major points central to effective regulation and opportunity creation within the evolving landscape of AI. First, market inquiries are a regulatory or competition policy tool that can address AI's impact on markets and consumers. With AI and AI-embedded digital platforms in constant evolution, market inquiries provide a flexible, evidence-led mechanism that involves stakeholders in seeking practical solutions. This approach supports the design of remedies that mitigate the adverse effects AI might introduce, without constraining the innovation and benefits that AI products and services may offer.

Securing data sovereignty was one of the summit's key discussion points as delegates also unpacked issues around access to data. In addition, I pointed out that access to data especially in training AI models such as large language models ("LLMs") are necessary as it embodies economies of scope and scale for data usage. This creates high barriers to expansion for small and medium enterprises (SMEs) and startups facing significant challenges accessing essential data that will enable them to further develop their AI models. There is now a critical need for the inclusion of South African data and data sharing in the development of LLMs as it is vital to add that local context and responsiveness to AI chatbots. If we act now as regulators, we can position competition policy to address the emerging data asymmetry between big tech platforms and local South African companies.

The third point I raised in my presentation relates to the access to AI infrastructure. We cannot deny that building digital infrastructure for AI (i.e. data centres, supercomputing, high-speed networks, etc.) is capital-intensive. In South Africa we have our own data centres (e.g. Teraco) as well as foreign-owned (for example, AWS and Microsoft). SMEs and startups often rely on cloud services provided by data centres which leads to potential higher costs and less local support. There is a growing chasm in investment in AI infrastructure by leading AI stakeholders and many other emerging countries. Competition policy can play a role where access to AI infrastructure (e.g. cloud services) must be fair, non-discriminatory and non-exploitative. Furthermore, expanding digital services and infrastructure to underserved rural/poorer areas is important for digital inclusion and regulators should determine where competition policy can support this.

In the past, regulators might not have been synonymous with agility and collaboration. Through market inquiries, in particular, the Competition Commission has proven that it is agile and open to working with firms and industry stakeholders to find solutions that address competition concerns, create opportunities for SMEs, and balance the rights of consumers.

Published by Tech Central

M&A QUARTERLY

PERFORMANCE REPORT: QUARTER 4

**Contributors: Grashum Mutizwa, Alistair Dey-Van Heerden, Noojehan Khaki, Tshehla Mathe, Reabetswe Molotsi, Mishka Abdool Sattar and Phillipine Mpane*

OVERVIEW OF QUARTER 4 (Q4)

In Q4 of 2024/2025, 59 mergers were notified and 83 mergers were finalised. Of the total mergers finalised in Q4, 33 mergers (40%) were approved with conditions and 49 mergers (59%) were approved without conditions. In this quarter, no cases were prohibited and one case was abandoned.

Fewer mergers were notified in Q4 2024/2025 (59) compared to Q3 2024/2025 (104). The number of cases finalised in Q4 of 2024/2025 (83) was lower compared to Q3 of 2024/2025 (97).

A majority of the mergers that were notified in Q4 were intermediate mergers (44), followed by large mergers (15). This continues the trend of the Commission receiving a higher number of intermediate merger filings compared to large mergers across various quarters. There were no small mergers notified in Q4.

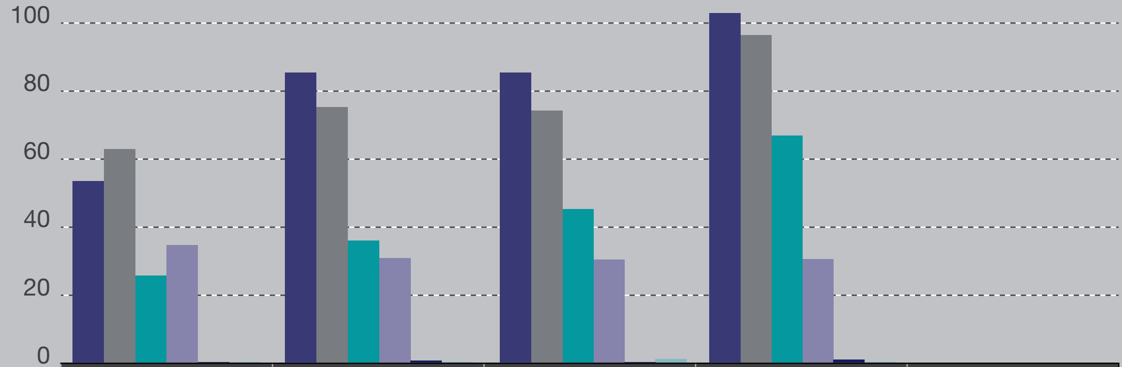
The Division met its turnaround time for Phase 2 and Phase 3 intermediate mergers in Q4. The Division did not meet its turnaround times for Phase 3 large mergers in Q4. There were no Phase 1 and Phase 3 small mergers finalised in this quarter.

Q4 STATISTICS

Figure 1 below shows the trend of cases notified, finalised/decided and abandoned/ withdrawn between Q4 of 2023/2024FY and Q4 of 2024/2025FY.

Figure 2 below shows the number of mergers by category (small, intermediate, and large) finalised during Q4 of 2024/2025.

