COMPETITION NEWS

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Opening the economy - what the 2026 concentration tracker tells us

South Africa's economy is showing signs of becoming less concentrated, but the underlying structural picture remains stubborn: economic activity continues to be dominated by a relatively small number of large firms, while smaller businesses struggle to grow, scale and compete.

The Commission's latest Concentration Tracker provides a detailed picture of these patterns across 228 sub-sectors of the economy, drawing on data from approximately 450,000 tax-registered firms. It examines how concentration changed between 2017 and 2021, while also tracking the participation and progression of micro, small and medium enterprises (MSMEs).

The findings point to some encouraging movement. The number of highly concentrated sub-sectors

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Editorial Note

There is a difference between being present in an economy and being able to participate meaningfully in it.

That distinction runs through much of this edition of Competition News, which reflects on some of the Competition Commission's work during the first quarter of the 2026/27 financial year.

Perhaps nowhere is it clearer than in the findings of the latest Concentration Tracker. South Africa has made some progress towards deconcentration, but the structural challenge remains significant. Large firms continue to account for a disproportionate share of economic activity, while micro, small and medium enterprises, despite representing the overwhelming majority of businesses, command a relatively small share of turnover.

The numbers tell us something important. Opening the door is not enough - firms must also be able to walk through it, survive and grow.

That question of meaningful participation appears in different forms throughout this edition.

In the franchise sector, the Commission is examining whether features of the market - including bargaining power imbalances, restrictive contractual arrangements, information asymmetries and access to finance - may impede the ability of smaller businesses and historically disadvantaged persons to participate and prosper.

Our work on Employee Share Ownership Plans (ESOP) raises another dimension of inclusion. Ownership on paper is one thing - ownership that produces real economic benefit for workers is another. The Commission's impact assessment therefore considers how ESOPs are designed and financed, and whether the benefits intended for workers are ultimately realised.

The revision of merger thresholds reflects the other side of effective regulation. Competition authorities must intervene where intervention is necessary, but regulation should not impose unnecessary costs or delays where competition is unlikely to be harmed. Good regulation must therefore be both vigilant and proportionate.

That same need to adapt is evident in our enforcement work. Cartels do not always announce themselves through obvious conduct or complaints. Increasingly sophisticated markets require increasingly sophisticated detection tools. This edition explores the growing role of empirical screening, behavioural indicators and artificial intelligence in identifying conduct that may otherwise remain hidden.

Artificial intelligence also presents a much broader competition challenge. The technologies developing around us hold extraordinary potential, but they are emerging within markets already characterised by significant advantages in data, computing infrastructure, capital and scale. The question for competition authorities is not whether innovation should proceed - it must - but whether the markets developing around that innovation will remain contestable and whether developing economies will have the space to participate meaningfully.

These are not uniquely South African questions. Our international engagements during the quarter - across Africa and through global competition networks - reinforce the importance of learning from other jurisdictions while ensuring that South Africa and the continent contribute their own experiences to the evolving global competition policy debate.

Behind these policy questions is the daily work of enforcement. During the first quarter, the Commission achieved 94% of its applicable performance targets, while pursuing cartel investigations, intervening in sectors including public procurement and dairy, monitoring digital-market remedies, advancing merger-related commitments to employment and transformation, and progressing the Franchise Market Inquiry.

Taken together, these interventions tell a larger story about the role of competition policy.

Our task is not simply to count competitors or transactions. It is to understand whether markets provide genuine opportunities for entry, whether entrants can grow into effective rivals, whether workers and historically excluded South Africans participate meaningfully in economic value, and whether innovation expands opportunity rather than reinforcing existing concentrations of power.

The first quarter reminds us that these objectives require different instruments - enforcement where conduct undermines competition; market inquiries where structural features require closer examination; merger regulation where transactions may alter competitive conditions; advocacy and international cooperation where markets transcend borders; and constant adaptation as technology changes the nature of competition itself.

Ultimately, the measure of a competitive economy is not simply how many firms enter the market. It is whether those with good ideas, competitive products and the ambition to grow are given a fair opportunity to succeed.

That is the work reflected in this edition. Enjoy the reading!

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Opening the economy - what the 2026 concentration tracker tells us

By Leila Raffee, Tankiso Thibane, Hariprasad Govinda



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has declined, with some markets shifting towards moderate levels of concentration. But the broader distribution of economic activity remains highly unequal.

MSMEs account for the overwhelming majority of registered businesses and make an important contribution to employment, yet their share of turnover remains disproportionately small. Large firms, although representing only a fraction of businesses, continue to account for the overwhelming share of turnover.

The challenge, therefore, is not simply to increase the number of smaller firms entering the economy. It is to create the conditions that allow them to survive, expand and become meaningful competitors.

The 2026 Concentration Tracker helps identify where those barriers remain and where competition policy, regulation and broader government interventions can help open markets, strengthen competitive rivalry and support a more inclusive economy.

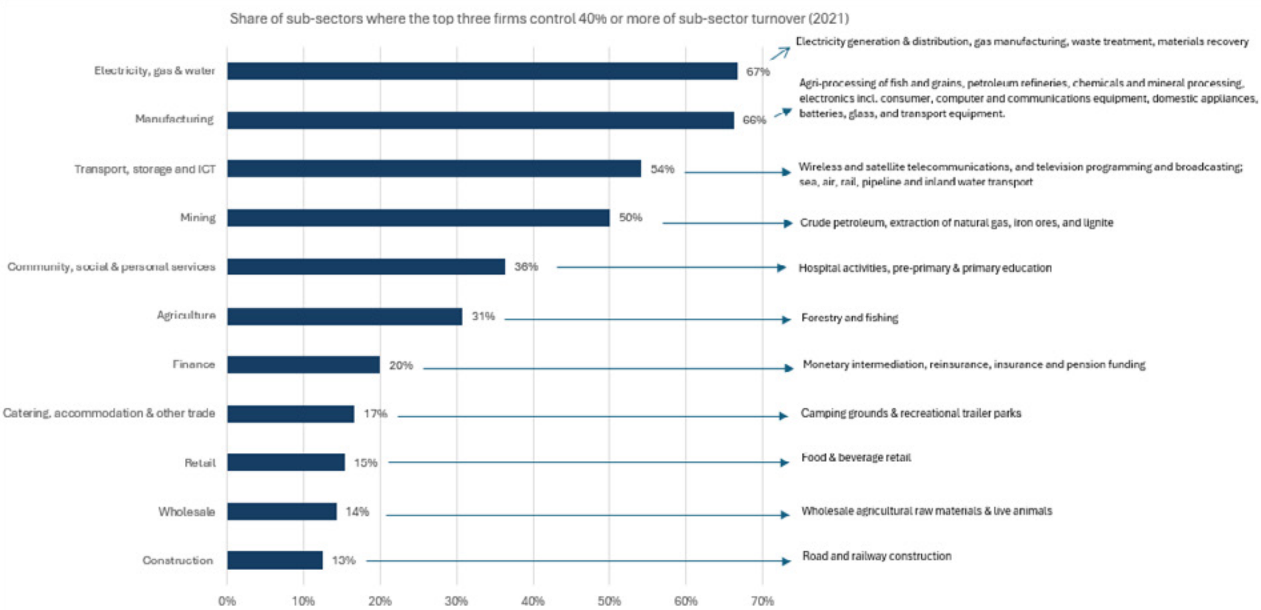
Data

The study is based on observations from 228 sub-sectors across the economy using the SARS-NT dataset from approximately 450,000 tax-registered firms for the period 2017 - 2021. The previous concentration tracker report used submissions by industry associations and the SARS-NT dataset for 2011 – 2016.

We use the 1-digit level and 3-digit level for our analysis. Each additional digit provides a deeper level of detail, allowing analysis to range from a broad level (1-digit) to the 5-digit level which are very specific activities. While the 3-digit level is more aggregated than a 5-digit level, we cannot report on industry analysis with less than 10 firms as the firms may become identifiable and so this would be excluded to preserve firm anonymity. This is more prevalent at the 5-digit level, whereas the 3-digit level allows for most sectors to be reported. It is also important to mention that the disaggregation of subsectors is not equal. Nonetheless this is a starting point for gaining insights into sub-sectors with credible data at a fairly specific level.

Concentration observations

A third to a half of the 228 sub-sectors are estimated to be highly or moderately concentrated depending on the measure.



CIT-IRP5 data (own calculations)

The number of highly-concentrated sub-sectors has reduced by approximately 5 percentage points, with 10 sub-sectors transitioning to a moderately-concentrated level. Concentration is reducing within each category (by HHI score), with around two-thirds of highly-concentrated sub-sectors and almost three-quarters of moderately-concentrated sub-sectors seeing some decline in concentration levels, albeit not enough to move down to moderate or less concentrated levels.

Most progress in de-concentration is in markets characterised by multiple competing large firms or oligopoly markets rather than where a single dominant firm exists. Dominant firms can more easily engage in exclusionary practices that prevent rivals from growing and challenging them whereas in oligopoly markets we have a few large firms capable of challenging each other to enhance competition.

The study is based on observations from 228 sub-sectors across the economy using the SARS-NT dataset from approximately 450,000 tax-registered firms for the period 2017 - 2021.

Structural concentration levels (HHIs) by sector, 2017 and 2021

Sector	2017			2021		
	High	Moderate	Less	High	Moderate	Less
Agriculture (13)	3	0	10	2	1	10
Catering, accommodation and other trade (6)	-	1	5	0	0	6
Community, social and personal services (22)	1	2	19	1	3	18
Construction (8)	0	1	7	0	1	7
Electricity, gas, and water (9)	2	2	5	1	4	4
Finance and business activities (45)	7	4	34	4	6	35
Manufacturing (71)	23	9	39	22	17	32
Mining (10)	5	1	4	4	0	6
Retail, motor trade and repair services (13)	0	0	13	0	1	12
Transport, storage and ICT (24)	8	5	11	5	5	14
Wholesale (7)	0	0	7	0	0	7

CIT-IRP5 data (own calculations)

This table shows the number of highly-concentrated, moderately-concentrated and least-concentrated sub-sectors according to each broad sector. These were classified according to HHI levels. The reduction in the number of highly-concentrated subsectors includes agriculture, electricity, finance, manufacturing, mining, transport and ICT. However, some sub-sectors with low concentration transitioned to higher levels of concentration in manufacturing, electricity, construction and retail. By 2021, manufacturing reflected the highest number of sub-sectors with high and moderately concentrated levels followed by transport and ICT, finance, and electricity.

Concentration observations at a sub-sectoral level

(1) **Agriculture:** concentration is declining across most sub-sectors; however, concentration remains high in (i) silviculture/forestry and (ii) non-wood forest products.

(2) **Manufacturing:** high & rising levels of concentration in (i) grain, (ii) fish processing, (iii) refined petroleum, and (iv) batteries/ accumulators.

(3) **Retail, motor trade and repair:** mostly low concentration; concentration in (i) non-specialised retail stores.

(4) **Construction:** low concentration; reliance on sub-contracting further lowers entry barriers.

(5) **Transport and storage:** dominated by regulated monopolies; (i) rail, (ii) pipeline and (iii) postal services show CR3 consistently above 80%.

(6) **ICT:** declining concentration; still high in (i) broadcasting and (ii) satellite telecoms.

(7) **Electricity, gas and water:** high in (i) power generation, transmission and distribution

(8) **Mining:** concentrated in capital-intensive subsectors (i) iron ore, (ii) natural gas, (iii) lignite

(9) **Community and personal services:** concentration concerns in (i) hospitals, (ii) gambling and betting, and (iii) higher education.

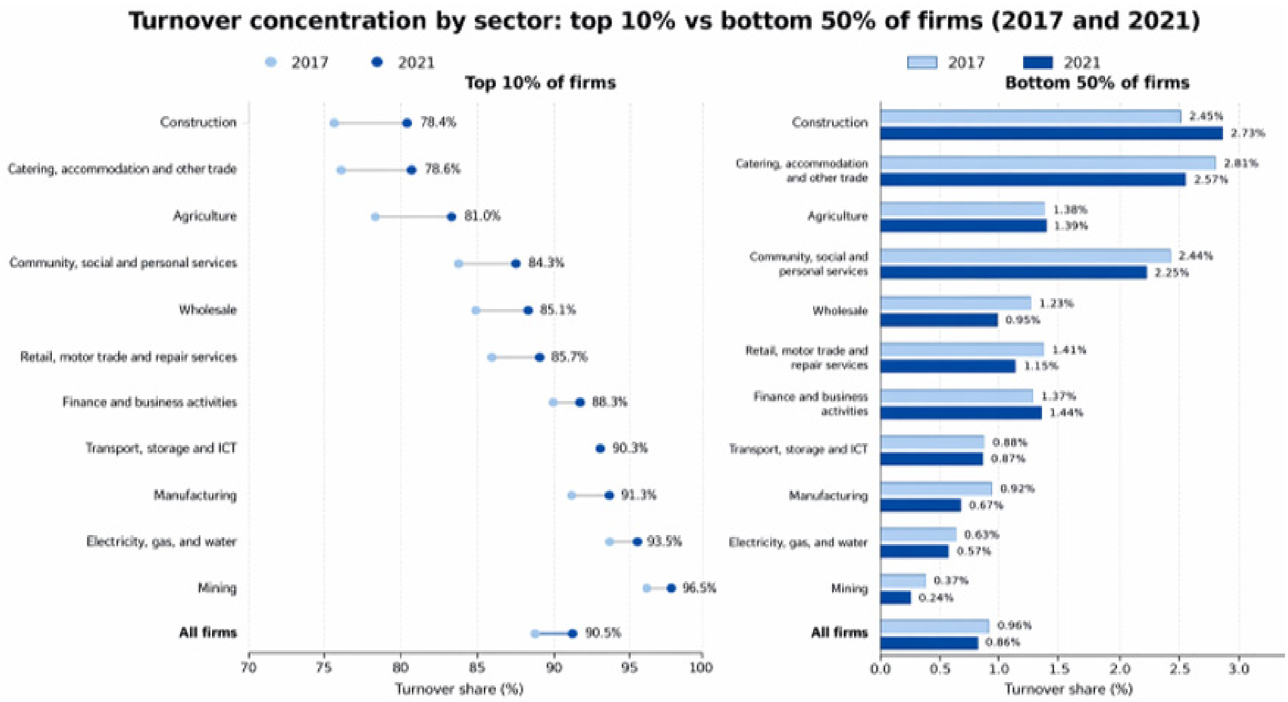
(10) **Finance and real estate,** (11) **catering/ accommodation**, (12) **wholesale:** largely less-concentrated, though finer 4- or 5-digit analysis may reveal more.

