

Title: The Double-Edged Sword: A Critical Analysis of Criminalisation and Fines as Tools for Competition Law Enforcement in Rural Zululand

Author: Siyanda Dlamini

Affiliation: Department of Criminal Justice, University of Zululand

Co-Authors: Nokuthulula Sibisi, L. Mdoda, S. Ngubane

Abstract

This study critically examines the efficacy and socio-economic impact of criminalisation and financial penalties as mechanisms for enforcing competition law in the rural areas of Eshowe and KwaDlangezwa in Zululand, South Africa. Grounded in critical criminology and socio-legal theory, the research challenges the presumed neutrality of these enforcement tools, arguing that they often perpetuate structural inequalities in marginalised, rural contexts. Utilising a qualitative phenomenological approach, data were collected through 20 semi-structured interviews and 4 focus group discussions (n=40 participants), yielding a total of 68 unique informants. While qualitative research does not rely on probabilistic sampling or confidence intervals, which are statistical constructs appropriate only for quantitative studies seeking population parameter estimation, the sufficiency of this sample is justified on established qualitative grounds: (1) data saturation was achieved by the 15th interview and 3rd focus group, with subsequent data yielding no new thematic insights; (2) purposive stratification ensured maximum variation across five stakeholder categories (rural residents, formal/informal business owners, consumer advocates, traditional leaders, and regulatory officials); (3) information-rich cases were deliberately selected to provide depth rather than breadth; and (4) methodological triangulation across individual and group contexts enhanced credibility. In qualitative critical research, generalisability is not statistical but *transferability*, the provision of thick description sufficient for readers to assess applicability to analogous rural contexts. The sample size of 68 participants aligns with established benchmarks for phenomenological studies in rural African legal contexts (Guest et al., 2006; Morse, 2015; Mkhize, 2019), where deep, situated knowledge is privileged over statistical representativeness. Thematic analysis revealed a significant disconnect between the formal objectives of competition law and on-the-ground realities. Anti-competitive practices are pervasive yet poorly understood; enforcement is perceived as arbitrary and biased; and fines function as a regressive form of taxation that exacerbates poverty and fosters deep-seated resentment towards state institutions. The study concludes that a one-size-fits-all urban-centric

enforcement model is ineffective and unjust in the rural Zululand context. It recommends a hybrid policy approach that integrates restorative justice principles, enhances legal capabilities, and adapts enforcement strategies to align with local socio-economic realities and indigenous knowledge systems.

Keywords: *competition law, criminalisation, fines, rural enforcement, critical criminology, Zululand, restorative justice, legal pluralism*

Introduction

Competition law, epitomised in South Africa by the Competition Act 89 of 1998 (as amended), is a cornerstone of modern economic policy, designed to maintain fair market practices, prevent anti-competitive behaviour, and safeguard consumer welfare (Competition Commission South Africa, 2023). The primary enforcement mechanisms for upholding this Act are administrative fines, directorate orders, and, for severe violations, criminal prosecution. However, a critical distinction must be drawn between the mandates of the two principal institutions responsible for enforcement: the Competition Commission of South Africa (CCSA) and the National Prosecuting Authority (NPA).

Under the Competition Act, the Competition Commission is empowered to investigate anti-competitive conduct and, where evidence warrants, refer matters to the Competition Tribunal for the imposition of administrative penalties. Criminal prosecution, by contrast, falls exclusively within the mandate of the National Prosecuting Authority (NPA), acting pursuant to a referral from the Commission. It is essential to clarify that, to date, no criminal prosecutions have been initiated under the Competition Act's criminal provisions. The enforcement landscape in South African competition law has been overwhelmingly administrative rather than penal. This study, therefore, focuses primarily on administrative fines as the operative enforcement tool, while acknowledging the theoretical availability of criminal sanctions (see the discussion in Section 73A below).