MERGERS FILED AND FINALISED

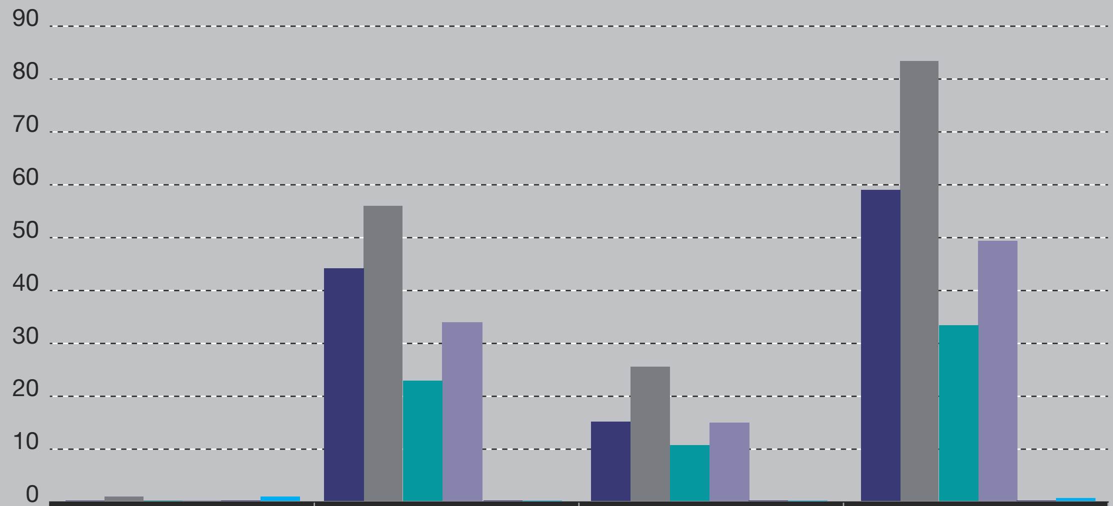


	Q4	Q1	Q2	Q3	Q4
	2023/2024	2024/2025			
Notified	54	84	83	104	
Finalised	62	75	75	97	
Approved without conditions	27	36	44	66	
Approved with conditions	35	29	30	30	
Prohibited	0	1	0	1	
Abandoned	0	9	1	0	

Figure 1: Mergers notified and finalised in the Q4 2023/2024 to Q4 2024/2025 financial years

Source: M&A's construction

MERGER CATEGORIES



	Small	Intermediate	Large	Total
	Q4 2024/25			
Notified	0	44	15	59
Finalised	1	56	26	83
Approved with conditions	0	22	11	33
Approved without conditions	0	34	15	49
Prohibitions	0	0	0	0
Abandonment	1	0	0	1

Figure 2: Cases by merger category for Q4 of 2024/25

Source: M&A's construction

Table 1 below highlights the turnaround time target for the cases finalised in Q4. The Division met its turnaround time target for Phase 2 and Phase 3 intermediate mergers in Q4. The Division did not meet its turnaround time target for Phase 3 large mergers. In this regard, three large mergers were finalised in this quarter. Two fell well below the 120 day target (57 and 51 days respectively). There were no Phase 1 and Phase 3 small mergers finalised in this quarter.

Table 1: Turnaround Times for Q4 2024/2025

	Turnaround times	Target	Outcome
Phase 1	-	20	N/A
Phase 2 Mergers	39	45	Target met
Phase 3 Intermediate Mergers (No small mergers finalised within this period)	57	60	Target met
Phase 3 Large Mergers[1]	265[2]	120 (average 120 for 90% of 5+ cases)	Target not met

Source: M&A's construction

Q4 SECTOR ANALYSIS

In terms of sector composition of mergers finalised in Q4, 29% of the cases that the Commission assessed were in the Property sector. Other sectors that have shown relatively high proportions of notifications were Manufacturing (25%), Wholesale (16%), and Finance (7%).[3]