Challenges of growing participation in the economy continue

MSME participation in the economy remains low by global standards and was set back even further by the Covid-19 pandemic. Whilst MSMEs make up 97% of all tax-registered businesses, MSMEs accounted for only 22% of turnover in 2021 compared to over 50% for OECD countries. This is because 80% of all businesses are micro sized, with only 13% small and just over 4% are medium sized firms, suggesting a missing middle of medium-sized firms.

Firm size	2017		2021	
	No. of firms % share	Turnover % share	No. of firms % share	Turnover % share
Large	3%	76%	3%	78%
Medium	5%	10%	4%	9%
Small	14%	9%	13%	8%
Micro	78%	5%	80%	5%
Total	100%	100%	100%	100%

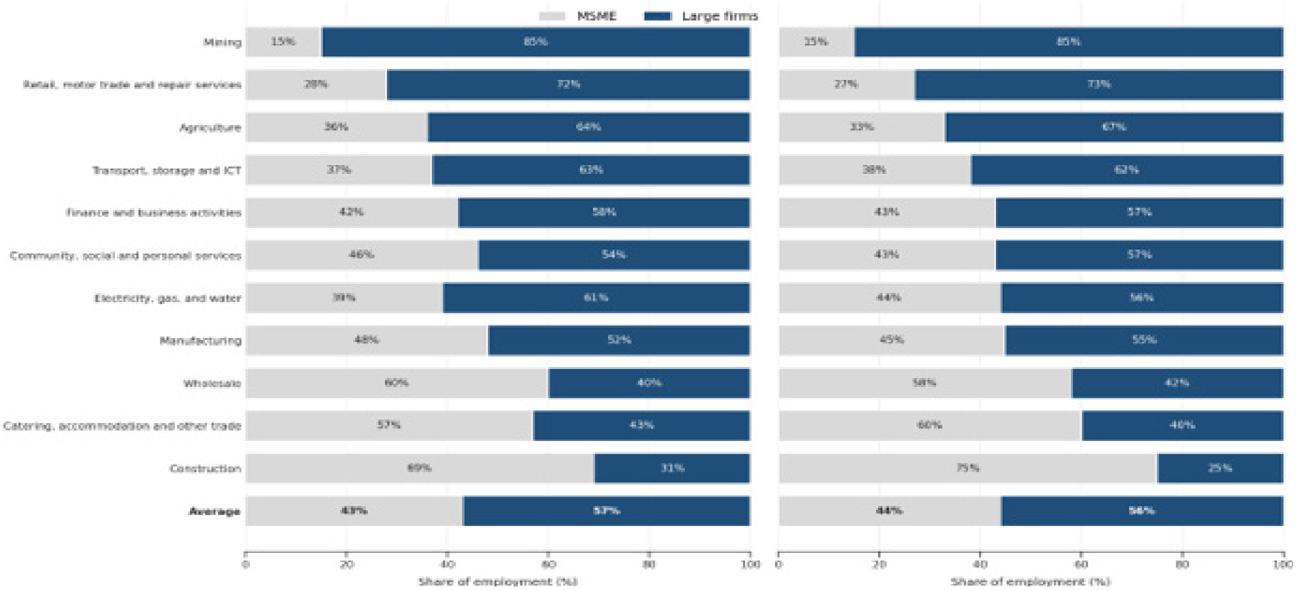
CIT-IRP5 data (own calculations)



CIT-IRP5 data (own calculations)

The sectors in the economy are largely concentrated but there are some trends towards lessening concentration. However, huge challenges remain among MSMEs and their participation in the economy. From the table, we see that MSMEs make up a huge portion in terms of number of firms but their turnover shares are below 10% and are stagnant or declining whereas large firms - although they only make up 3% of all firms - contribute 76% of turnover in 2017 and 78% of turnover in 2021.

As a result, there is a high degree of inequity in the distribution of firm turnover, and the top 10% of firms increased their share to 90% of turnover, whereas the bottom 50% of firms make up less than 1% of turnover. In these graphs, when looking at turnover by sector, the top 10% of firms contribute over 75% of turnover while the bottom 50% contribute less than 3% of turnover in each sector.



CIT-IRP5 data (own calculations)

While turnover generated remains highly unequal, when we look at employment and the distribution of the share of employment by large firms and MSMEs, it is important in this context as it shows how MSMEs contribute a lot more to employing people in the country. MSMEs account for 44% of employment and are twice as employment-intensive as large firms. MSMEs contribute the majority share to employment in construction (75%), catering and accommodation (60%) and wholesale (58%), showing that MSME presence is very significant to contributing to the SA economy and livelihoods.

Challenges of growing participation - firm entry and exit

MSME exit rates have gradually climbed and even overtook the entry rate in 2020, the first year of Covid.

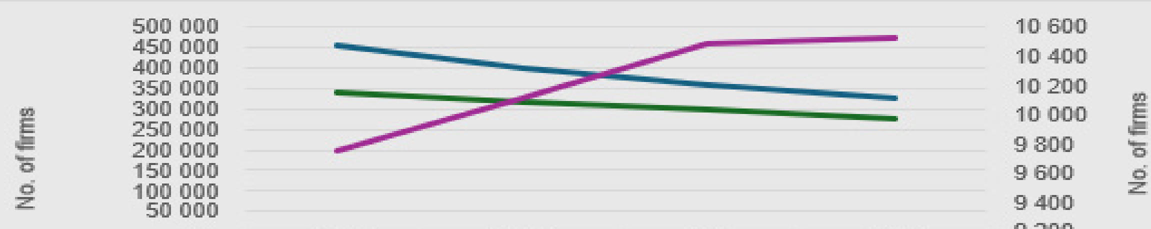
The table presents overall entry and exit rates of MSMEs and large firms over the period 2017 – 2020. SMEs have higher entry and exit rates when compared to large firms – pre-Covid and even more so during Covid (2020).

Overall entry and exit rates by firm size, 2017-2020

Year	All firms		MSMEs		Large firms	
	Entry rate	Exit rate	Entry rate	Exit rate	Entry rate	Exit rate
2017	13%	7%	13%	7%	5%	2%
2018	11%	8%	12%	8%	2%	2%
2019	11%	9%	12%	9%	2%	3%
2020	10%	12%	10%	12%	2%	3%
Average	11%	9%	12%	9%	3%	3%

CIT-IRP5 data (own calculations)

This graph below, shows the number of firms that were active in 2017 and, of these firms, how many were still present in 2018, 2019 and 2020. Of the total MSMEs in 2017, over 60 thousand of these firms (19%) had exited the market by 2020. The firm retention numbers by firm size again show that MSME retention is less likely than that of large firms.



	2017	2018	2019	2020
total_firms (left axis)	456 317	399 457	359 155	328 566
smme_firms (left axis)	341 162	316 590	298 028	277 535
large_firms (right axis)	9 752	10 109	10 488	10 520

CIT-IRP5 data (own calculations)

Transition matrix by firm size (2017-18)

		2018 Firm Category				
		Micro	Small	Medium	Large	Total
2017 Firm Category	Micro	96%	4%	0,13%	0,03%	100%
	Small	12%	81%	7%	0,38%	100%
	Medium	1%	11%	79%	9%	100%
	Large	0,34%	1%	8%	91%	100%

Transition matrix by firm size (2020-21)

		2021 Firm Category				
		Micro	Small	Medium	Large	Total
2020 Firm Category	Micro	97%	3%	0,15%	0,03%	100%
	Small	22%	72%	5%	0,34%	100%
	Medium	3%	21%	69%	7%	100%
	Large	1%	2%	13%	84%	100%

CIT-IRP5 data (own calculations)

The transition rate of small to medium and medium to large firms annually is well below the entry rate of firms into the economy. Whilst it may be easier to enter the economy, there are considerable barriers to expansion in becoming even just a small or medium firm, let alone a large one. There is stagnation in turnover by micro firms and a decline in turnover by small and medium firms, compared to increases by large firms over 2017-2021.

The first transition table shows the size of a firm across 2017 to 2018 and whether it remained the same or transitioned to another firm size. The rows on the left show the size categories of firms in 2017, and the columns on the right show their size categories in 2018. There has been a deterioration in survival rates by MSMEs, especially during the initial stages of Covid-19. During 2020-2021, there was a 12% MSME exit rate, and 22% of medium and small firms saw a reduction in size category. In comparison, large firms were more resilient in dealing with the lockdowns and economic downturn.

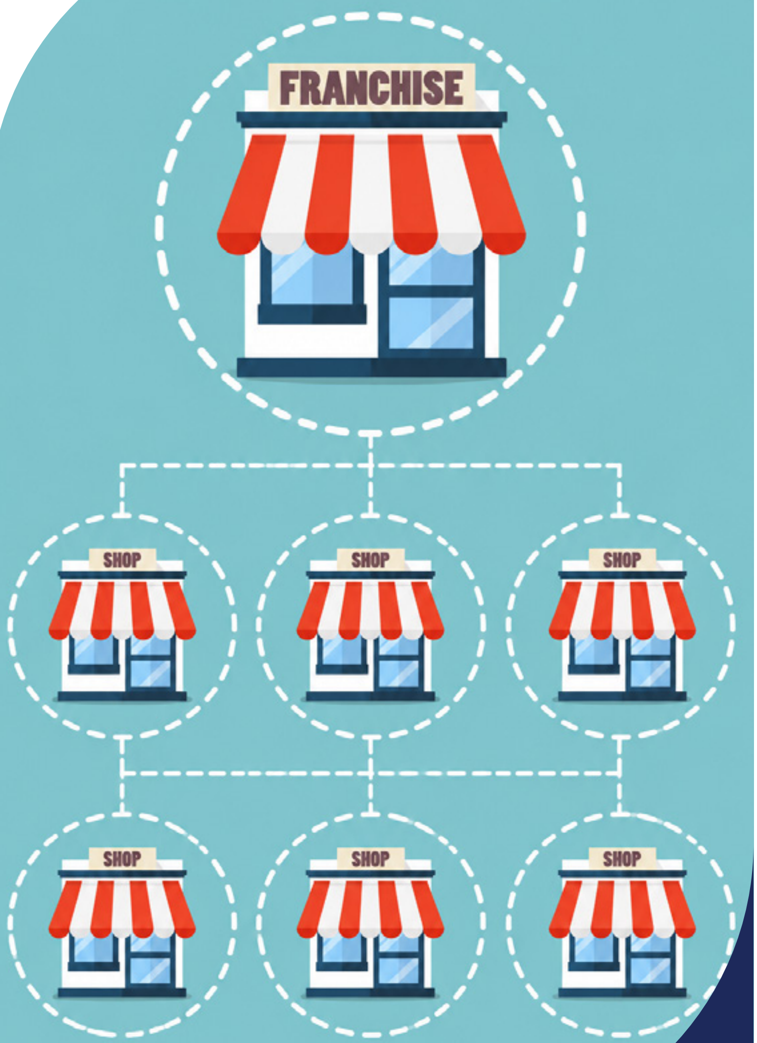
Conclusions

Findings

- Concentration remains high but there are positive de-concentration trends resulting from enforcement, digital disruption and regulatory reforms that will improve competitiveness and promote growth.
- However, broader participation remains low with MSMEs struggling to scale, threatening the inclusiveness of growth and job creation.

Lessons

- De-concentration will only arise from scaling rivals and promoting a vibrant MSME ecosystem.
- There is a need to dismantle barriers – both routes to market and regulation - that entrench incumbency and prevent challenger firms from thriving in markets.
  - Distribution channels are often hostile to MSMEs through higher fees or restricted access in preference for national chains (both online and brick and mortar rentals).
  - Overly burdensome or restrictive regulations including licensing and permits or operating standards that can perpetuate concentration and limit new entry both at a national and municipal level.
- Disruptive entry facilitated by technology and pro-competitive regulation are shown to work in reducing concentration and intensifying competition.
  - For example, a reduction in the number of highly-concentrated sub-sectors in financial services over time is a result of the entry of innovative digital alternatives – fintechs, new digital-first banks like GoTymeBank and Discovery Bank.
  - Policy and funding should support disruptive technological entrepreneurs and promote greater inclusion in new technologies and markets.
- Both government policy and competition law should have increased emphasis on scaling successful entrants as this remains the single largest bottleneck for MSME growth.
  - This means more funding and enforcement aimed at supporting medium-sized and larger challengers that have demonstrated their capabilities.
- Regulatory reforms should avoid privatizing monopolies.
  - Energy reforms have resulted in reduced concentration in energy generation whilst rail network reforms will do the same in transport – these should be monitored to ensure a healthy competitive environment.



Commission Publishes **Draft Terms of Reference for the South African Franchise Market Inquiry**

By Christopher Fisher and Thulani Nhlabathi

On 26 June 2026, the Commission published the draft Terms of Reference ("ToRs") establishing the Franchise Market Inquiry ("FMI") to probe the competitiveness of the South African franchise sector. The Commission invited interested stakeholders to make written comments on the proposed draft ToRs.

The FMI has been established in terms of section 43B(1)(a) of the Competition Act No. 89 of 1998 as amended ("the Act") as the Commission believes there may exist market features in the South African franchise sector that impede, distort, or restrict competition. Furthermore, the Commission is concerned about the lack of participation by small to medium enterprises ("SMEs") and historically disadvantaged persons ("HDPs") despite the fact that the franchising sector is considered an important entry point for SMEs and HDPs. Some of the market features that may impede, distort, or restrict competition in the franchise sectors are briefly discussed below.

i. Power imbalances, franchise agreements and restrictive practices

Complaints received by the Commission suggest potential imbalances in terms of the bargaining strength between franchisors and franchisees. Due to these bargaining power imbalances, franchisees may be subjected to unfair and non-negotiable contracting terms that affect the sustainability of their businesses. Some of these contract terms and practices include:

- Restrictive supply requirements and conditions: Clauses in franchise agreements often compel franchisees to purchase stock or products from appointed or pre-approved suppliers even for generic products and instances where cheaper alternatives exist.

- Franchisors retain supplier discounts and rebates: Franchisors often retain supplier discounts and rebates from franchisees' purchases. The failure to pass on these benefits to franchisees has the potential to undermine their viability and profitability.

- Non-negotiable pricing, promotions and corporate strategies: Franchisors impose fixed pricing or promotions (often selling stock below cost) on products sold by franchisees with complete disregard for the financial position of the franchisee and the prevailing local market conditions of the franchisee.