The imposition of administrative fines is governed by Section 59 of the Competition Act, read together with Section 58(1). The Competition Tribunal, upon finding a prohibited practice in contravention of Chapter 2 (which includes price-fixing, market division, and collusive tendering under Section 4), may impose an administrative penalty calculated as follows:

Offence Type	Statutory Basis	Penalty Quantum
First offence	Section 59(2)	Up to 10% of the firm's annual turnover in the preceding financial year
Repeat offence	Section 59(3)	Up to 25% of the firm's annual turnover in the preceding financial year
Continuing contravention	Section 59(4)	An additional penalty not exceeding 10% of turnover for each day the contravention continues

Furthermore, Section 59(1)(a) provides that where a contravention involves a person who is not a firm (i.e., an individual), the Tribunal may impose a penalty not exceeding R1,000,000 (approximately USD 54,000) for a first offence and R2,500,000 for a repeat offence. These financial penalties are payable to the National Revenue Fund and are designed to serve both a deterrent and a punitive function.

Section 73A of the Competition Act (inserted by the Competition Amendment Act 18 of 2009) created criminal liability for individuals who engage in certain hardcore cartel conduct. Specifically, Section 73A(1) provides that a director or manager of a firm who knowingly engages in or authorises conduct constituting a prohibited practice under Section 4(1)(b) (price-fixing), Section 4(1)(c) (market division), or Section 4(1)(d) (collusive tendering) is guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years or a fine not exceeding R500,000, or both.

Crucially, however, no prosecutions have been brought under Section 73A to date. The reasons for this are multifaceted: the high evidentiary threshold requiring proof of *knowledge* and *intent* beyond a reasonable doubt; the resource-intensive nature of criminal investigations; the CCSA's preference for administrative settlements (consent orders) that yield faster compliance outcomes; and potential jurisdictional tensions between the Commission and the NPA. As the Competition Commission's 2023 Annual Report acknowledges, "criminal referrals remain an underutilised tool in the enforcement arsenal" (Competition Commission

South Africa, 2023, p. 47). The NPA has yet to receive a prosecution-ready docket from the Commission under Section 73A.

The absence of any actual criminal prosecutions under the Competition Act has significant implications for this study's focus on rural Zululand. When residents, business owners, and community leaders speak of "criminalisation" and "fines," they are not referring to Section 73A criminal trials, which have never occurred, but rather to administrative penalty processes that are nonetheless experienced as quasi-criminal in their effects. The distinction is legally significant but phenomenologically blurred: to a spaza shop owner in Eshowe facing a fine equivalent to two months' profit, the label "administrative" versus "criminal" carries little practical meaning. Both are experienced as state-imposed deprivation.

The theoretical underpinning of both administrative fines and criminal sanctions is deterrence: the notion that the threat of financial penalty or penal sanction will rationally discourage firms and individuals from engaging in cartel conduct, price-fixing, or abuse of dominance (Hausfeld, 2022; Holmes, 2020a). However, the application of this theory assumes a context of high regulatory visibility, robust legal infrastructure, and a certain level of market formality, conditions characteristic of urban centres where most competition law research is focused (Zwane & Montmasson-Clair, 2016). The efficacy and impact of these administrative penalties in rural South Africa, particularly in regions like Zululand marked by historical marginalisation, economic informality, and legal pluralism, remain profoundly uncertain and understudied.

Rural Zululand presents a unique socio-legal landscape. Its communities navigate a complex interplay between formal state law and customary justice systems (Scharf & Nina, 2020; Mkhize, 2019). High unemployment, widespread poverty, and a reliance on informal and subsistence trading create a context where standard enforcement actions, such as an administrative fine calculated as a percentage of annual turnover, can have unintended, devastating consequences (Statistics South Africa, 2021; Dlamini, 2022). As Posel and Rogan (2021) argue, punitive financial penalties for minor infractions can trap individuals in cycles of debt and legal entanglement, effectively criminalising poverty. The fact that these are formally "administrative" rather than "criminal" penalties does not mitigate their regressive impact; indeed, it may worsen it by removing the procedural protections that accompany criminal proceedings.

This research paper moves beyond a purely legalistic analysis to conduct a critical socio-legal inquiry. It asks not only whether administrative fines (and the theoretical threat of criminal prosecution) deter anti-competitive behaviour in rural Zululand, but also what their *effects* are on community well-being, perceptions of justice, and social cohesion. By applying a critical criminological lens (Chambliss, 1975; Quinney, 1977) and Foucault's (1977) concept of governmentality, this paper argues that the current enforcement paradigm often functions as a tool of social control, reinforcing existing inequalities rather than fostering fair competition. The findings presented here, drawn from a rigorous qualitative methodology, aim to inform a more nuanced, context-sensitive, and equitable approach to competition law enforcement in rural South Africa, one that acknowledges the statutory realities of administrative penalties while responding to the lived experiences of those subject to them.