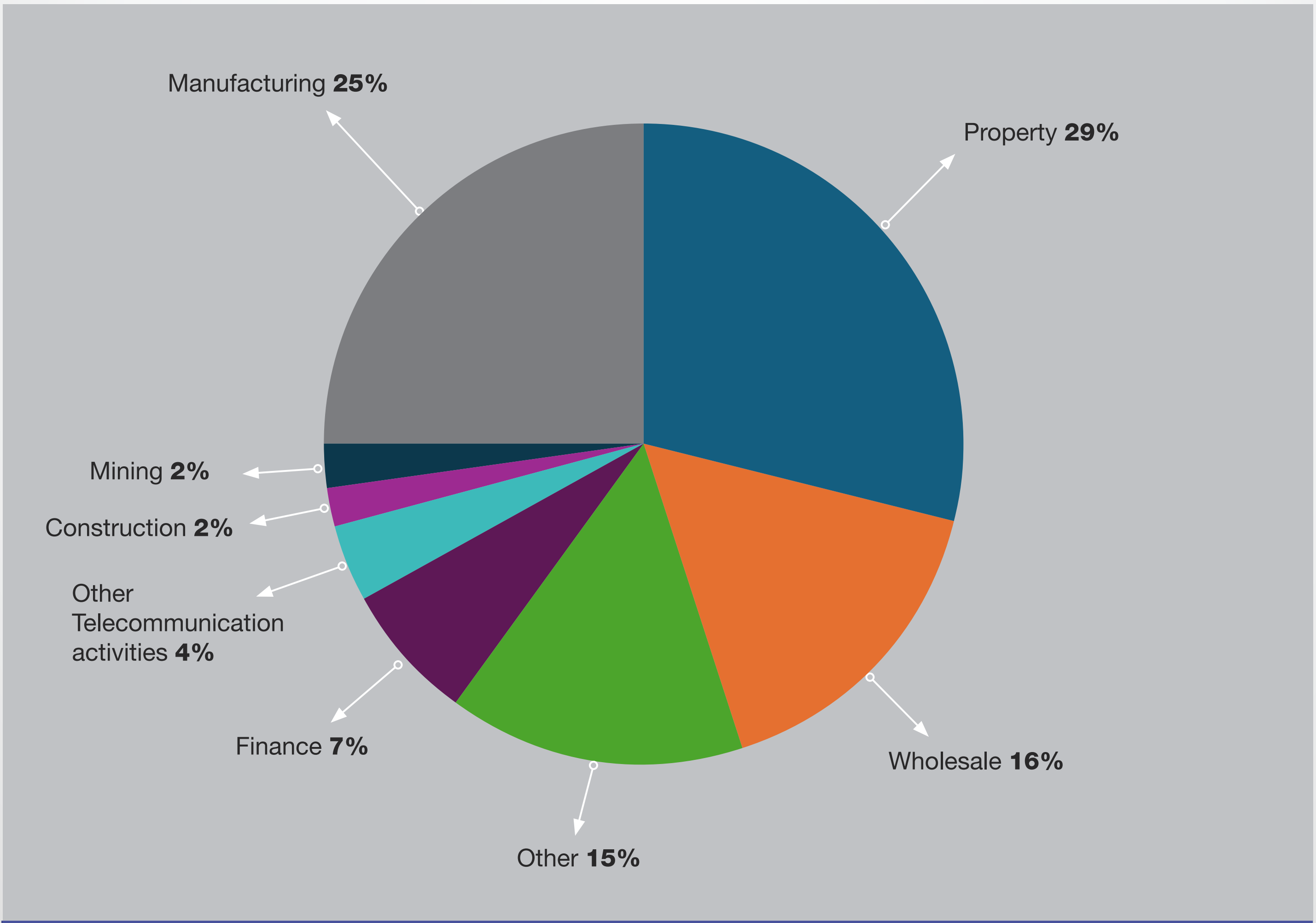


Figure 3: Sectoral analysis for Q4 of 2024/25

Source: M&A's construction

1 3 Phase 3 large mergers were finalised in Q4. 3 x 90% =2.7~3. Accordingly, no Phase 3 large merger is excluded.
2 The target was missed because of the Vumatel/Herotel merger which took 672 days to complete.
3 The "other" includes: Education (1%); Generation of electricity, Information & Communication (1%), Other business activities (1%), Other food service activities (1%), Other information service activities n.e.c (1%), Other information technology and computer service activities (1%), Writing of software and programming activities (1%), Telecommunications (1%), Entertainment (1%), and Transportation & Storage (2%).

KEY CASES IN Q4

Vumatel (Pty) Ltd (Vumatel) / Herotel Telecoms (Pty) Ltd (Herotel)

The Commission has recommended that the Competition Tribunal (Tribunal) approves the proposed transaction whereby Vumatel intends to acquire Herotel, with conditions.

The primary acquiring firm is Vumatel, a company wholly controlled by Community Investment Ventures Holdings (Pty) Ltd (CIVH). CIVH also controls several firms including Dark Fibre Africa (Pty) Limited (DFA). Vumatel, its controlling entities and its subsidiaries are hereinafter referred to as the Acquiring Group.

The Acquiring Group operates through various subsidiaries. Vumatel is a fibre network operator that provides wholesale fibre-to-the-home (FTTH) and fibre-to-the-business (FTTB) infrastructure at the last-mile level to internet service providers (ISPs). DFA largely offers wholesale metropolitan fibre to fixed network operators, mobile network operators and other downstream companies requiring access to its fibre network.

The primary target firm is Herotel and it is not controlled by any firm. Herotel operates at the national fibre infrastructure, last-mile fibre infrastructure, retail internet access services and fixed wireless access (FWA) levels of the telecommunications market.

The investigation identified 2 vertical overlaps relevant for the assessment of the proposed transaction. The 'First Vertical Overlap' is the overlap between wholesale FTTH providers (upstream) and retail FTTH providers (downstream). The 'Second Vertical Overlap' is the provision of metropolitan connectivity (upstream) to wholesale FTTH providers (downstream).

First vertical overlap

With respect to the provision of wholesale FTTH to ISPs/retail FTTH providers, the Commission notes that pre-merger, only Vumatel provides wholesale access to its FTTH network. Herotel operates on a closed-access basis and does not allow access to its fibre network to competing ISPs. However, Herotel is vertically integrated and also operates at the retail level against other independent ISPs.

The investigation was concerned that the merger may result in merger-specific anticompetitive effects in the downstream retail market if Vumatel were to change its pre-merger roll-out plans in favor of rolling out fibre in low LSM areas through Herotel instead of Vuma Reach, foreclosing downstream competitors who would otherwise have access to the Vumatel network. The Commission found that this concern can be addressed by the conditions agreed with the merger parties.