- Burdensome and discriminatory franchise and royalty fees: Franchisors appear to discriminate between franchisees regarding payment of franchise fees and royalties. Franchisees exempted from paying franchise fees (or reduced fees) gain a competitive advantage and are more sustainable than a franchisee required to pay franchise fees in full.

ii. Information asymmetries

To attract franchisees, franchisors often mislead prospective franchisees by providing overstated information such as the non-disclosure of franchise financial performance and corporate strategy. The practice of providing misleading or overstated information has the potential to distort competition between franchisors who compete in the sale of franchise business opportunities. Therefore, the FMI will assess the extent to which franchisors may distort the true value of franchise outlets and the potential impact of information asymmetries on SME and HDP franchisees. It will also consider whether measures could be introduced to improve transparency and support informed decision-making by prospective franchisees.

iii. Access to finance and funding

SMEs and HDPs have challenges accessing finance and the upfront capital required by credit financiers and franchisors. This upfront capital requirement or access to finance may be a significant barrier for a prospective SME/HDP franchisee. Therefore, the FMI will assess whether the requirements imposed by creditors and franchisors for accessing franchise finance create barriers to entry and participation for SMEs and HDPs. This will include examining qualification criteria and financing terms, as well as the potential for alternative inclusive financing arrangements.

Scope of the inquiry

The Commission's concerns extend across the franchise sector. The FMI will, therefore, adopt a broad sectoral approach. Based on the information currently available to the Commission, however, the FMI may focus on sectors considered to have greater potential to influence market dynamics. These include fast food, construction and hardware, automotive products and services, grocery retail, fuel stations and health and beauty stores. This sectoral focus is not intended to limit the FMI to these areas, but rather reflects the sectors that, on the information currently before the Commission, may warrant particular attention.

Next Steps

The period for public comment on the draft ToRs closed on 7 August 2026. This consultation process provided interested parties with an opportunity to assist the Commission in identifying whether the draft ToRs adequately captured the features of the franchise sector that warrant investigation. The Commission is currently collating and considering the submissions received to determine whether any amendments to the draft ToRs are required. Following this process, the Commission will publish the final Terms of Reference. The FMI will commence 20 days after publication of the final Terms of Reference, subject to the appointment of a chairperson, and will be completed within the statutory 18-month period.

A considered approach to merger control: revised merger thresholds

By Betty Mkatshwa

On Friday 08 May 2026, the Minister of the Department of Trade Industry and Competition (dtic), Mr. Parks Tau gazetted the amendment of the Determination of Merger Thresholds as set out in General Notice 1003 of 2017 (Government Notice No. 54640). Although gazetted on 8 May 2026, the revised thresholds had been effective from 1 May 2026.

The amendment revised the thresholds for mergers that require mandatory notification in terms of the Competition Act. With effect from 1 May 2026, the merger notification thresholds are revised as follows:

Category	October 2017	Revised (1 May 2026)	% Increase
Intermediate Merger Threshold (Combined Turnover/Assets)	R600 million	R1 billion	66.7%
Intermediate Merger Threshold (Target Firm Turnover/Assets)	R100 million	R200 million	100%
Large Merger Threshold (Combined Turnover/Assets)	R6.6 billion	R9.5 billion	43.9%
Large Merger Threshold (Target Firm Turnover/Assets)	R190 million	R280 million	47.4%

The Commission's analysis of the pre-1 May 2026 merger thresholds, found that thresholds can be raised significantly without harming competition in the economy as the smaller deals generally do not result in findings of harm to competition and public interest. Therefore, raising thresholds through changing regulations would reduce the number of deals that fall into the Commission's oversight, allowing more deals to proceed quickly.

Following the revision of merger thresholds, the Commission has observed a 29.3% reduction in the number of mergers notified from May to July 2026, in comparison to the mergers notified from May to July 2025.

Importantly, the Commission conducted an impact assessment of the revised thresholds by applying them to mergers filed during FY 2022/23 and FY 2023/24 to determine which mergers would have been "foregone" under the new thresholds. The Commission's impact assessment of the revised merger thresholds indicates that the upward adjustment was unlikely to result in significant under-enforcement or an increased risk of monopolisation.

Specifically, none of the mergers that would have been excluded under the revised thresholds were prohibited, and only three raised minor competition concerns. Furthermore, the public interest commitments that would have been foregone account for less than 2.1% of all commitments, suggesting a limited impact on the Commission's ability to address competition and public interest concerns.

The revision of merger thresholds does not mean that the Commission will now allow mergers that raise significant competition and public interest concerns

The Commission also continues to actively monitor merger activity to identify small mergers timeously and often receives queries from market participants and the general public on small mergers. This allows the Commission to request for relevant information from merger parties and, where appropriate, call for notification of small mergers in terms of the Act.

The public comments received from public consultations on the draft regulation proposing the revision of the merger thresholds published by the Minister on 27 January 2025 affirmed the need to increase the thresholds, given the passage of time since the previous amendment and commended the Minister in this regard. The submissions further expressed support for the positive step to reduce red tape and allow the Commission to allocate more of its resources to the most complex and impactful mergers.

The revision of thresholds enables the Commission to improve regulatory effectiveness in merger assessments.

to be implemented simply because they do not meet thresholds for mandatory notification. On the contrary, small mergers that do not meet the new thresholds for intermediate and large mergers are not completely out of the Commission's reach as:

- Section 13(2) of the Act allows for voluntary notification of small mergers by the parties at any time.
- Section 13(3) of the Act provides that the Commission has discretion to require the parties to a small merger to notify the Commission of that merger, if the merger may substantially prevent or lessen competition or cannot be justified on public interest grounds. Merging parties may not take further steps to implement that merger until it has been approved or conditionally approved.

Of significance, with the reduced case load, the Mergers & Acquisitions Division is now able to efficiently allocate resources on complex cases that raise competition and public interest concerns. This is expected to result in more effective investigation of mergers and ultimately reduce the annual average turnaround times for completion of merger investigations, especially as the Commission set a target in FY2024/26 to reduce its annual case completion service standard by 5% relative to the preceding financial year (FY2024/25). The relevant service standard targets are set out below, and remain applicable for FY2026/27.

Size and Phase of Merger	2024/25 Service Standard (average no of days for completion, maximum)	Reduction (min value)	2025/26 Service Standard (average no of days for completion, maximum)
Phase 1 (all)	20	5%	19
Phase 2 (all)	45	5%	43
Phase 3 (small / intermediate)	60	5%	57
Phase 3 (large)	120	5%	114

In continuing to reduce red tape and improve the efficiency of merger review, in addition to revised merger thresholds, the Commission has also published Guidelines on the Framework for Pre-Merger Filing Consultations. This is a measure which seeks to streamline merger review processes, with the aim of minimising regulatory costs and burdens for business.

With revised merger thresholds and more efficient allocation of resources for merger cases, the Commission is confident that it is contributing to the reduction of regulatory burdens faced by business in concluding mergers and acquisitions. Efficient merger review is important for business certainty, investment, and service-delivery, particularly given the financial and economic implications of mergers.

Impact Assessment

In April 2026, the Competition Commission published an impact study on Employee Share Ownership Plans (ESOPs) arising from the Commission's merger decisions. ESOPs are an ownership remedy that the Commission can impose as a merger condition if it finds that the merger does not promote a greater spread of ownership by historically disadvantaged persons (HDPs) and workers as contemplated by section 12A(3)(e) of the Act. ESOPs stem from the recognition that workers play an integral role in the growth of firms and should therefore benefit from the success of the firms in which they are employed. They are an ownership model that aims to create inclusion for workers in the ownership structure of a firm. Through an ESOP, workers can acquire shares in a firm without incurring an initial cost. As shareholders in a firm through an ESOP, workers are entitled to benefits such as dividends and/or capital gains derived from the share appreciation (depending on the design model) and workers may also be granted voting rights or board representation in the firm.

By Raksha Darji

> Through an ESOP, workers can acquire shares in a firm without incurring an initial cost. As shareholders in a firm through an ESOP, workers are entitled to benefits such as dividends and/or capital gains derived from the share appreciation and workers may also be granted voting rights or board representation in the firm.

The objective of the study was to evaluate the Commission's current design principles for ESOP remedies in mergers to determine whether this framework includes sufficient design provisions or whether these can be strengthened further to ensure beneficiaries derive full benefit from the ESOP remedies. In addition, the study also considered variations of the key design principles highlighting the advantages and shortfalls of the different approaches to ensure that all stakeholders have sufficient information when considering different ESOP designs. The study also looked at different financial scenarios based on the ESOPs reviewed in the study. This was to illustrate the impact of the different financing approaches on debt over time and the implications for beneficiaries.

In terms of the methodology, the study reviewed ESOPs that were mandated by the Commission's merger conditions for the period FY 2019/20 to FY 2022/23. These ESOPs have been in existence for a few years, allowing for a more in-depth understanding of the implications of the ESOP design principles on beneficiaries. The final sample comprised

15 ESOPs across various sectors such as agriculture, mining, retail and fintech. The relevant information was gathered from meetings and requests for information from firms, trustees, trade unions, relevant government departments, B-BBEE Commission and industry experts.

Key Findings

The key findings of the study relate to two aspects: (i) design principles; and (ii) financing of the ESOP. Each of these are discussed in more detail below.

Design principles

At present, when imposing ESOP remedies in mergers, the Commission provides merging parties with a template that outlines the design structure for an ESOP. The current template stipulates the key design principles that should be included in the ESOP structure. While the merger template provides for some key design principles, the study found that there is still considerable design scope for a firm implementing the ESOP. These design principles can have a material impact on the extent to which workers benefit from the ESOP, as well as the cost to shareholders in implementing the ESOP. As such, the study found that it is imperative that additional design principles are included in the ESOP remedy template to ensure that certain principles are mandatory and clarified in the design. Some of these mandatory principles that should be included in the design template include qualifying criteria, funding of the ESOP, training for beneficiaries and trustees (at no cost to the workers), participation benefits, structure and governance of the ESOP, amongst others.

Further, the study also found that each of the design principles consist of variations that provide both advantages and disadvantages that have implications for beneficiaries. These are outlined in detail in the study to provide beneficiaries and firms with additional context on the design principles to allow for the establishment of an ESOP that aligns with both their interests. With this information, beneficiaries can decide if they prefer to receive more income immediately or later and this preference may be based on their own preferred time value of money. Therefore, it is essential that beneficiaries are included in the decision-making process for the ESOP design principles. The study highlights that beneficiaries should have a choice in determining the following design principles (i) duration, (ii) trickle dividend ratios, (iii) class of shares, (iv) placement on the ESOP, and (v) the definition of "good leaver" and "bad leaver".

Financing of the ESOP

A significant concern identified by stakeholders with the current ESOPs is the funding model used in implementing ESOPs. While some ESOPs in the study were established through grants by the firm at no cost to workers, most of the ESOPs were funded with debt, mostly in the form of Notional Vendor Finance (NVF) with interest being charged on the debt in several cases. To repay this debt, ESOPs are reliant on the dividends received from the firm which are declared at the discretion of the firm. ESOPs generally repay the debt through a trickle dividend ratio applied to dividends. This means that dividends are split such that a portion is used to pay off the debt and the remainder is paid to beneficiaries. The study found from the dividend flow analysis that this may result in some beneficiaries receiving no-to-little dividend payouts.

Furthermore, the study shows that when interest is charged on the debt, it negatively affects beneficiaries as the debt accumulates significantly over time. Even if a dividend is declared, the study found that the dividend does not cover the full interest charge for the year, which effectively means that the capital loan amount is not being reduced. Therefore, interest rate charges perpetually increase debt and may render the ESOP structure unsustainable. This structure is not truly value creating for beneficiaries as a portion of the dividend will always be allocated to the repayment of the debt, preventing beneficiaries from receiving the full value of the dividend.

The study also found that ESOPs obtain the most value when discounts are applied to the purchase price of the shareholding as they reduce the initial value of the debt. These discounts would ordinarily be offered to investors in the open market and may be offered to executives and therefore should be offered to ESOP beneficiaries too. The study highlights the following discounts that should be considered when valuing the ESOPs' shareholding; (i) minority discount, (ii) marketability discount, (iii) lock-in period discount, and (iv) discounts given due to the B-BBEE points gained by having an ESOP as a shareholder.

Recommendations

Based on the above findings, the study made 3 main sets of recommendations which broadly deal with (i) funding of the ESOP; (ii) design principles that must be mandatory; and (iii) design principles that must be determined in consultation with workers, worker forums or trade unions. Each of these 3 sets of recommendations is discussed below.

Funding

Interest should not be charged on the NVF debt as it is not warranted, and it makes ESOPs financially unsustainable.

Discounts on the share price should be offered to ESOPs. These include minority discounts, marketability discounts, lock-in discounts and B-BBEE points discounts. This is in line with typical commercial share sales and would reduce the debt significantly.

Mandatory design principles

The design principles that must be mandatory are:

- The implementation date of the ESOP specifying the number of months in which the merging parties must implement the ESOP.
- whether the ESOP will be structured as a Trust or company and the shareholding percentage held by the ESOP.
- Workers must not be required to pay to participate in the ESOP.
- The funding model must be specified such as NVF, cash loan or grant and the distribution of the trickle dividend (if applicable).
- The ESOP employee representative to nominate a director to the board of the company. The composition of the ESOP Trustees on the board should consist of either more beneficiary nominated trustees or an equal spilt of beneficiary and firm nominated trustees.
- The qualifying criteria for the workers such as the number of years worked and employee grade. Also, the circumstances under which beneficiaries

will cease to participate must be clarified e.g. bad leavers.

- The benefits beneficiaries will receive such as dividends and/or capital gains.
- Mandatory training for beneficiaries to ensure workers understand the functioning of an ESOP (at no cost to the workers).
- Training for beneficiary and firm nominated trustees to enable professional oversight of the ESOP and Board participation (at no cost to the workers).
- Any disputes between the merging parties and any independent legal and financial experts in relation to the reasonableness of fees / costs must be resolved by arbitration or any other mutually agreed dispute resolution mechanism.
- Monitoring mechanisms to ensure compliance with the implementation and establishment of the ESOP.