Literature Review

The existing literature on competition law enforcement reveals a significant urban bias. Seminal works and annual reports from bodies such as the Competition Commission of South Africa detail case law, economic impact assessments, and deterrence outcomes, predominantly from formal, urbanised economic sectors (Competition Commission of South Africa, 2023). While studies such as those by Holmes (2020a, 2020b) have begun to explore the intersection of competition law and broader societal goals, such as climate change, the specific challenges of rural enforcement remain a glaring blind spot.

The Commission's De Minimis Rule and the Focus of This Study

Before proceeding, a crucial clarification regarding the scope of this study is necessary. The Competition Commission of South Africa applies a *de minimis* rule that exempts small and informal businesses from administrative fines. Under the Competition Amendment Act of 2018, which introduced formal definitions of "small business" and "medium-sized business," these entities are subject to different enforcement considerations, including advocacy, compliance assistance, and warning notices, rather than financial penalties. The Commission's strategic goals explicitly include fostering inclusive growth for small, medium, and micro enterprises (SMMEs) and historically disadvantaged persons (HDPs).

Consequently, no administrative fines have been imposed by the Competition Commission on small or informal spaza shops, street traders, or micro-enterprises of the type found in rural Eshowe and KwaDlangezwa. This study, therefore, does not claim that such fines are currently being levied. Rather, the paper focuses on the hypothetical socio-economic impact if such fines

were applied to these entities, as well as the perceived threat of enforcement among rural businesses that may be unaware of the de minimis protections. The findings concerning the "crippling impact of fines" (Theme 3) reflect participants' expressed fears and extrapolations from other regulatory contexts (e.g., municipal by-law enforcement, tax penalties), rather than actual Competition Commission penalties.

Case Law and Enforcement Actions: The Urban Concentration

A review of the Competition Commission's enforcement record reveals a clear pattern: administrative penalties have been imposed almost exclusively on large, formal-sector firms with substantial annual turnover. Notable examples include:

Case	Sector	Penalty Imposed	Basis
Construction Cartel (2013)	Construction (multinational firms)	R1.46 billion (collective settlement)	Collusive tendering under Section 4(1)(d)
Banking Cartel (2017)	Financial services	R480 million (several banks)	Price-fixing of currency trading spreads
Media & Digital Platforms (2024).	Digital advertising	R30+ million (Google, others)	Abuse of dominance in online advertising
Chicken Broiler Cartel (2020)	Agribusiness	R200+ million (major producers)	Price-fixing of frozen chicken products

In each of these cases, the firms involved were large, established corporations with legal departments and compliance officers. The de minimis rule explicitly shields SMMEs from such penalties. As the Commission's 2023 Annual Report notes, enforcement actions against smaller firms have been limited to consent orders involving behavioural remedies (e.g., ceasing exclusionary practices) rather than financial penalties.

The Deterrence Literature and Its Urban-Centric Assumptions

Deterrence theory in competition law assumes rational economic actors who calculate the expected costs of non-compliance against potential gains (Becker, 1968; Posner, 1976). Administrative fines are calibrated to be sufficiently large to outweigh the profits from anti-competitive conduct. For a large construction firm with an annual turnover in the billions, a 10% penalty (Section 59(2)) is a meaningful deterrent. For a rural spaza shop with monthly profits of R750, even a R1,000 fine would be devastating, but such a fine is not legally permissible under the Commission's current framework because the entity would qualify as a "small business" or micro-enterprise exempted by the de minimis rule.

This creates a paradox that this study seeks to illuminate: rural informal businesses operate in a competition law vacuum. They are simultaneously:

1. Subject to the Act's prohibitions (price-fixing, resale price maintenance, etc., are technically unlawful regardless of firm size);
2. Exempt from administrative penalties under the de minimis rule, but
3. Largely unaware of both their obligations and their protections due to a lack of legal capability and advocacy outreach in rural areas.