Second vertical overlap

In terms of access to metropolitan connectivity by wholesale FTTH providers, the investigation found that the merged entity would have the ability and incentive to preference Vumatel and Herotel relative to other downstream FNO rivals. In this regard, the Commission found that DFA is a supplier of metropolitan connectivity while Vumatel and Herotel are customers of DFA. Herotel procures a significant portion of its metropolitan fibre infrastructure from DFA. Herotel would also need backhaul to connect any new areas.

Since the proposed transaction would combine Herotel and Vumatel's last-mile networks, the incentive to engage in foreclosure strategies to curb competition from rival FNOs in lower LSM areas and secondary towns would be increased. However, the Commission is of the view that this can be remedied through conditions that prevent self-preferencing and ensure continued open access of the DFA network.

Ultimately, and to address the vertical concerns identified, the Acquiring Group agreed to maintain pre-merger open access and to continue to provide services on terms that are transparent and non-discriminatory. Further, Vumatel has also made public interest commitments to roll out FTTH in low-income areas.

MAKING HEADLINES

The Competition Commission South Africa

MEDIA STATEMENTS ISSUED THIS QUARTER

MEDIA STATEMENT 07 March 2

CONFERENCE HIGHLIGHTS ROLE OF BRICS COMPETITION AUTHORITIES TO CREATE MORE INCLUSIVE MULTILATERAL ECONOMIC ORDER

Media Statement
For Immediate Release
12 September 2025

CONFERENCE HIGHLIGHTS ROLE OF BRICS COMPETITION AUTHORITIES TO CREATE MOR
INCLUSIVE MULTILATERAL ECONOMIC ORDER

The 9th BRICS International Competition Conference, hosted by the Competition Commission

MEDIA STATEMENT 09 March 2022

COMPETITION CONFERENCE UNDERSCORES NEED FOR COMPETITION LAW AND REGULATION TO BE RESPONSIVE TO IMMEDIATE ECONOMIC CHALLENGES

Media Statement
For Immediate Release
10 September 2025

COMPETITION CONFERENCE UNDERSCORES NEED FOR COMPETITION
REGULATION TO BE RESPONSIVE TO IMMEDIATE

MEDIA STATEMENT

COMMISSION REACHES AGREEMENT WITH VODACOM AND MAZIV ON CONDITIONS THAT REMEDY COMPETITION AND PUBLIC INTEREST CONCERNS

Media Statement
For Immediate Release
08 July 2025

COMMISSION REACHES AGREEMENT
REMEDY COMPETITIO

The Competition Commission (Commissi
("Vodacom") and Business Venture Inve
conditions that substantially remedy the
recommendation to the Competition Tribu

MEDIA STATEMENT 13 April 2022

COMMISSION RELEASES FIRST COST OF LIVING REPORT

Media Statement
For Immediate Release
04 September 2025

COMMISSION RELEASES FIRST COST OF LIVING REPORT

its inaugural Essential Food Price
ed the prices of selected essential
ough to retail outlets. The primary
staple food items, with the aim of
ge of the value chain, and ensuring
nd retailers. The Commission has

MEDIA STATEMENT 07 March 2022

9TH BRICS CONFERENCE TO CONSIDER FIVE-YEAR AGENDA AMID GEO-POLITICAL UNCERTAINTY

Media Advisory
For Immediate Release
09 September 2025

MEDIA STATEMENT 23 Mar

19TH ANNUAL COMPETITION CONFERENCE TO CONSIDER ROLE OF COMPETITION LAW IN CURRENT ECONOMIC TIMES

Media Advisory
For Immediate Release
08 September 2025

MEDIA STATEMENT 04 May 2022

REPORT ON GRAIN TRADE TO BE RELEASED AT ACADEMIC WORKSHOP

Media Advisory
For Immediate Release
11 September 2025

MEDIA STATEMENT 13

COMMISSION WELCOMES TRIBUNAL DECISION TO CONDITIONALLY APPROVE PROPOSED CANAL+ / MULTICHOICE MERGER

Media Statement
For Immediate Release
23 July 2025

COMMISSION WELCOMES TRIBUNAL DECISION TO CONDITIONALLY APPROVE PROPOSE
CANAL+ / MULTICHOICE MERGER

The Competition Commission ("Commission") welcomes the decision by the Competition Tribu
("Tribunal") conditionally approving the proposed merger between Groupe Canal+ SAS ("Canal+") a
MultiChoice Group Limited ("MCG"). The Tribunal's order handed down yesterday, 22 July 2025, follo
the Commission's recommendation on 20 May 2025, that the proposed merger be approved subject to
public interest conditions, and a recent hearing in which the Commission, the merger parties and various

MEDIA STATEMENT 07 March 2022

WESBANK AND TOYOTA FINANCIAL SERVICES AGREED TO SETTLE WITH THE COMMISSION AND PAY R30 MILLION

Media Statement
For Immediate Release
27 August 2025

WESBANK AND TOYOTA FINANCIAL SERVICES AGREED TO SETTLE WITH THE COMMISSION AND PAY R30 MILLION

The Competition Commission ("Commission") welcomes the Competition Tribunal's ("Tribunal") confirmation of the settlement agreement concluded between the Commission and WesBank, a division of FirstRand Bank ("WesBank"), Toyota Financial Services South Africa ("TFSSA"), Toyota Motor Corporation ("TMC"), Toyota Financial Services UK PLC ("TFSUK"), and Toyota South Africa Motors (Pty) Ltd ("TSA") ("the Respondents"). In terms of the settlement agreement, the Respondents will pay an administrative penalty of R30 000 000 (thirty million Rand) without admission of liability.