Design principles to be determined in consultation with workers / worker forums / trade unions

The design principles that must be determined in consultation with workers, worker forums or trade unions are:

- Duration of the ESOP such as evergreen, buyback or hybrid model.
- Distribution of the trickle dividend.
- Class of shares. Shares may be ordinary shares with voting rights or preference shares which may come with benefits around dividend payments.
- Placement of the ESOP at either the holding or subsidiary level. Firms should consider placing the ESOP at the operating level (subsidiary) of the firm as workers may be more incentivised to increase their work performance as their contribution is directly linked to the profitability of the subsidiary. However, if the subsidiary is not performing well, then it may be beneficial to place the ESOP at a group level (if the structure exists), so beneficiaries can still receive a dividend if the group is profitable.
- If the ESOP has debt, then the ESOP should consider alternative mechanisms to reduce the debt. The Trust Deed can make allowance for the ESOP to consider the following:
  - » Purchasing more of the firm's shares and then sell off part of the shareholding when the share price appreciates.
  - » Purchase shares of other companies and the income from those shares can be allocated to the debt.
  - » Undertake investments such as EFTs and fixed income investments.

Repair should remain a choice - Commission publishes draft Aftermarket Guidelines for public comment

By Sipho Ngwema

For many South Africans, the decision to repair a broken appliance, television, cellphone or other electronic device is often made long before they walk into a repair shop.

It may be determined by whether spare parts are available. Whether an independent technician has access to diagnostic software. Whether specialised tools are available outside the manufacturer's authorised network. Or whether the cost of repairing a product has become so high that replacing it appears to be the only realistic option.

These are some of the competition concerns addressed in the Commission's Draft Guidelines on Repair, Service and Maintenance Aftermarkets, which have been published for public comment.

The draft Guidelines represent an important development in the Commission's ongoing work to promote competitive, transparent and accessible markets. They recognise that while consumers purchase products in primary markets, competition continues long after the original sale through the repair, servicing and maintenance markets that support products throughout their useful lives.
The Commission's experience in the automotive sector demonstrated how restrictions in aftermarket markets can limit consumer choice and exclude independent service providers from competing effectively. Following the implementation of the Automotive Aftermarket Guidelines, similar concerns emerged in other industries involving electronic devices, household appliances, equipment and other durable goods that require regular repair and maintenance.

The new draft Guidelines therefore seek to provide a competition framework for these growing repair markets while recognising the commercial realities, technical requirements and regulatory obligations that apply across different industries.

Looking beyond the original purchase

The starting point of the draft Guidelines is the recognition that repair and maintenance markets are distinct aftermarkets.

Once consumers purchase a product, they may face significant switching costs if they wish to replace it with another brand. This means that competition in the repair market may operate differently from competition in the original product market.

A consumer who owns a washing machine, smartphone or television may no longer have the practical option of simply switching brands when repair services become expensive or difficult to access. Instead, they depend on the availability of affordable repairs, replacement parts and qualified service providers.

The Commission notes that this dependence can create opportunities for competition concerns where the conduct of an Original Equipment Manufacturer (OEM) limits the ability of independent service providers to participate effectively or restricts consumers from choosing between repair providers.

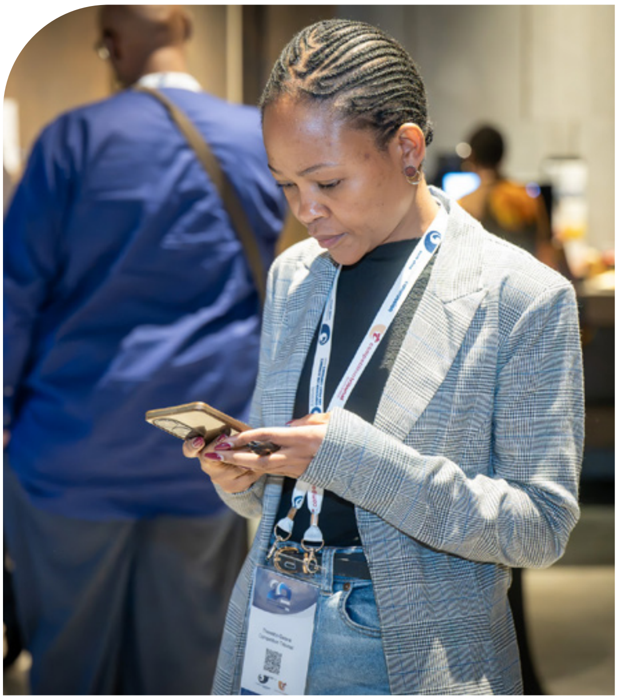
At the same time, the Guidelines make it clear that the Commission will assess each matter according to its own facts and commercial realities. They are not intended to apply mechanically, nor do they replace the Competition Act or existing sector-specific legislation.

What products are covered?

Unlike the Automotive Aftermarket Guidelines, these proposed Guidelines do not apply to motor vehicles or automotive spare parts.
Instead, they are intended to apply broadly to repair and maintenance markets outside the automotive sector, particularly where consumers may benefit from extending the lifespan of products or where barriers make repairs unnecessarily difficult.

The draft identifies several product categories where the Guidelines are likely to have particular relevance. These include:

- Mobile phones, tablets and other electronic devices, including gaming consoles;
- Audiovisual equipment such as televisions;
- White goods and household appliances including washing machines and tumble dryers;
- Medical equipment and devices; and
- Backup water and electricity systems.



Importantly, the Guidelines focus primarily on repairs that fall outside statutory or manufacturer warranty protections. They are therefore concerned with situations where consumers are responsible for the cost of repairing their products after warranties have expired or where a particular defect is not covered by warranty.

Why access to spare parts matters

One of the strongest themes running throughout the draft is access to spare parts.

The Commission describes spare parts as a central condition for effective competition in repair and maintenance markets. Without access to legitimate replacement components, independent repair businesses may simply be unable to compete, regardless of their technical expertise.

The draft therefore indicates that agreements, practices or arrangements that restrict access to spare parts may attract close scrutiny.

These include refusals to supply independent repairers, discriminatory supply arrangements, exclusive supply agreements and other practices that materially limit access to parts required for repairs.

The concern, however, goes beyond physical components.

Modern products increasingly rely on software, firmware, diagnostic systems and specialised programming tools. A replacement part may technically be available, yet remain unusable because it requires manufacturer activation or proprietary software before it can function correctly.

The Guidelines recognise these technological realities and provide that restrictions involving diagnostic software, proprietary tools and activation systems may also amount to indirect restrictions on access to repair inputs where they unnecessarily prevent independent repairers from undertaking repairs.

For consumers, this distinction is significant because competition is not only about whether a replacement part exists - it is also about whether qualified technicians can practically use it.

Supporting independent service providers

Another important feature of the draft is its recognition of the role played by Independent Service Providers, commonly referred to as ISPs.

These businesses include technicians and firms that provide repair, maintenance, diagnostics, servicing, refurbishment and related after-sales services without being owned or controlled by an OEM.

Many ISPs operate as small and medium enterprises and contribute to local employment, entrepreneurship and technical skills development.

The Commission explicitly encourages measures that promote competition and improve the participation of SMMEs and firms owned or controlled by historically disadvantaged persons in repair markets.

This reflects the broader objectives of the Competition Act, which seeks not only to promote consumer welfare but also to create greater opportunities for smaller businesses to participate effectively in the economy.

The Guidelines therefore examine practices that may create unnecessary barriers to entry or expansion for independent repair businesses, including restrictive accreditation requirements, discriminatory supply conditions and a lack of transparency around pricing for essential repair inputs.

Consumer choice remains central

While much of the document addresses relationships between OEMs and repair businesses, the ultimate beneficiary envisioned by the Guidelines is the consumer.

The Commission identifies several practices that may weaken consumer choice by making independent repairs less attractive or unnecessarily difficult.
For example, the draft highlights concerns where commercial practices artificially make repairs uneconomic compared with replacing a product, where consumers are discouraged from using independent repairers through conditional discounts or loyalty incentives, or where switching repair providers becomes unnecessarily costly because access to repair records, software settings or service histories is restricted.

The Guidelines do not suggest that manufacturers cannot operate authorised repair networks. Rather, they distinguish between legitimate commercial and technical arrangements and conduct that substantially prevents or lessens competition.

That distinction is particularly important in industries where safety, cybersecurity and product integrity must be protected.

Ultimately, the draft Guidelines are built around a simple but important competition principle: purchasing a product should not automatically determine where a consumer must obtain repairs for the rest of that product's life.

Recognising safety and intellectual property

The draft adopts a balanced approach by recognising that not every restriction is anti-competitive.

Certain products contain security, authentication, encryption and safety systems that are essential to protect consumers and prevent serious harm. Likewise, OEMs have legitimate intellectual property rights that must be respected.

The Commission therefore acknowledges that accreditation, activation controls and restricted access may be justified where they are genuinely necessary to protect safety, security or intellectual property.

However, the proposed approach is that such restrictions should be objective, transparent and proportionate to the legitimate purpose they serve rather than extending unnecessarily into unrelated repair activities.
In other words, a legitimate safety requirement should not become a blanket mechanism for excluding independent repairers from an entire aftermarket.

A consultation that invites public participation

The publication of the draft Guidelines marks the beginning of a public consultation process rather than the final adoption of policy.

The Commission is inviting written representations from stakeholders, including manufacturers, distributors, independent repair businesses, consumer organisations, industry associations and members of the public.

This consultation provides an opportunity for those directly involved in repair and maintenance markets to contribute practical experiences, identify implementation challenges and suggest improvements that may strengthen the final Guidelines.

As repair markets continue to evolve alongside increasingly sophisticated technology, the Commission's objective is to develop a framework that promotes effective competition while remaining responsive to innovation, consumer protection, safety requirements and sustainable product lifecycles.

Ultimately, the draft Guidelines are built around a simple but important competition principle: purchasing a product should not automatically determine where a consumer must obtain repairs for the rest of that product's life. Competitive repair markets can create greater consumer choice, support independent businesses and encourage products to remain useful for longer - provided that competition develops alongside legitimate technical, safety and regulatory safeguards.

The Commission has therefore opened the conversation to the public, inviting stakeholders to help shape the future of repair, service and maintenance aftermarkets in South Africa.

COMPETITION INSIGHTS

Exploring emerging issues in competition law, economics, consumer welfare and market regulation.



By Baneng Naape, Noojehan Khaki, Esona Jara

Breaking the Cartel: A Comparative Study of Empirical Screening Tools and Detection Strategies in Competition Law

Introduction

When the word "cartel" is mentioned, images of organised crime and illicit trade often come to mind. However, in the realm of competition enforcement, the concept has far greater significance. Section 4(1)(b) of the Competition Act 89 of 1998 defines a cartel as an agreement or coordinated practice among two or more competitors to fix prices or trading conditions, allocate markets, or participate in collusive tendering.[1] Cartel conduct may be established where communication or a mutual understanding between competitors can be inferred from factual evidence.

Cartel Screening Techniques

When analysing cartels, two primary methods are involved, namely: structural and behavioural approaches. Structural approaches to screening focus on identifying markets with certain structural characteristics associated with collusion, such as product standardization, low turnover volatility, and stable leading market participants.[2]

Although structural approaches are beneficial in highlighting markets susceptible to collusion, they often yield false positives. This is largely because actual collusion is statistically rare. Even markets exhibiting an "ideal" structural profile are, in most cases, more likely to exhibit competitive rather than collusive behaviour.[3]

As such, structural approaches are prone to limitations. For instance, structural markers such as high market concentration, product homogeneity, and stable demand are considered "necessary but insufficient" conditions for collusion. In these environments, multiple equilibria can exist, and whether firms settle on a collusive or competitive outcome is often dependent on unobserved data that structural screens cannot detect.

Further to the above, the effectiveness of these screens is entirely contingent upon the availability of granular, high-frequency industry data. Ultimately, structural screens function as broad "top-down" filters that flag markets where collusion is possible but fail to provide the preliminary evidence required to justify a formal investigation.

In contrast, behavioural approaches to screening focus on market impact. Suspicion is triggered by the observed behaviour of firms, specifically patterns in pricing, output, or bidding.[4] Behavioural screening often originates directly from market participants through various channels such as **buyer complaints** about parallel pricing or sudden, unexplained price surges that can trigger further investigation. Additionally, **internal anomalies** observed by staff, such

1 Retrieved from: Cartels – The Competition Commission
2 Grout, P.A. and Sonderegger, S. (2005). Simple economics of cartel detection. Reporting on the fundamental background of product, volatility, and company criteria (p. 15)
3 Beth, H. & T. Reimers (2019), "Screening Methods for the Detection of Antitrust Infringements", https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3501700
4 Fazekas, M. et al. (2022), "Public procurement cartels: A systematic testing of old and new screens", Government Transparency Institute, http://www.govtransparency.eu/wp-content/uploads/2022/03/GTI-WP-Cartel_20220304-1.pdf

as instructions to avoid bidding on specific accounts, can serve as indicators of customer allocation schemes.

Behavioural screens fall into three broad categories: collusive markers, structural breaks, and anomalies[5]. A collusive marker refers to a data pattern that is more aligned with collusion than competition. A structural break signifies an abrupt change in the data-generating process.[6] An anomaly is characterised by a pattern in the data that is inconsistent with competitive behaviour but may ultimately be consistent with collusion.

To illustrate the behavioural impact of coordination, enforcement agencies often analyse the "price path" of an industry. In the case of the citric acid cartel, the transition from competition to collusion was marked by a gradual but significant price increase, followed by a period of artificial stability, and a subsequent collapse upon detection.[7]

Competition authorities frequently employ both structural and behavioural screening techniques. Structural screens are utilised to identify markets susceptible to collusive practices, following which behavioural screens are implemented to detect evidence of actual collusion.[8]

Approaches to Cartel Detection

Competition authorities use both reactive and proactive approaches to detect cartels, which vary in how investigations are initiated, the information relied upon, and their effectiveness on enforcement and deterrence. While reactive mechanisms have historically dominated cartel enforcement, there is growing need for proactive tools to address the limitation of complaint-driven detection.

Reactive Cartel Detection

Reactive cartel detection involves enforcement activities initiated in response to information received from external sources rather than authority-led market monitoring. The most common mechanism is complaints lodged by customers or competitors, who may identify and report potential collusive behaviours such as price fixing, bid-rigging, or exclusionary practices. While these complaints can yield valuable insights specific to markets, their effectiveness relies heavily on the awareness and incentives of market participants.[9]

Other reactive measures encompass leniency and whistle-blower programs, which incentivize cartel participants to self-report by offering reduced penalties or immunity. Leniency programs have contributed to higher cartel detection rates by promoting defection through structured incentives.[10] However, their overall efficacy depends on cartel members' perception of detection risk and may be less effective in highly secretive cartels.