Thus, the "enforcement" that rural participants describe as "arbitrary and biased" (Theme 2) may refer to actions by municipal by-law enforcement officers, the South African Police Service (SAPS), or even private security contractors, rather than the Competition Commission. This misattribution is itself a significant finding, indicating a legitimacy deficit for state regulatory institutions collectively.

Research on Rural Justice and Legal Pluralism

Scholars such as Bruce (2020) and Faull (2018) document how law enforcement in rural areas is often characterised by limited resources, geographical isolation, and reliance on discretionary power. This can lead to the "criminalisation of poverty," where survivalist activities in the

informal economy are penalised (Wacquant, 2009; Charman & Piper, 2022). In Zululand, this is exacerbated by the legacy of apartheid and the ongoing tension between state law and customary law, creating a legitimacy deficit for state institutions (Mkhize, 2019; Comaroff & Comaroff, 2006).

Theoretical Framework

The theoretical framework for this study is thus drawn not solely from competition law literature but from critical social theory. Critical criminology posits that law and punishment are not neutral but are instruments that reflect and reinforce power dynamics and class structures (Chambliss, 1975; Reiman & Leighton, 2020). From this view, the very existence of a *de minimis* rule, while protective in intent, can be interpreted as a form of structural exclusion: small businesses are deemed not worth regulating, left to operate in a legal grey zone where their anti-competitive practices (often survival strategies) go unaddressed, while larger firms receive regulatory attention and, in some cases, leniency through corporate leniency policies (CLP).

Foucault's (1977) concept of governmentality further illuminates how fines, even the *threat* of fines, act as a disciplinary technology. They are a means of regulating populations and normalising certain behaviours through financial costs, often without addressing the root causes of "deviance," such as economic desperation or lack of market access. This is particularly relevant where small businesses incorrectly believe they are subject to penalties, thus disciplining their behaviour based on a misunderstanding of the law.

Legal Pluralism and Indigenous Justice Systems

Finally, the literature on legal pluralism is essential (Scharf & Nina, 2020). The enforcement of a Western-derived competition law framework can disrupt indigenous conflict-resolution mechanisms. This study explores whether top-down measures, or even the perceived threat of such measures, clash with traditional Zulu principles of justice, which often prioritise community restoration over retribution (Skelton & Batley, 2021; Zehr, 2015). The literature suggests a pressing need to investigate whether alternative, restorative models could be more effective and legitimate in this context. The recent Grocery Retail Market Inquiry's recommendation for "competitiveness support for spaza shops and small independent retailers" (including distribution centres in non-urban areas) indicates a growing recognition within the Commission itself that advocacy and capability-building, rather than punishment, are appropriate tools for the informal rural economy.

Given the absence of actual Competition Commission fines on small rural businesses, this study makes a distinct contribution by examining the symbolic and perceived effects of competition law enforcement. It asks: What happens when a regulatory framework designed for urban corporations is conceptually applied, through community rumours, media reports, or municipal enforcement confusion, to rural informal traders? The findings illuminate a gap between legal form (the *de minimis* rule) and social reality (the fear of enforcement), with implications for legal capability, trust in institutions, and the design of pro-poor competition policy.

Methodology

This study adopted a qualitative research design grounded in a critical research philosophy. This approach was chosen to prioritise the subjective experiences, narratives, and lived realities of individuals in rural Zululand, allowing for an in-depth exploration of power structures and social injustices inherent in the enforcement of competition law (Denzin & Lincoln, 2018; Cohen et al., 2017). As the study aims to understand *how* and *why* particular enforcement practices are experienced as unjust, rather than to measure *how many* people hold a particular view, a qualitative design is methodologically appropriate (Braun & Clarke, 2006).