Read more on our website: www.compcom.co.za

QUARTER 4 ORGANISATIONAL PERFORMANCE OVERVIEW

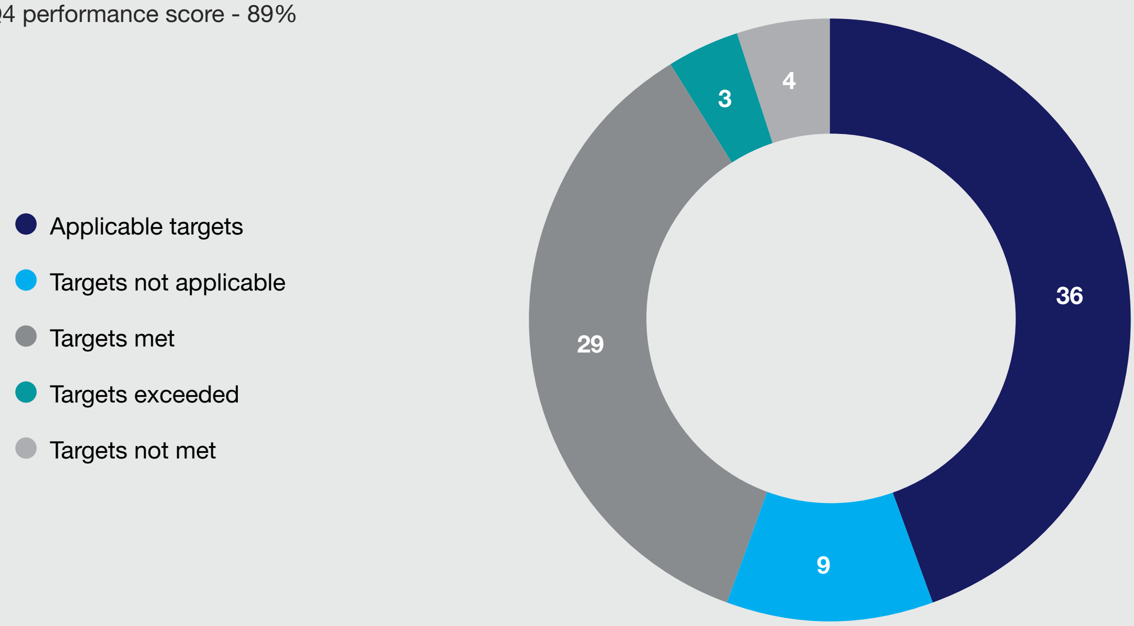
By Nokuthula Mosoeu

INTRODUCTION

The Commission has a total of forty-five (45) performance targets in the revised 2024/25 Annual Performance Plan. Of the forty-five (45) performance targets, thirty-six (36) targets were applicable and nine (9) targets were not applicable in Q4. The Commission met twenty-nine (29) targets, exceeded three (3) targets and did not meet four (4) targets. Therefore, the Commission obtains a performance score of 89% against its Q4 applicable targets.

Total Performance Targets	Applicable Targets (Q4)	Not Applicable Targets (Q4)	Targets Met	Targets Exceeded	Targets Not Met	Performance Score (Q4)
45	36	9	29	3	4	89%

Figure 1: Q4 performance score - 89%



EXECUTIVE HIGHLIGHTS

The Commission continued to maintain high levels of enforcement activity during the quarter under review.