A key limitation of reactive methods is their tendency to detect cartels only after substantial consumer harm has taken place. As a result, relying solely on reactive detection does not ensure comprehensive enforcement coverage.[11] Reactive detection, especially leniency applications, has been key in exposing cartels but works best in unstable cartels which are on the verge of collapse. The OECD data shows that global leniency applications fell by 64% from 2015 to 2020, highlighting the need for proactive detection methods.[12]

Proactive Cartel Detection

Global enforcement patterns have underscored the importance of proactive cartel detection. According to the A&O Shearman Global Antitrust Enforcement Report (2025), cartel fines fell dramatically to USD 602.5 million despite a steady number of cases.[13]

Authorities suggested that the growing private litigation may be discouraging leniency applications. Industrial and manufacturing sectors remained enforcement hotspots, with price-fixing overtaking bid-rigging as the most common offence. Regulators are also focusing on new forms of collusion, including information-sharing and algorithmic price-fixing enabled by AI, suggesting this lull may be temporary,

5 Harrington, J. & Imhof, D. (2022) "Cartel Screening and Machine Learning", https://law.stanford.edu/wpcontent/uploads/2022/08/harrington-imhof-2022.pdf
6 Pachnou, D. & Westrik, D. (2023). Developments in Cartel Screening, CPI Columns, OECD
7 European Commission (2002). Citric Acid (Case COMP/E-1/36.604), Official Journal of the European Communities.
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9 Hüschelrath, K. (2010). How Are Cartels Detected? The Increasing Use of Proactive Methods to Establish Antitrust Infringements. Journal of European Competition Law & Practice, 1(6).
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11 Abrantes-Metz, R.M., (2013). Proactive vs reactive anti-cartel policy: The role of empirical screens. Available at SSRN 2284740.
12 OECD, (2022). OECD competition trends 2022. Available at: https://www.oecd.org/daf/competition/oecd- competition-trends-2022.pdf.
13 A&O Shearman (2025). *Global antitrust enforcement report 2025*, [Online] Available at: https://www.aoshearman.com/en/insights/global-antitrust-enforcement-report

reinforcing the need for proactive screens for the early detection of cartels. Proactive cartel detection involves competition authorities actively seeking out signs of collusion through systematic analysis and monitoring rather than waiting for external triggers. This approach recognises that many cartels are difficult to detect and that increasing the perceived probability of detection strengthens deterrence even without immediate enforcement action.[14]

Proactive detection relies heavily on screening tools to pinpoint markets that may be problematic. Empirical screens examine market data to detect signs of collusion, such as unexplained price uniformity, reduced price volatility, or structural breaks in bidding behaviour. Although these indicators do not confirm collusion, they act as useful diagnostics, helping authorities decide where to investigate further.

By combining screening with traditional investigative techniques, officials can uncover cartels that might otherwise remain unnoticed. For instance, the EU competition authority publicly discloses its screening initiatives, which act as a deterrent to cartel activity. This approach increases the uncertainty and risk associated with detection for parties engaged in collusion, ultimately encouraging the submission of leniency applications.[15] Proactive methods, however, require access to reliable data and sustained investment, which can challenge authorities with limited resources. Consequently, most authorities adopt a hybrid strategy, using proactive tools to focus enforcement resources on high-risk markets, while reactive tools such as leniency programmes are used to provide evidentiary support.[16]

Price Indicators in Cartel Detection

Competition authorities often utilise a range of pricing indicators to detect cartel activity. One key signal is parallel pricing, where several firms raise their prices simultaneously by comparable amounts without costs or demand-based rationale. Parallel pricing may also occur as a consequence of cost shocks and inherent market structures. A recent study by Bejger (2024) employed unsupervised machine learning techniques (a subset of Artificial Intelligence) to analyse time-series price data, enabling the identification of recurring price patterns, synchronized price fluctuations, and policy movements without reliance on predefined traditional econometric models.[17]

Another indicator is price convergence which occurs when competing firms' bids or prices consistently fall within a narrow range, or when line-item costs such as labour, materials, or equipment are strikingly similar. Such patterns often point to benchmarking that goes beyond market forces. In 2015, Waste Rite and Crossmoor were investigated for bid-rigging after their identical pricing raised suspicions of cartel activity. The investigation revealed matching bid values and similar cost structures, pointing to collusive tendering. Waste Rite settled with the Competition Commission for R220 000, while Crossmoor received a Tribunal judgement.[18] It is sufficient to note, however, that detection algorithms for bid-rigging price convergence may not work in markets that do not procure through tenders, such as airline tickets or fuel retail where prices are posted and change frequently within short periods. As such, price-based signals are not a "one-size-fits-all" mechanism. Their feasibility depends on procurement methods and the quality and quantity of available data. [19]

Predictable margin gaps and stable relative prices may also prompt scrutiny, particularly in markets characterised by frequent price fluctuations. Such patterns enable enforcement authorities to compare production costs and sales prices, in combination with a price-pattern analysis among suspected cartel members [20]

Umbrella pricing is another form of price indicator in cartels, which occurs when a leading firm raises its prices and competitors subsequently follow, refraining from undercutting, which may suggest tacit collusion. In the EU, the Commission imposed penalties totalling €799.4 million on 11 international air cargo carriers. The investigation was initiated in response to a near-identical surge in surcharges observed from 1999 to 2006. [21] The evidence revealed coordinated price announcements amongst airlines to keep a flat rate

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14 Pecotic Kaufman, J., (2025). Intensity Of Cartel Enforcement In Central And Eastern Europe: A Comparative Analysis. Available at SSRN.
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17 Bejger, S. (2024). Machine Learning in Cartel Screening–The Case of Parallel Pricing in a Fuel Wholesale Market. Energies, 17(16), 4184.
18 Competition Tribunal of South Africa, (2025). CR133SEP15 – Competition Commission v Waste Rite & Crossmoor Transport: Reasons for Decision. Available at: Competition Tribunal case file.
19 Beth, H., & Gannon, O. (2022). Cartel screening–can competition authorities and corporations afford not to use big data to detect cartels? Competition Law & Policy Debate, 7(2), 77-88.
20 Harrington Jr, J. E., & Imhof, D. (2022). Cartel screening and machine learning. Stan. Computational Antitrust, 2, 133.
21 European Commission (2010), Antitrust: Commission fines 11 air cargo carriers €799 million in price fixing cartel, Press Release IP/10/1487, Brussels, 9 November 2010. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_10_1487

surcharge, followed by sequential price increases that were predictable for competitors, resulting in the so-called "umbrella price effect." The abnormal surcharge trend, despite fluctuations in fuel expenses, further highlighted a margin gap between prices and costs, prompting competition authorities to investigate. These market pricing patterns ultimately contributed to the detection of the air cargo cartel in 2005.

Lastly, a reduction in price dispersion following meetings or trade association events, where the variation in bids narrows significantly, may further suggest that such events are used to coordinate pricing strategies.[22]

Pricing Behaviour Indicators in Cartel Enforcement Across Jurisdictions

Competition authorities across various jurisdictions employ pricing behavioural indicators as circumstantial evidence to support cartel investigations and enforcement. In the United Kingdom, the Competition and Markets Authority (CMA) integrates pricing analysis with documentary and witness evidence, especially in markets where signs such as cover pricing, coordinated bidding patterns and abnormal bid distributions are apparent. The CMA examines factors such as price comparisons, correlation analysis, and volatility assessments to identify pricing patterns unlikely to arise under competitive conditions, thereby strengthening its investigative findings.[23]

In the United States , pricing behavioural indicators have played a foundational role in cartel screening and analysis, particularly through variance-based and time-series methods that identify elevated and rigid prices, coordinated price movements, and anomalous bidding behaviour. U.S. agencies use econometric models to compare observed prices with estimated competitive prices as in the UK and EU. Pricing indicators are used alongside leniency evidence and internal communications, serving as supporting evidence rather than conclusive proof of cartel conduct.[24]

AI-Driven Screening Techniques in Cartel Detection

In jurisdictions such as Switzerland, machine-learning techniques are gaining recognition as essential tools in cartel screening. Since 2016, the Swiss Competition Commission has been using supervised-learning models to isolate collusion from competition in the construction industry.[25]

The OECD further notes the rising importance of algorithmic and data-driven screening methods to enhance proactive detection, particularly in markets with high-frequency pricing dynamics and subtle, non-linear patterns that traditional econometric models may overlook.[26] Overall, regulators are increasingly utilising sophisticated tools to identify collusive markers earlier, closing the net on traditional price-fixing. However, the 2024 decline in global fines suggests the "chilling effect" of private litigation and the rise of algorithmic collusion present new challenges for authorities.

Conclusion

Cartel enforcement has transitioned from relying on "insider" tips to more proactive approaches. As demonstrated by the air cargo cartel, collusive agreements and behaviours may remain undiscovered for extended periods, resulting in escalating harm to consumers and other market participants. This underscores the increasing need for proactive screening approaches.

Ultimately, the effectiveness of competition law rests on a dual strategy: the continued refinement of empirical screening tools and a rigid enforcement regime that ensures that the risk of detection outweighs any prospective illegal gains. Collaboration among competition agencies, both nationally and internationally, has the potential to strengthen detection efforts.[27] Insights from related instances such as merger assessments or abuse of dominance cases, may reveal signs of collusive behaviour or provide information about specific industries.

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Regulating AI in a rapidly changing marketplace

By Hardin Ratshisusu

Artificial intelligence (AI) is reshaping markets, economies and societies faster than regulators have ever had to respond in previous technological revolutions.

AI is promising great productivity, innovation and consumer choice, but it also has big risks - concentration of market space and consumer abuse, and extreme inequality.

The question is no longer whether AI should be regulated but whether regulation can keep pace with the technology itself.

Consumer protection and competition authorities all over the world are dealing with this new reality.

At the recent UN Conference on Trade and Development (Unctad) meetings of the Intergovernmental Group of Experts on consumer protection and competition law and policy, the topic of product safety, food value chains, digital markets, and AI and how it will affect competition and consumer welfare were among the topics of discussion.

The timing was significant. In the same week, world leaders, policymakers, scientists and business leaders gathered for the world's first UN Global Dialogue on AI Governance. The convergence of these discussions reflects an increasing global consensus - AI is transforming markets and society at an unprecedented pace. The challenge is to embrace that opportunity and ensure it doesn't reproduce and exacerbate inequality.

For consumer protection and competition regulators, the urgency is clear. New markets are emerging, existing business models are changing and regulators themselves are looking at AI-driven investigative tools to better analyse and monitor markets.

However, the more difficult task is reacting quickly enough to the new risks AI is creating. Consumers are now far more susceptible to deepfakes, misinformation, disinformation, scams, fraud and misleading online advertising, all compounded by the misuse of AI.

The scope of harm is immense. Even the most educated consumers can't discern genuine content from sophisticated manipulation. At the same time, AI helps bad actors target the most vulnerable consumers with unprecedented precision and make exploitation easier and more widespread.

Competition is also of great concern. Digital markets such as search engines, social media and e-commerce show how quickly markets can become concentrated in the hands of a few firms. First-mover advantages, network effects and control over major infrastructure often create barriers to entry that limit competition and consumer choice.

We do not need to revisit the many regulatory interventions that have emerged from digital markets. It is enough to realise their evolution has not always brought competitive or socially optimal outcomes.

AI appears to be following a similar trajectory. The market is converging around a relatively small number of large language model (LLM) developers with advanced deep-learning capabilities.

Top platforms include ChatGPT by OpenAI, Claude by Anthropic, Gemini by Google, Copilot by Microsoft, Meta AI by Meta and DeepSeek by Zhejiang. The supply chain is even more concentrated when one considers the limited number of firms able to produce the advanced semiconductor chips that power these models.

If AI develops along the same path as earlier digital ecosystems - and current trends suggest it will - the world could soon depend on only a handful of companies with the scale, resources and computing capacity to develop frontier AI models.

That's something for regulatory attention.

Consumers require safeguards against abuse.

Markets need fair, transparent and non-discriminatory access. Policymakers need to make sure governance is right for innovation, consumer welfare and better public interest objectives.

History also serves to teach. Technological revolutions have not always translated into universal access. Government policy and regulatory systems have often been slow to provide access to technology and intellectual property, leaving many developing countries behind.

Without formal intervention, AI risks reinforcing that pattern, limiting its benefits in countries that lack the capacity to build frontier AI models from scratch.

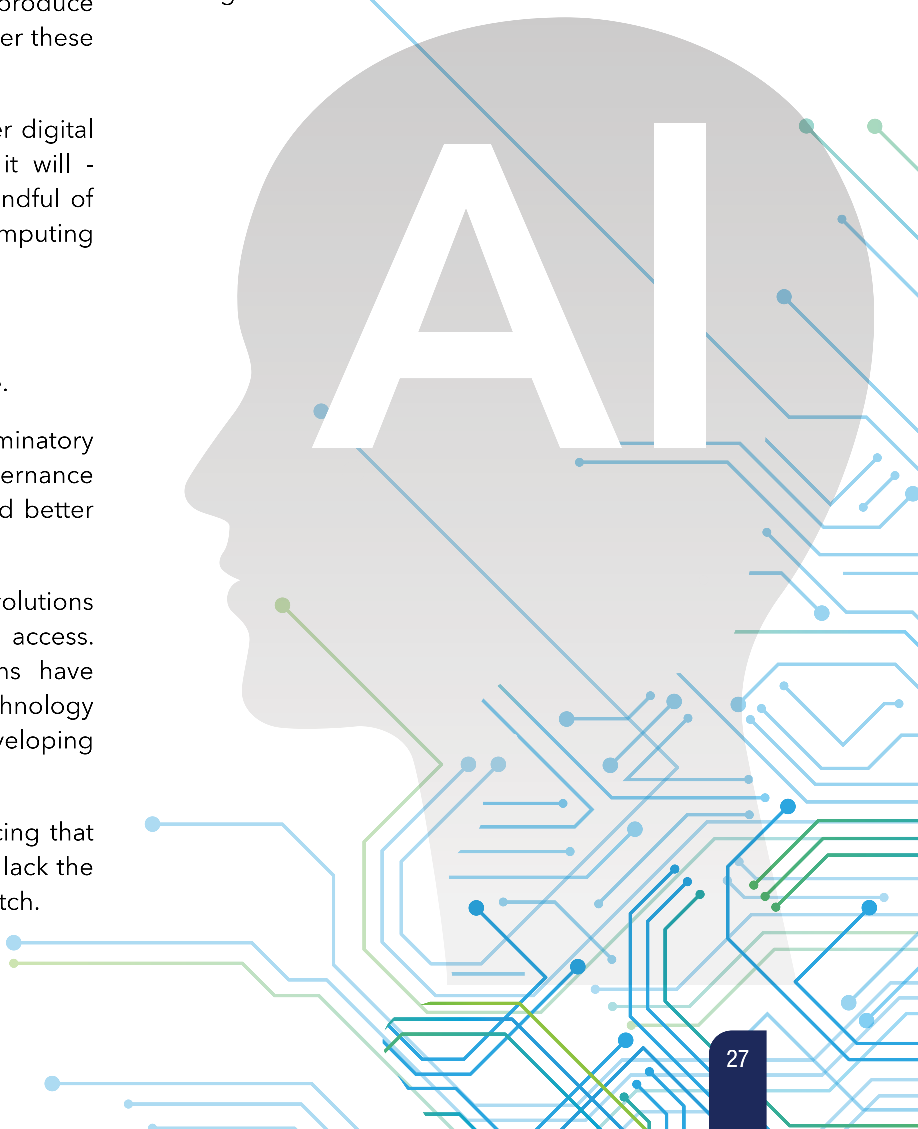
It is for this reason policymakers, industry leaders and technology developers should aim for a more inclusive AI architecture that will enable developing economies to contribute meaningfully to the next wave of innovation.