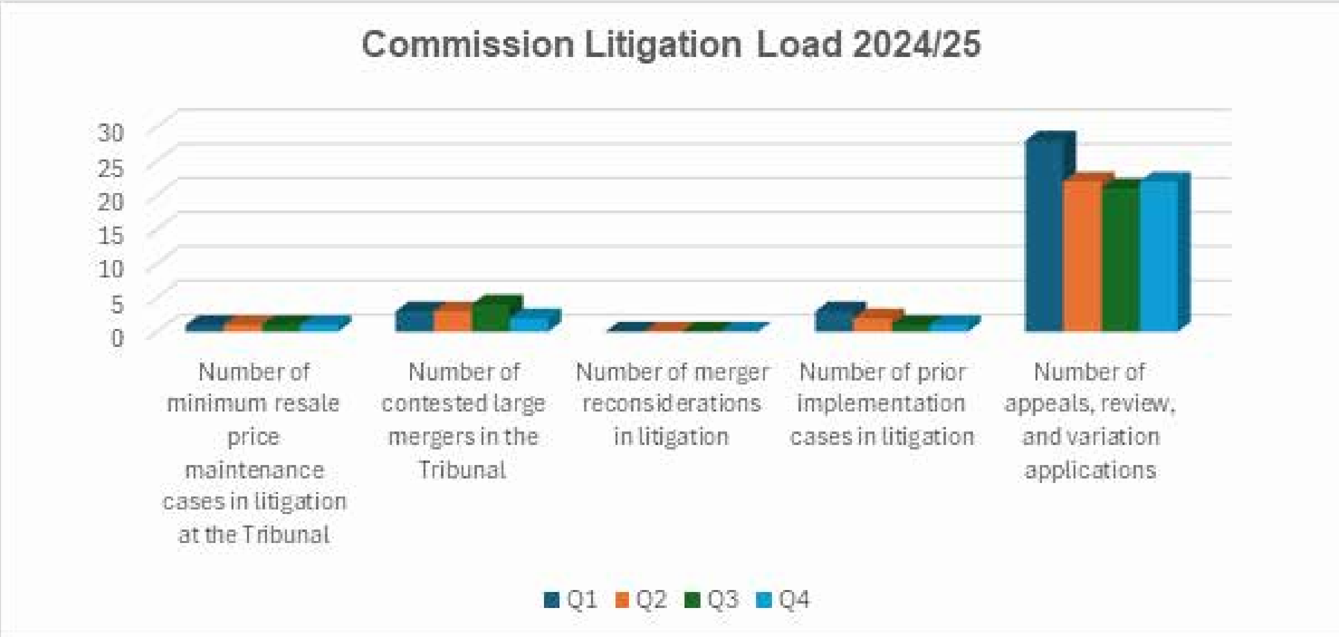
Litigation

At the end of the quarter, the Commission had a total of hundred and nine (109) cases at various stages of litigation in the Competition Tribunal (Tribunal) and the courts. Ninety-one (91) of these are cartels cases, eleven (11) abuse of dominant cases, one (1) minimum resale price maintenance case, two (2) contested mergers, one (1) is prior a implementation case and twenty-two (22) are appeals, review, and variation application. There were no reconsidered cases in this quarter.

Table 2: Commission's Litigation Load 2024/25

Cases	Q1	Q2	Q3	Q4
Number of cartel cases in litigation at the Tribunal and the courts	75	70	71	91
Number of abuse of dominance cases in litigation at the Tribunal and the courts	15	15	13	11
Number of minimum resale price maintenance cases in litigation at the Tribunal	1	1	1	1
Number of contested large mergers in the Tribunal	3	3	4	2
Number of merger reconsiderations in litigation	0	0	0	0
Number of prior implementation cases in litigation	3	2	1	1
Number of appeals, review, and variation applications	28	22	21	22
Total cases	**125**	**113**	**110**	**109**

Figure 2: Commission Litigation Load 2024/25



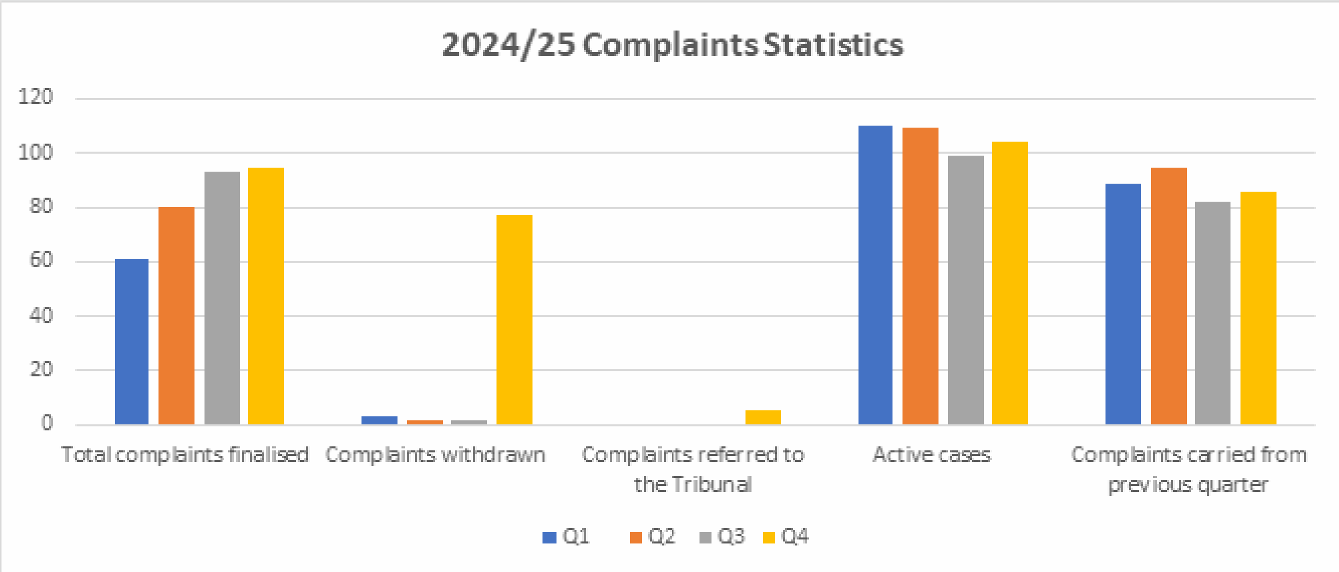
COMPLAINTS

The Commission received a total of eighty-seven (87) complaints and finalised ninety-three (93) complaints in Q3. Of the ninety-three (93) complaints finalised, eighty-four (84) of these complaints were non-referred, two (2) were withdrawn. The Commission's divisions will undertake full investigations into seven (7) complaints which were screened during the quarter. Of these complaints, two (2) were referred to the Market Conduct Division and five (5) were referred to the Cartels Division for further investigation.