Equally important is the job of developing economies themselves. New entrants are only given a short window of time before network industries become entrenched and the market leaders have huge advantages. Governments should establish policy, regulatory and investment regimes that allow local innovators to build competitive AI capabilities while the window is open.

These considerations informed discussions at the recent Unctad meetings, where delegates agreed that further work should focus on the impact of AI on vulnerable and disadvantaged consumers. That is an important beginning.

However, the real measure of success is not how quickly AI advances, but whether the benefits are shared among all and risks are well managed and no-one is left behind.

This article was first published in Business Day on 17 August 2026.



INTERNATIONAL RELATIONS IN ACTION

Key Q1 Developments Shaping Competition Policy

INTRODUCTION

Competition policy is evolving rapidly, and the Commission is ensuring that South Africa is part of the conversation shaping what comes next. Across African, BRICS, ICN and OECD platforms, the Commission has strengthened its international presence, bringing South African perspectives to some of the most pressing competition policy debates of our time, from artificial intelligence and digital markets to food security and inclusive growth. Among the many engagements, three developments stand out for their significance and potential to shape the Commission's role on the global stage.

REGIONAL SPOTLIGHT
Advancing Africa's Digital Future Through AfCFTA

One of the most important regional engagements during the quarter was the Commission's participation in the inaugural AfCFTA Competition Policy and Law Conference held in Lomé, Togo, under the theme *"Harnessing Competition as a Catalyst for African Market Integration."*

As Africa moves towards deeper economic integration under the African Continental Free Trade Area (AfCFTA), competition policy is becoming increasingly important in ensuring that businesses and consumers benefit from expanded trade opportunities. During a plenary session on *Competing in the Digital Age: Digital Trade and Platform Markets,* the Commission highlighted the challenges African digital businesses face when competing against large global technology firms. The Commission advocated for effective implementation of the AfCFTA Competition and Digital Trade Protocols to address exclusionary practices, promote regional digital trade and support Africa's digital industrialization agenda.

The engagement demonstrated South Africa's continued leadership in shaping continental approaches to competition regulation, particularly in rapidly evolving digital markets. It also positioned the Commission as a key contributor to the development of future AfCFTA competition institutions.

By Precious Mathibe and Nomvula Chasakara

INTERNATIONAL SPOTLIGHT
Competition Enforcement in the AI Era

Globally, one of the most forward-looking discussions of the quarter took place at the BRICS International Workshop on AI and BRICS+ Competition Policy, hosted in Moscow in June 2026. The workshop brought together competition authorities, academics, and technology experts to examine how artificial intelligence is reshaping markets and regulatory enforcement.

The Commission contributed a presentation in the panel on *"Enforcement Challenges in the AI Era."* Drawing on its Online Intermediation Platforms Market Inquiry and Media and Digital Platforms Market Inquiry, the Commission shared insights on how AI-driven algorithms shape market outcomes, business user visibility and consumer choice. The discussion also highlighted emerging competition concerns, including algorithmic collusion, personalised pricing, barriers to expansion for smaller firms, and increasing concentration within AI ecosystems.

Importantly, the Commission also showcased how it is using AI-enabled tools to strengthen its own analytical and enforcement capabilities. The workshop reinforced the Commission's role in shaping international thinking on competition policy in the digital economy and demonstrated South Africa's contribution to global discussions on the governance of emerging technologies.

KEY HIGHLIGHTS
South Africa Secures Hosting Rights for ICN Chief Economists Workshop 2027

A major institutional achievement during the quarter was the Commission's successful bid to host the International Competition Network (ICN) Chief Economists Workshop in March 2027. The proposal received endorsement from ICN members during the ICN Annual Conference in Manila, Philippines. The Workshop will bring together chief economists and senior advisors from competition authorities worldwide to discuss emerging issues in competition economics and enforcement. Securing the event is an important recognition of South Africa's expertise and influence within the international competition community. Beyond the prestige associated with hosting a flagship ICN event, the workshop will create valuable opportunities for knowledge exchange, international collaboration and showcasing the Commission's work to a global audience. More information regarding the workshop programme, participating agencies and related activities will be shared in due course.

THOUGHT LEADERSHIP AND KNOWLEDGE CONTRIBUTIONS

In addition to its participation in international forums, the Commission made several substantive contributions during the quarter. Firstly, at the Competition Authority of Kenya Research Conference, the Commission submitted written papers and participated in a plenary session on *Balancing Competition with Broader Public Policy Goals*. The Commission shared South Africa's experience in aligning competition policy with national development objectives, including economic transformation, inclusion and consumer welfare.

Secondly, the Commission contributed to international policy discussions through two written submissions to the OECD Competition Committee and Global Forum on Competition. The first submission, *"Emerging Trends in Cross-Agency Collaboration and Information-Sharing to Strengthen Public Procurement Processes and Fight Bid-Rigging"*, examined South Africa's coordinated response to abuses in emergency PPE procurement during the COVID-19 pandemic, highlighting the values of inter-agency enforcement cooperation.

The second submission, *"Competition Enforcement in Informal Markets"*, explored the Commission's experience in enforcing competition law in markets characterised by informal businesses and informal settlements. The submission highlighted interventions aimed at reducing barriers to entry, improving market access for informal traders and small businesses, and promoting more inclusive participation in the economy.

Further extending its international thought leadership, the Commission contributed an article to Concurrences International Competition Review on the role of competition law in reducing the cost-of-living in developing economies. The article showcased how competition enforcement can directly improve affordability, increase market access and advance inclusive growth.

The Commission was also invited to the Dominican Republic's competition authority, PRO-COMPETENCIA, to contribute to the Fourth Antitrust Yearbook 2026. The planned article will focus on State-Owned Enterprises and Competitive Neutrality, contributing South African perspectives to an important international publication on competition policy in a changing geopolitical environment.

FROM PARTICIPATION TO LEADERSHIP

The quarter's engagements reflect the Commission's growing influence in regional and global competition policy discussions. Whether contributing to the design of Africa's future competition architecture, shaping debates on artificial intelligence, or sharing South Africa's enforcement experience through international publications and policy submissions, the Commission continues to enhance its reputation as a trusted leader in the international competition community. As preparations begin to host the ICN Chief Economists Workshop in 2027, the momentum generated in the first quarter provides a strong foundation for further international impact in the months ahead.

Odds stacked against small businesses in **townships and rural towns**

By Siyabulela Makunga

Township and rural economies must be given the support to become integral to South Africa's growth story

For years, South Africans have witnessed the potential of township and rural economies.

They are functional, resilient and dependable. Rural and township communities have benefitted from the determination of spaza shop owners, mechanics, hairdressers, farmers, tailors and countless other entrepreneurs.

Yet many of these businesses continue to face an uphill battle – not because they lack ambition or determination, but because the odds remain stacked against them.

The Competition Commission's recently launched inaugural Rural and Township Economy Report paints a sobering picture. It also shows that unlocking the potential of these economies could be one of the most effective ways to address South Africa's persistent challenges of poverty, unemployment and inequality.

Many households in townships and rural towns face severe financial pressure. The report found that 53% of rural residents and between 39% and 47% of township residents live in households earning less than R3,500 a month. Many also live below the poverty line.

Despite these hardships, local businesses continue to support livelihoods and provide essential goods and services. Most are micro-, small- or medium-sized enterprises owned by historically disadvantaged South Africans. Yet too many remain trapped in survival mode.

One of the biggest challenges is the cost of doing business. Nearly half of the businesses surveyed for the report said suppliers charge them higher prices because of their size. Among independent businesses, that figure rises to 61%.

When small businesses pay more for stock and supplies, they often pass those additional costs on to consumers. This creates a vicious cycle in which small businesses struggle to compete, while consumers in already financially constrained communities ultimately bear part of the burden.

The report also identifies market access as a major obstacle. More than half of township businesses and almost half of rural town businesses rely mainly on their physical stores for sales. Only 6% of township businesses and 10% of rural town businesses sell through major retailers. Participation in online marketplaces is even lower, at 11% and 9%, respectively.

This matters because many consumers shop outside their communities for clothing, electronics, furniture and even groceries. Rural consumers often travel farther than township consumers, adding transport costs to already stretched household budgets.

The report further highlights the burden of red tape.

Licensing requirements, permits, zoning rules and municipal processes can be confusing, costly and time consuming, particularly for small businesses with limited resources.

However, these challenges can be overcome.

Better access to suppliers, more opportunities to sell through malls and online platforms, simpler regulatory processes and improved infrastructure could help local businesses grow, create jobs and keep more money circulating within their communities.

Echoing this view, economist and inclusive-growth specialist Dr Mthokozisi Mncedisi Tshuma has called for government to "consider implementing a comprehensive township support programme and local economic development initiatives".

He argues that reducing regulatory obligations and increasing financial support for small-business development are paramount, while policymakers should also foster supply chain development and localisation to ensure entrepreneurs have greater access to markets beyond townships.

The challenge, therefore, is not simply to create more businesses but to create the conditions for existing businesses to grow.

A township entrepreneur should not be confined to a geographically defined market. A rural manufacturer, farmer, retailer or service provider should be able to participate in wider regional, national and digital markets.

This requires a coordinated approach involving government, municipalities, financial institutions, established businesses and other stakeholders.

Access to finance must be accompanied by access to markets, infrastructure, skills, technology and supply chains.

South Africa cannot afford to view township and rural enterprises merely as beneficiaries of government programmes. They should be recognised as potential economic partners, employers, suppliers and contributors to inclusive growth.

The Rural and Township Economy Report reminds us that behind every small business is a person working to support a family, serve a community and build a better future.

Removing the barriers that hold these entrepreneurs back is not only sound economic policy; it is an investment in people, dignity and shared prosperity.

If South Africa is serious about inclusive growth, township and rural economies cannot remain on the margins. They must become an integral part of the country's growth story.

This article was first published in The Sowetan on 14 September 2026.

M&A quarterly performance Report Quarter 1

CONTRIBUTORS:
Grashum Mutizwa, Alistair Dey-Van Heerden, Reabetswe Molotsi, Mishkah Abdool Sattar, Nomthandazo Mndaweni and Phillipine Mpane

OVERVIEW OF QUARTER 1 (Q1)

In Q1 of 2026/2027, 60 mergers were notified and 66 mergers were finalised. Of the total mergers finalised in Q1, 27 mergers (41%) were approved with conditions, and 38 mergers (58%) were approved without conditions. In this quarter, one case was withdrawn and no cases were prohibited.

We note that fewer mergers were notified in Q1 of 2026/2027 (60) compared to Q4 of 2025/2026 (65) which may be linked, in part, to the amended merger thresholds that came into effect on 01 May 2026. The number of cases finalised in Q1 of 2026/2027 (66) was lower than in Q4 of 2025/2026 (98) and higher than Q1 of 2025/2026 (65).

Most of the mergers notified in Q1 were intermediate mergers (36), followed by large mergers (23) and small mergers (1). This continues the trend of the Commission receiving a higher number of intermediate merger filings compared to large mergers (across various quarters).

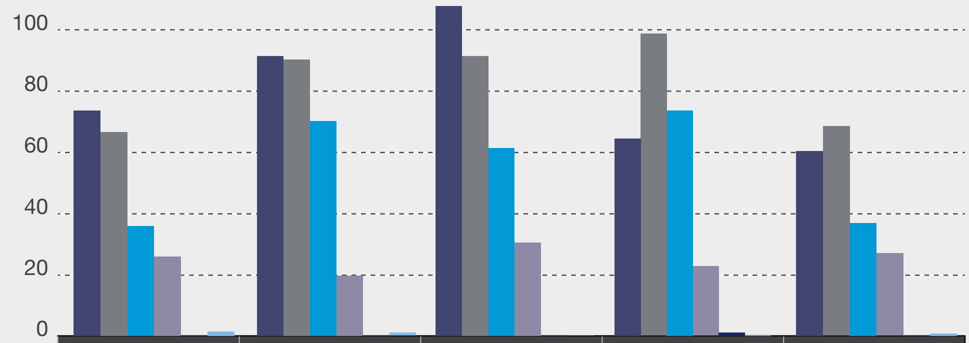
In Q1, the Division did not have any phase 1 mergers and met its turnaround time targets for phase 2 mergers, phase 3 small and intermediate mergers, and phase 3 large mergers.

Q1 STATISTICS

Figure 1 below shows the trend of cases notified, finalised / decided, and withdrawn between Q1 of 2025/2026FY and Q1 of 2026/2027FY.

Figure 2 below shows the number of mergers by category (small, intermediate, and large) finalised during Q1 of 2026/2027.