Table 3: Complaints Statistics in 2024/25

Screening Activity	Q1	Q2	Q3	Q4
Total complaints received	82	73	87	93
Total complaints finalised	61	80	93	95
Complaints non-referred	48	68	84	77
Complaints withdrawn	3	2	2	5
Complaints referred to the Tribunal	0	0	0	0
Active cases	110	109	99	104
Complaints carried from previous quarter	89	95	82	86

Figure 2: Commission Litigation Load 2024/25



LEGAL PROCEEDINGS AND REGULATORY ACTIONS

The Commission vs Takata South Africa (SA)

In January 2025, the CAC handed down a ruling in which an appeal and review lodged by Takata SA against the decision of the Competition Tribunal (Tribunal) was dismissed with costs. The decision relates to the referral by the Commission against Takata Corporation (Takata Corp) and its erstwhile South African subsidiary, Takata SA, to the Tribunal for prosecution on 21 instances of collusive conduct that involved price fixing, market division and collusive tendering in June 2018. Takata SA subsequently excepted to all 21 instances on the grounds that each instance failed to disclose a cause of action. The CAC judgment effectively paves the way for the case against Takata to be heard on merits by the Tribunal.

Commission vs DH Brothers Industries (Pty) Ltd T/A Willowton

On 17 February 2025, the Tribunal confirmed the settlement agreement concluded between the Commission and DH Brothers Industries (Pty) Ltd trading as Willowton Group. This settlement agreement concludes nine years of litigation between the Commission and the Willowton Group over allegations of price fixing in respect of edible oils and baking fats as from 2007. These allegations are in contravention of section 4(1)(b)(i) of the Competition Act. The Willowton Group agreed to settle the complaint with the Commission without admission of liability and agreed to pay an administrative fee of R1 000 000 (one million rand) and made public interest commitments amounting to R100 000 000 (one hundred million rand) over a period of five years which includes a bursary fund of R20 000 000 (twenty million rand) over the same period. The bursary is intended for tertiary education students who are historically disadvantaged persons (HDPs) from underprivileged schools. At least 60% of the bursary recipients must be female students. The Willowton Group will, within 90 days from the settlement date, advertise in a national newspaper and / or electronic media as well as social media platforms the details of the bursary fund inviting applicants to submit applications within 30 days. In addition, the Willowton Group will make donations of food products and groceries to registered non-governmental and non-profit organisations that cater for HDPs to the amount of R30 000 000 (thirty million rand) over a five-year period. Non-governmental and non-profit organisations will be able to find information on how to submit applications for the donation in a national newspaper, electronic media or social media platform within 30 days from the 17 February 2025. Additionally, the Willowton Group has committed to procure products and services to the amount of R50 000 000 (fifty million rand) from Level 1 B-BBEE service providers over the five-year period. Further, Willowton Group will withdraw its review application in the North Gauteng High Court with each party bearing its legal costs. This consent agreement concludes all proceedings between the Commission and the Willowton Group in relation to the conduct on the supply of edible oils, including baking fats and margarine in South Africa.

Draft healthcare interim block exemptions

During the period under review, the draft Interim Block Exemption for Tariffs Determination in the Healthcare Sector, 2025 (draft block exemption) were published by the Minister of Trade, Industry and Competition (the Minister of the dtic). The draft block exemption was gazetted on 14 February 2025 and is available on the Commission website za-government-gazette-dated-2025-02-14-no-52111.pdf. Stakeholders and interested persons were invited to submit written comments to the dtic, on the proposed draft block exemption within a period of 30 business days from the date of publication of the draft block exemption. A block exemption is a legislative tool aimed at facilitating and enabling coordination or cooperation in an industry or sector that would otherwise constitute a contravention of the Competition Act for public interest purposes. The purpose of the draft block exemption is to contribute to affordability of quality healthcare services, the reduction of costs and the prevention of over-utilisation of healthcare services. The draft block exemption exempts the following three categories of agreements or practices in respect of both prescribed and non-prescribed minimum benefits in the healthcare sector: a) the collective determination of healthcare services tariffs; b) the collective determination of standardised diagnosis, procedure, medical device, and treatment codes; c) and the collective determination of quality measurements/ metrics, medicines formularies, and treatment protocols/ guidelines. The draft block exemption is consistent with the recommendations made by the 2019 Health Market Inquiry (HMI) chaired by former Chief Justice Sandile Ngcobo. The HMI, among others, recommended the establishment of a multilateral negotiating framework to facilitate collective tariff determination. The block exemption will last for a period of three years, which can be extended by the Minister of the dtic after consultation with the Minister of Health and the Commission.

Advisory Opinion Update

On 6 December 2025, the Minister of the dtic published in the government gazette the Regulations on Non-Binding Advisory Opinions. As a result, the Commission is now again offering advisory opinions in accordance with section 21 (1)(gE), read with section 79A of the Competition Act and the Regulations of Non-binding Advisory Opinions. An Advisory Opinion is a written opinion of the Commission's position in respect of a set of facts submitted by external parties. Its aim is to assist in interpreting provisions of the Competition Act and to provide business with guidance on the position that the Commission is likely to take in respect of certain transactions, agreements or practices. An advisory opinion is not binding on the Commission, the Tribunal or Competition Appeal Court. The fees are as follows: for Medium Enterprises: R24 000 and for Other Firms: R60 000. A request for an advisory opinion can be directed to the Commission's Registry at: ccsa@compcom.co.za.

MARKET INQUIRIES AND REGULATORY INITIATIVES/ INTERVENTIONS

Final report on the Fresh Produce Market Inquiry

The Fresh Produce Market Inquiry (FPMI) final report was released on 13 January 2025 and marks the conclusion of the FPMI since commencement on 31 March 2023. The final report can be accessed on this link CC_FPMI-Final-Non-Confidential-Report-2025.pdf. This achievement represents 21 months of thorough analysis and significant stakeholder involvement, aimed at comprehensively understanding the competitive landscape of South Africa's fresh produce market. The Commission initiated the FPMI under the provisions of the Competition Act with an aim to examine structural features and practices within the fresh produce market that could impede, distort, or restrict competition in the fresh produce sector. The FPMI focused on five fruits: apples, citrus (specifically oranges and soft citrus), bananas, pears, and table grapes and six vegetables: potatoes, onions, carrots, cabbage, tomatoes, and spinach. These products are vital to every household in South Africa. The FPMI has identified several barriers to competition within the fresh produce value chain. These include issues at national fresh produce markets, the influence of market agents, high input costs (especially for certain fertilisers and seeds), regulatory obstacles, and systemic barriers preventing small-scale, emerging, and historically disadvantaged farmers from entering the market. The FPMI also emphasised the limited access these farmers have to formal retail channels and national fresh produce markets, highlighting concerns about the slow pace of transformation within the sector. Recognising the challenges and competitive distortions in the fresh produce market, the FPMI has proposed 31 practical and reasonable remedial actions and recommendations. These measures aim to enhance competition, foster inclusion, reduce barriers to entry, and create a more inclusive and competitive fresh produce market. The recommendations encompass policy reforms, market restructuring, and targeted support for small-scale, emerging, and historically disadvantaged farmers.

Essential Food Pricing Monitoring Report

The Commission released the latest edition of the Essential Food Pricing Monitoring (EFPM) Report on 27 March 2025. This is the Commission's continued effort of tracking food prices throughout the value chains of sunflower oil, brown bread, eggs, canned pilchards, maize meal and individually quick frozen (IQF) chicken. This continuous essential food price monitoring efforts support transparency regarding the margins earned by producers and retailers of products. The Commission has observed that some of the prices of the food tracked started falling although modestly. Nevertheless, monitoring remains necessary to ensure that as costs decline upstream, those are passed through quickly and proportionately to retailers and subsequently to consumers.

ENGAGEMENT WITH STAKEHOLDERS AND PROMOTION OF COMPETITION COMPLIANCE

Research study to understand entrepreneurial landscape for people living with disabilities in South Africa

The Commission launched a research study to explore the entrepreneurial opportunities available for people living with disabilities, the challenges they face, and the mechanisms and strategies required to support their entry and participation in the economy. As part of the study, the Commission on 31 January 2025 invited people living with disabilities, advocacy groups, business owners, and the relevant stakeholders to complete a survey. The survey aimed to gather valuable insights that will shape strategic policy interventions to achieve a more inclusive and competitive economy. The survey was made available online and closed on 10 February 2025. Responses are treated anonymously and the data collected and documented in compliance with the Protection of Personal Information Act, ensuring confidentiality and security.

World Consumer Rights Day commemoration

The National Consumer Commission (NCC) in partnership with the Commission, the Mpumalanga Department of Economic Development and Tourism, and various regulatory bodies, under the umbrella of the Consumer Protection Forum (CPF), commemorated World Consumer Rights Day (WCRD 2025) in the Mpumalanga Province. World Consumer Rights Day serves as a global reminder that consumer rights are not just policies on paper but essential pillars of a just and ethical society. This year's commemorative activities themed ***"Empowering Consumers—Balancing Rights with Ethical Business Practices"***, prioritised on-the-ground engagement with businesses and consumers alike providing an invaluable opportunity to share information about the work of the NCC, the Commission, and other CPF regulatory bodies. The Commission used the platform to dispel misconceptions about what a regulator does, transfer knowledge around ethical business practices, answer questions such as how to report suspected anti-competitive conduct and shed light on the competition concerns and safety in the food value chain. Another highlight was the relaunch of the Mpumalanga Provincial Consumer Court, the eighth in the country. This court will provide access to effective redress for consumers in the province. For consumers in Mpumalanga, this court is essential in ensuring a quick resolution to consumer complaints and the enforcement of consumer rights

International Relations

The Commission has made notable strides toward its strategic goals for the quarter under review, focusing on reinforcing bilateral and multilateral ties. Priority was given to building stronger relations with BRICS countries, African nations, and the wider international community. A significant part of this effort involves deepening collaboration with key global institutions such as the ACF, AfCFTA ICN, OECD and UNCTAD. These partnerships provide critical expertise and support in crafting effective international policies and promoting sustainable development. Highlighting the Commission's steadfast dedication to fostering global partnerships and active multilateral engagement.

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