MERGERS FILED AND FINALISED

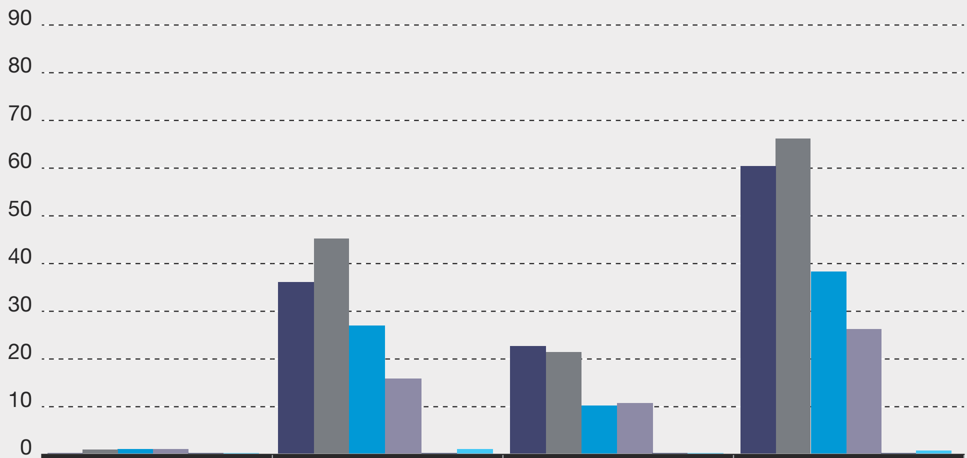


	2025/2026				2026/2027
	Q4	Q1	Q2	Q3	Q1
Notified	73	92	115	65	60
Finalised	65	89	91	98	66
Approved without conditions	38	67	61	74	38
Approved with conditions	25	21	30	23	27
Prohibited	0	0	0	1	0
Abandoned	2	1	0	0	1

Figure 1: Mergers notified and finalised from Q1 2025/2026 to Q1 2026/2027 financial years

Source: M&A's construction

FINALISED CASES BY MERGER CATEGORY



	Q4 2025/26			
	Small	Intermediate	Large	Total
Notified	1	36	23	60
Finalised	1	44	21	66
Approved with conditions	1	27	10	38
Conditional approval	0	16	11	27
Prohibitions	0	0	0	0
Withdrawn	0	1	0	1

Figure 2: Finalised cases by merger category for Q1 of 2026/27

Source: M&A's construction

Table 1 below highlights the turnaround time target for the cases finalised in Q1. The Division met its turnaround time targets for all categories and phases.

Table 1: Turnaround Times for Q1 2026/2027

Phase	Turnaround time	Target	Outcome
Phase 1 *(No phase 1 mergers were finalised in Q4)*	N/A	15	N/A
Phase 2	34	45	Target Met
Phase 3 Small / Intermediate	60	60	Target Met
Phase 3 Large	88	105	Target Met

Source: M&A's construction

Q1 SECTOR ANALYSIS

In terms of sector composition of mergers finalised in Q1, most of the cases that the Commission assessed were in the Property sector (35%). Other sectors that have shown relatively high proportions of notifications were Manufacturing (20%), Wholesale (18%), Finance (8%) and Mining (3%). The figure below graphically represents the sectoral breakdown of finalised cases in Q1. The "Other" category is comprised of: Accommodation and food services activities (2%); Agriculture (2%); Education (2%) Electrical installation (2%); Event Catering and other food service activities (2%); Health (2%); Information & Communication (2%); Information and communication (2%); Other transportation support activities (2%); Repair of electric equipment (2%); and Transport & Storage (2%).

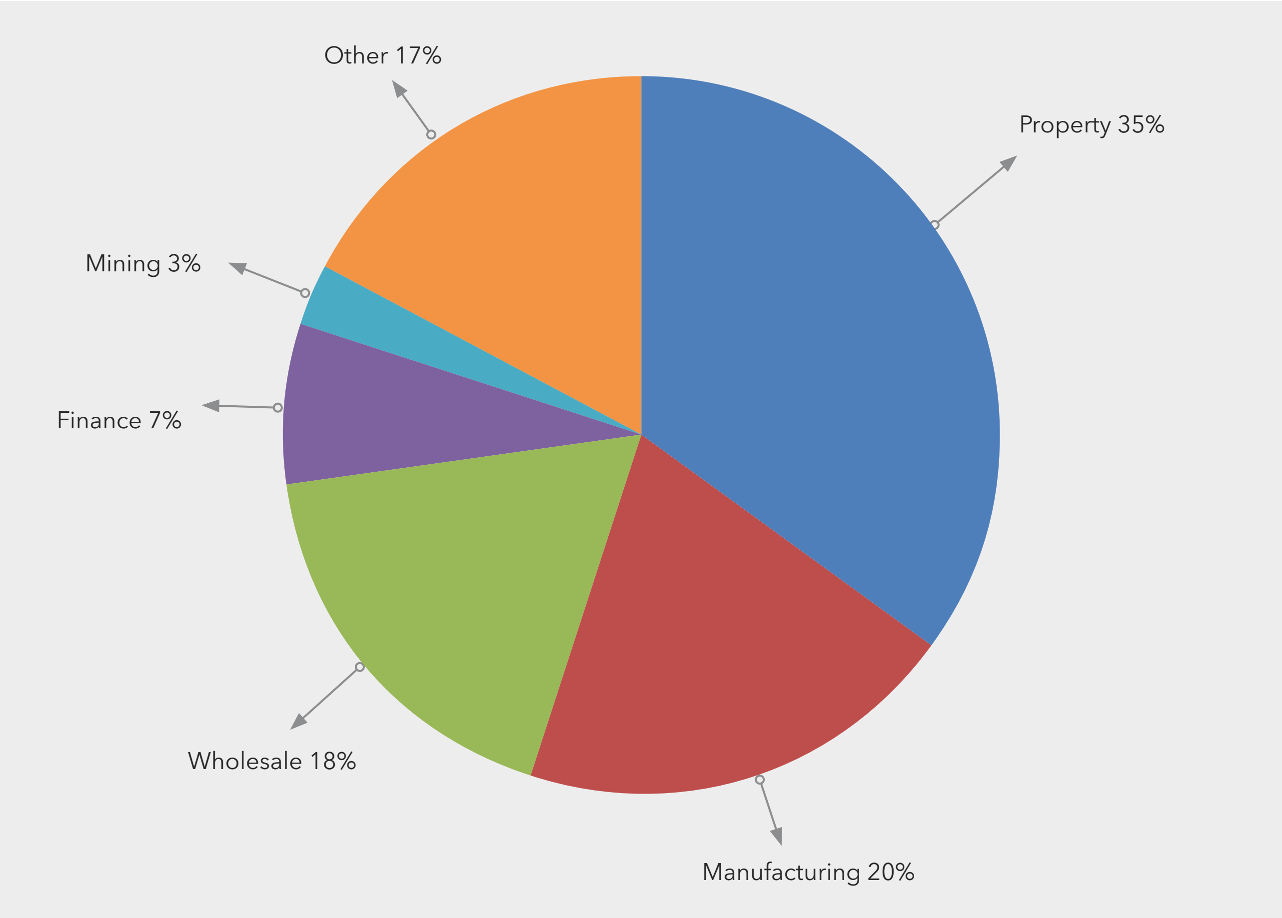


Figure 3: Sectoral Analysis of finalised cases in Q1 of 2026/27

Source: M&A's construction

KEY CASES IN Q1

Prince Sub Inc and Warner Bros. Discovery Inc. (Case No.: 2026Mar0041)

The Commission approved, subject to conditions, the proposed acquisition of Warner Bros. Discovery Inc. (the "Acquiring Firm") by Prince Sub Inc. (the "Target Firm"), a special purpose vehicle solely controlled by Paramount Skydance Corporation.

The Acquiring Group is a global entertainment and media company engaged in the production, distribution and licensing of film, television, streaming content, gaming, animation and sports content. In South Africa, it operates across the audiovisual value chain, including film distribution, content supply, television channel wholesaling, Pay TV advertising, intellectual property licensing and video game publishing. The Acquiring Firm also distributes its films in South Africa.

The Target Firm is a publicly listed global media and entertainment company with operations in South Africa through Turner South Africa Proprietary Limited. Its activities include film and content licensing, television channel wholesaling, digital and linear media distribution, advertising sales and limited intellectual property licensing.

The Commission identified horizontal overlaps between the merger parties in the markets for film distribution, audiovisual content, television advertising, intellectual property licensing for merchandising, and video game development and publishing. It also identified a vertical relationship in the theatrical film distribution value chain.

The Commission found that the proposed transaction could raise competition concerns in the theatrical film distribution market, particularly the potential exclusion of other distributors due the operation of existing joint venture arrangements. The Commission emphasised that its assessment of the proposed transaction should not be interpreted as condoning or endorsing the existing joint venture arrangements

Following its investigation, the Commission approved the transaction subject to conditions aimed at addressing identified competition and public interest concerns. In particular, the merged entity committed to extend the Target Firm's existing theatrical film distribution agreement with its current distributor thereby supporting the continued participation of that exempted micro enterprise in the market. The merged entity also committed to contribute towards film-related skills development programmes at specified historically black universities in South Africa.

The Commission's decision in this transaction demonstrates the Commission's intervention efforts in the arising vertical aspects of mergers within the media and entertainment sector where a transaction may uniquely strengthen concentration at an intermediate level of the value chain. The Commission addressed the identified competition concern through a targeted behavioural remedy that preserved the Target Firm's existing distribution arrangements in South Africa for a defined period. The decision also reflects that the Commission does not seek to endorse potentially anti-competitive arrangements even in instances where such might have been in existence for long periods and predate the merger under review.

The case also exhibits the Commission's continued collaborative efforts with other authorities in other jurisdictions in such large trans-Atlantic transactions that are reviewed my multiple authorities.

COMMISSION IN THE NEWS

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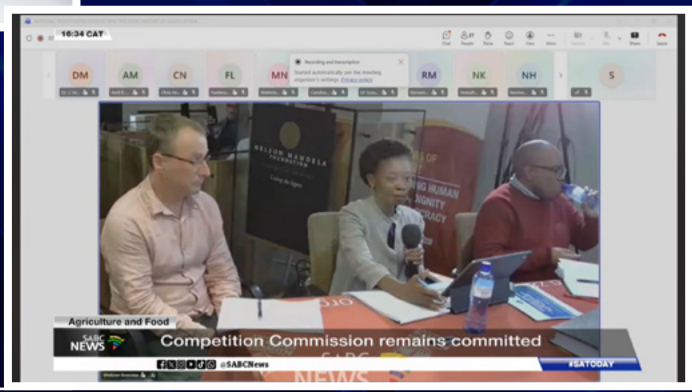

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MEDIA STATEMENTS
ISSUED THIS QUARTER

1

competition commission south africa

Media Statement
For Immediate Release
03 June 2026

COMMISSION PROSECUTES ADCOCK INGRAM CRITICAL CARE (PTY) LTD FOR ALLEGED EXCESSIVE PRICING OF DIALYSIS PRODUCTS

The Competition Commission ("Commission") yesterday referred a complaint against Adcock Ingram Critical Care (Pty) Ltd ("AICC") to the Competition Tribunal ("Tribunal") for the alleged excessive pricing of peritoneal dialysis and continuous renal replacement therapy products used as an input in the treatment of kidney failure. The alleged conduct took place between July 2019 and June 2024, in contravention of section 8(1)(a) of the Competition Act 89 of 1998, as amended ("the Act").

AICC's critical care activities include, among others, the manufacture and distribution of intravenous fluids and renal dialysis systems. Renal dialysis performs the key functions of healthy kidneys when a patient experiences kidney deterioration or failure. Peritoneal dialysis can be performed at home, while continuous renal replacement therapy mainly takes place in intensive care units. The complaint referral concerns the products required to provide these treatments, rather than the treatment itself.

An estimated 6% to 17% of South Africans are living with chronic kidney disease, and this number is likely to rise because of high rates of diabetes, hypertension, and HIV. Expensive renal replacement therapies can limit access to treatment and place financial pressure on government, renal facilities, medical schemes, and patients.

The Commission investigated the matter following a complaint filed with it and found that AICC is dominant in the market for renal replacement therapy products in South Africa. It found that AICC's prices for peritoneal dialysis and continuous renal replacement therapy products during the relevant period were excessive, as they significantly exceeded the economic costs attributable to those products. Economic costs include operating costs and costs of capital. This is a prima facie indication of an abuse of dominance in terms … of the Act.

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competition commission south africa

Media Advisory
For Immediate Release
29 April 2026

COMMISSION PUBLISHES EMPLOYEE SHARE OWNERSHIP PLANS IMPACT STUDY

The Commission has released its *Impact Study on Employee Share Ownership Plans (ESOPs)*, which examines how ESOPs imposed as merger conditions are structured and whether they deliver meaningful value to workers.

The study reviews ESOPs implemented between the 2019/20 and 2022/23 financial years and assesses key design elements such as funding models, governance arrangements, dividend distribution and sustainability. While the study finds that ESOPs can play an important role in promoting broader ownership and economic inclusion, it highlights that certain design features, particularly debt-based funding structures, can limit benefits for employee beneficiaries.

The report sets out recommendations to strengthen ESOPs as an effective public-interest remedy, including guidance on interest-free funding, appropriate discounts on share prices, clearer governance frameworks, mandatory training for beneficiaries and trustees, and enhanced consultation with workers and trade unions.

The full report is available on the Commission's website at https://www.compcom.co.za/wp-content/uploads/2026/04/ESOP-Impact-Study_NonConfidential.pdf

[ENDS]
Issued by:
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Email: SiyabulelaM@compcom.co.za

Find …
X: @…

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competition commission south africa

Media Statement
For Immediate Release
22 April 2026

COMMISSION LAUNCHES REVIEW OF REGULATORY BARRIERS TO COMPETITION AND SME PARTICIPATION

The Competition Commission ("Commission") today launched a review of regulations that may act as barriers to competition and the entry or expansion of firms, particularly small and medium enterprises (SMEs), across all markets in South Africa. The review forms part of national efforts to support inclusive growth, improve the ease of doing business and strengthen the competitiveness of the economy.

In his 2026 State of the Nation Address, President Cyril Ramaphosa highlighted the need to reduce red tape and improve the ease of doing business - an issue also raised in the Commission's market inquiries and by stakeholders calling for a more streamlined and modern regulatory system that enables SMEs to start, operate and expand in international markets.

Regulations are often necessary to protect consumers, address market failures and advance development objectives, including through licensing and standards that support safety, health and financial stability. However, where rules are unduly restrictive or poorly implemented, they can raise compliance costs, delay entry and constrain SME growth thus reducing competition, innovation, investment, and ultimately jobs.

The Commission will identify and assess regulations (including sector policies and licensing frameworks) that may restrict firm entry or expansion and consider whether they are necessary to achieve their stated purpose or are overly restrictive in design or application. The review will also consider whether current frameworks adequately address market concentration, the effects of vertical integration on non-integrated firms, potential exclusionary practices, and meaningful participation by historically disadvantaged persons. Findings from the review will inform recommendations for regulatory reforms to remove or modify barriers to competition and market participation.

The Commission invites businesses and other stakeholders who have experienced regulatory barriers to entry or expansion to make submissions identifying the regulation, explaining how it restricts competition or particip… …osing practical reforms.

Exam… …s may include:

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competition commission south africa

Media Statement
For Immediate Release
04 May 2026

COMMISSION REFERS MULTICHOICE AND ALTECH TO THE TRIBUNAL FOR PROSECUTION

The Competition Commission ("Commission") has referred a complaint against MultiChoice South Africa (Pty) Ltd ("MultiChoice") and Altech UEC South Africa (Pty) Ltd ("Altech") to the Competition Tribunal ("Tribunal") for prosecution.

Altech is a manufacturer of Set Top Boxes ("STBs") that are used to operate subscription-based or pay television services ("Pay-Tv"). MultiChoice is a provider of Pay-Tv, which uses STBs to provide its Pay-Tv services. MultiChoice sources the STBs from Altech.

In the complaint lodged with the Tribunal on 15 April 2026, the Commission alleges that MultiChoice and Altech entered into an agreement to divide markets by allocating suppliers and/or specific types of goods or services, in contravention of section 4(1)(b)(ii) of the Competition Act 89 of 1998, as amended ("the Act").

The Commission's investigation revealed that in February 2014, MultiChoice and Altech reached an agreement for Altech not to enter or compete in the pay-TV market where MultiChoice operates. This arrangement constitutes division of markets by allocating suppliers and /or specific type of goods or services.

The Commission seeks an order declaring that MultiChoice and Altech contravened section 4(1)(b)(ii) of the Act, and that they are liable for an administrative penalty of up to 10% of their respective annual turnover.

[ENDS]
Issued by:
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a competitive, dynamic, deconcentrated and inclusive economy.

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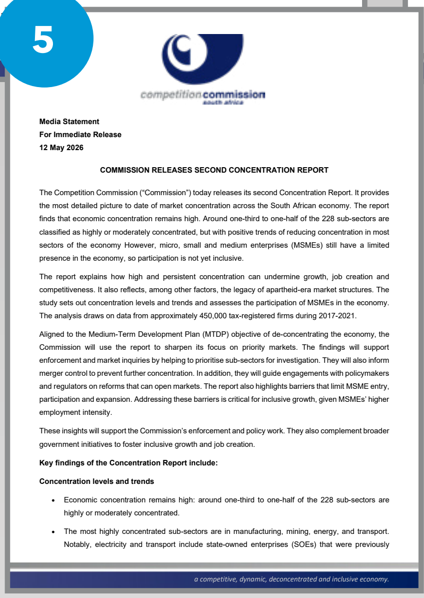

competition commission south africa

Media Statement
For Immediate Release
12 May 2026

COMMISSION RELEASES SECOND CONCENTRATION REPORT

The Competition Commission ("Commission") today releases its second Concentration Report. It provides the most detailed picture to date of market concentration across the South African economy. The report finds that economic concentration remains high. Around one-third to one-half of the 228 sub-sectors are classified as highly or moderately concentrated, but with positive trends of reducing concentration in most sectors of the economy However, micro, small and medium enterprises (MSMEs) still have a limited presence in the economy, so participation is not yet inclusive.

The report explains how high and persistent concentration can undermine growth, job creation and competitiveness. It also reflects, among other factors, the legacy of apartheid-era market structures. The study sets out concentration levels and trends and assesses the participation of MSMEs in the economy. The analysis draws on data from approximately 450,000 tax-registered firms during 2017-2021.

Aligned to the Medium-Term Development Plan (MTDP) objective of de-concentrating the economy, the Commission will use the report to sharpen its focus on priority markets. The findings will support enforcement and market inquiries by helping to prioritise sub-sectors for investigation. They will also inform merger control to prevent further concentration. In addition, they will guide engagements with policymakers and regulators on reforms that can open markets. The report also highlights barriers that limit MSME entry, participation and expansion. Addressing these barriers is critical for inclusive growth, given MSMEs' higher employment intensity.

These insights will support the Commission's enforcement and policy work. They also complement broader government initiatives to foster inclusive growth and job creation.

Key findings of the Concentration Report include:

Concentration levels and trends

- Economic concentration remains high: around one-third to one-half of the 228 sub-sectors are highly or moderately concentrated.
- The most highly concentrated sub-sectors are in manufacturing, mining, energy, and transport. Notably, electricity and transport include state-owned enterprises (SOEs) that were previously

a competitive, dynamic, deconcentrated and inclusive economy.

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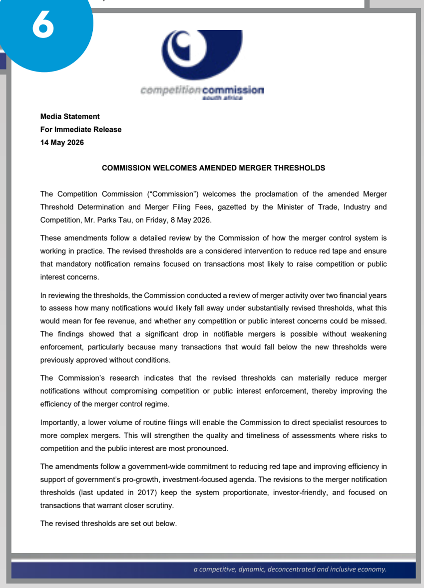


competition commission south africa

Media Statement
For Immediate Release
14 May 2026

COMMISSION WELCOMES AMENDED MERGER THRESHOLDS

The Competition Commission ("Commission") welcomes the proclamation of the amended Merger Threshold Determination and Merger Filing Fees, gazetted by the Minister of Trade, Industry and Competition, Mr. Parks Tau, on Friday, 8 May 2026.

These amendments follow a detailed review by the Commission of how the merger control system is working in practice. The revised thresholds are a considered intervention to reduce red tape and ensure that mandatory notification remains focused on transactions most likely to raise competition or public interest concerns.

In reviewing the thresholds, the Commission conducted a review of merger activity over two financial years to assess how many notifications would likely fall away under substantially revised thresholds, what this would mean for fee revenue, and whether any competition or public interest concerns could be missed. The findings showed that a significant drop in notifiable mergers is possible without weakening enforcement, particularly because many transactions that would fall below the new thresholds were previously approved without conditions.

The Commission's research indicates that the revised thresholds can materially reduce merger notifications without compromising competition or public interest enforcement, thereby improving the efficiency of the merger control regime.

Importantly, a lower volume of routine filings will enable the Commission to direct specialist resources to more complex mergers. This will strengthen the quality and timeliness of assessments where risks to competition and the public interest are most pronounced.

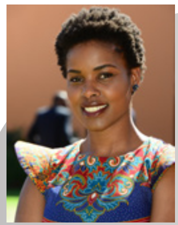
The amendments follow a government-wide commitment to reducing red tape and improving efficiency in support of government's pro-growth, investment-focused agenda. The revisions to the merger notification thresholds (last updated in 2017) keep the system proportionate, investor-friendly, and focused on transactions that warrant closer scrutiny.

The revised thresholds are set out below.

a competitive, dynamic, deconcentrated and inclusive economy.

1. COMMISSION PROSECUTES ADCOCK INGRAM CRITICAL CARE (PTY) LTD FOR ALLEGED EXCESSIVE PRICING OF DIALYSIS PRODUCTS
2. COMMISSION PUBLISHES EMPLOYEE SHARE OWNERSHIP PLANS IMPACT STUDY
3. COMMISSION LAUNCHES REVIEW OF REGULATORY BARRIERS TO COMPETITION AND SME PARTICIPATION
4. COMMISSION REFERS MULTICHOICE AND ALTECH TO THE TRIBUNAL FOR PROSECUTION
5. COMMISSION RELEASES SECOND CONCENTRATION REPORT
6. COMMISSION WELCOMES AMENDED MERGER THRESHOLDS

QUARTER 1 INSTITUTIONAL PERFORMANCE OVERVIEW



By Selelo Ramohlola & Nomvula Chasakara

1. Introduction

The Competition Commission has recorded a strong performance in the first quarter of the 2026/27 financial year, achieving an overall performance score of **94%** with 15 of 17 applicable targets met and one target exceeded. The quarter was characterized by intensified enforcement in priority sectors, interventions in public procurement, support for SME and HDP participation, and strengthened regional and international cooperation.

2. Performance Overview

Total APP Targets: 39	Q1
Applicable targets	17
Targets not applicable	22
Targets not triggered	6
Targets met	15
Targets exceeded	1
Targets not met	1
Total score %	94%

3. Strengthening enforcement

The Commission has prioritised fast-tracking public procurement investigations in the 2026/27 financial year given the impact of bid-rigging on government expenditure and service delivery. Collusive tendering inflates procurement costs, deprives other businesses of opportunities to compete and diverts resources that could otherwise be used to provide services to citizens.

The Commission completed eight cartel investigations and five market conduct investigations during the quarter. A key enforcement focus during the quarter was public procurement, with six of the eight completed cartel matters referred to the Competition Tribunal for prosecution. A significant proportion of these matters involved alleged price-fixing and collusive tendering in procurement processes involving entities such as the City of Cape Town, Eskom, the Western Cape Department of Education and the Western Cape Department of Infrastructure.

In a matter concerning the Western Cape Department of Infrastructure, the Commission's intervention resulted in the cancellation of the affected tender, allowing the

Department to pursue a new, more competitive and cost-effective procurement process. The Commission also concluded a settlement involving Mogodumo Bakone Holding and Seed-Bearing Fields concerning alleged price-fixing and collusive tendering in a Limpopo Department of Health procurement process for perishable provisions. The respondents admitted liability and agreed to administrative penalties of R22 245.00 and R10 044.00, respectively. The settlement is expected to facilitate greater competition between the firms when supplying government institutions, contributing to lower prices and improved efficiency.

4. Intervention in the dairy sector

Furthermore, the Commission initiated a complaint against Darling Romery concerning alleged anti-competitive and exclusionary conduct in the dairy products market. The complaint followed information indicating that substantially lower prices were being charged in Mpumalanga, Limpopo, and Gauteng, with the conduct allegedly contributing to the exit of a dairy processor in the Northern Provinces. The Commission is investigating the matter as possible predatory pricing and/or exclusionary conduct.

Successful investigation and prosecution of the alleged conduct could facilitate more competition in the market and open up opportunities for smaller dairy processors to enter, expand and sustain within the dairy value chain.

5. Contribution to employment, ESOP, HDPs & SME participation

The Commission continued to advance economic participation by SMEs and firms owned by historically disadvantaged persons (HDPs). During Q1, 19 merger cases were approved with conditions promoting participation by SMEs and HDP-owned firms and enterprise development. These commitments, covering areas such as enterprise and supplier development, HDP procurement, skills development and socio-economic development, had a total value of approximately R2.622 billion.

Three cases were also approved with conditions promoting greater ownership by workers and HDPs, with the total quantifiable value of the ESOPs and one HDP transaction amounting to approximately R103.58 million. In addition, 15 cases were approved with employment-related conditions covering a net effect on employment of 21 113 employees to date. During the quarter, mergers resulted in 853 jobs being saved, 18 jobs being lost and no jobs being created.

6. Monitoring digital market remedies

Monitoring implementation of remedies and conditions from completed market inquiries, investigations and mergers is a key component of the Commission's work to ensure that the desired outcomes from its work are achieved.

Under the Online Intermediation Platforms Market Inquiry, the Commission continued to monitor programmes designed to give SMEs and HDPs greater opportunities to participate in the digital economy. The Booking.com Hospitality Growth Programme has supported more than 35 SMEs and HDPs through training and workshops, while discounted commission fees have been made available to more than 100 SMEs and HDPs. The programme has invested more than R2 million in supporting accommodation providers. The Takealot SME Marketplace Initiative has similarly onboarded more than 100 SMEs and HDPs, particularly from historically underserved areas and townships in Gauteng. Approximately 33% of participating SMEs and HDPs have increased their revenues through sales on the platform.

In the fresh produce sector, the Commission continued monitoring remedies designed to address structural barriers facing smaller businesses. Large market agents are entering into arrangements with SME and HDP-owned businesses that provide mentorship, training, operational support, access to equipment and trading infrastructure, and skills development. The objective is ultimately to move beyond participation in the market towards meaningful and sustainable participation.

7. Franchise Market Inquiry

The Commission also advanced its work in the franchise sector by gazetting the draft Terms of Reference for the Franchise Market Inquiry on 26 June 2026. The inquiry will examine features of the franchise sector that may impede, distort or restrict competition, with particular attention to finance and funding franchise agreements and contractual practices, and information asymmetries. The inquiry is intended to consider barriers that may hinder the entry and growth of SMEs and limit opportunities for increased HDP ownership of franchise businesses. The draft Terms of Reference were published for public comment, with the comment period closing on 7 August 2026. Several stakeholders have submitted comments; the Commission will consider the submissions received in preparation for publication of the final Terms of Reference before proceeding with the inquiry.

8. Enabling pro-competitive collaboration through block exemptions

During Q1, the Commission completed two in-scope assessments under existing block exemptions involving the Citrus Growers Association of Southern African and Exxaro Resources Limited. The citrus in-scope assessment confirmed that proposed collaboration to facilitate the sharing of structured export-market information falls within the Block Exemptions for the Promotion of Exports. The arrangement is intended to help producers overcome high logistics costs, achieve economies of scale and remain competitive in international markets.
Additionally, the Commission confirmed Exxaro's application under the Block Exemption for Ports, Rail and Key Feeder Road Corridors for a period of 36 months, subject to conditions and safeguards. The arrangement is intended to facilitate private sector collaboration to address constraints in rail and port infrastructure, reduce logistics costs and support increased mine capacity and exports.

9. Deepening regional and international cooperation

The Commission strengthened its regional and international engagements during the quarter through participation in platforms including the AfCFTA Competition Policy and Law Conference, BRICS Competition Forum, International Competition Network (ICN), OECD and African Competition Forum. These engagements supported knowledge sharing and cooperation on digital markets, food markets, merger regulation, artificial intelligence, global supply chains and other emerging competition issues. The Commission also contributed to capacity-building initiatives in Botswana, Kenya, The Gambia and Namibia, sharing expertise in areas including food price monitoring, consumer welfare, merger regulation, case handling, risk management and institutional governance. The Commission's successful bid to host the ICN Chief Economists Workshop in 2027 further demonstrates its growing role in the international competition policy community.

10. Conclusion

Overall, Q1 demonstrates the Commission's continued commitment to protecting competition, reducing barriers to participation and ensuring that competition policy contributes meaningfully to inclusive economic growth. The Commission's enforcement interventions, market inquiries, merger remedies and regional cooperation efforts position it to respond to emerging competition challenges while supporting more competitive and inclusive markets, in particular participation of SMEs and HDPs in the economy.

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