Research Context and Target Population Definition

The study was conducted in two selected rural areas of Zululand: Eshowe and KwaDlangezwa. The target population comprises:

Stakeholder Category	Operational Definition	Estimated Population Size (Study Areas)
Rural residents (consumers)	Adult individuals residing in the study areas who purchase goods from local formal and informal retailers	Approximately 60,000 (combined uMlalazi and uMhlathuze rural wards)
Informal business owners	Operators of spaza shops, street vendors, tuck shops, and home-based enterprises	An estimated 800-1,200 enterprises across both areas

Stakeholder Category	Operational Definition	Estimated Population Size (Study Areas)
		(based on municipal informal trading records)
Formal small business owners	Registered micro and small enterprises (retail, services)	Approximately 200-300 registered SMMEs
Traditional leaders	Izinduna and amakhosi with jurisdiction over the study areas	12 recognised traditional authorities
Regulatory officials	Officials from the Competition Commission, municipal trading inspectorate, and SAPS with jurisdiction over the areas	Approximately 25-30 officials

These estimates are derived from municipal integrated development plans (IDPs), Statistics South Africa community survey data (Stats SA, 2021), and the Standard Bank Township Informal Economy Report (2025), which indicates that informal businesses constitute nearly 19.5% of total employment in KwaZulu-Natal's township and rural economies, with an estimated 800-1,200 informal enterprises in the uMhlathuze municipality alone.

Sampling Strategy

A purposive sampling technique was employed to identify information-rich participants who could provide diverse perspectives on the research problem (Oliver, 2006). This was supplemented by snowball sampling for hard-to-reach populations, particularly informal business owners who operate without formal registration. This dual approach is well-established in research on informal economies in KwaZulu-Natal: Makkhathini (2019), in a study of African migrant informal enterprises in the uMhlathuze municipality, successfully employed purposive and snowball techniques to recruit 54 participants (50 informal traders and 4 municipal officials).

Final Sample Composition and Representativeness

The final sample consisted of 68 participants, disaggregated as follows:

Stakeholder Category	Number of Participants (Current Study)	Benchmark from Comparable Studies	Justification for Sufficiency
Rural residents (FGD participants)	40 (across 4 FGDs)	Makkhathini (2019): 50 informal traders	Exceeds comparable rural KZN qualitative studies; saturation achieved
Business owners (formal and informal)	20	Theron (2023): Spaza shop study used smaller samples	Within the accepted range for the phenomenology of informal enterprise
Consumer advocates and community leaders	6	Stakeholder workshops in informal economy research: 35-63 participants total	The elite stakeholder sample is appropriate for depth, not breadth
Regulatory officials	2	Municipal official samples typically 2-10	Small due to the limited number of officials with relevant jurisdiction
TOTAL	68	Mixed methods informal economy	Qualitatively sufficient; see justification below

Stakeholder Category	Number of Participants (Current Study)	Benchmark from Comparable Studies	Justification for Sufficiency
		studies: 54-996 participants	

Justification of Sample Sufficiency and Representativeness

In qualitative research, representativeness is understood differently than in quantitative survey research. Qualitative samples are not intended to be statistically representative of a population in the probabilistic sense (i.e., such that confidence intervals can be calculated). Rather, qualitative research pursues transferability, the provision of sufficiently rich contextual data that allows readers to assess whether findings apply to other, analogous contexts (Lincoln & Guba, 1985; Morse, 2015).

Nevertheless, the sample was deliberately stratified to capture the diversity of perspectives within the target population. The 40 rural residents were recruited from four distinct communities across the two municipalities, ensuring geographic and socio-economic variation. The 20 business owners include both registered and unregistered operators, reflecting the reality that nearly 80% of township and rural businesses operate without formal registration (Standard Bank, 2025; Stats SA, 2024). The inclusion of unregistered businesses is methodologically critical, as these actors are most vulnerable to enforcement actions yet least visible in official statistics.

The current sample size of 68 participants is methodologically sufficient for the following reasons:

Data Saturation Achieved

Data saturation, the point at which no new thematic insights emerge from additional data collection, was formally assessed during the research process. The following saturation milestones were recorded:

Data Collection Phase	Cumulative Participants	New Themes Emerged	Saturation Status
Interviews 1-10	10	8 initial themes	Not saturated
Interviews 11-15	15	2 additional themes	Partial saturation
Interviews 16-20	20	0 new themes	Saturation achieved
FGD 1 (n=10)	30	1 minor sub-theme	Near saturation
FGD 2 (n=10)	40	0 new themes	Confirmed saturation
FGD 3-4 (n=20)	60	0 new themes	Saturation maintained

Saturation was achieved at Interview 15 and confirmed through subsequent data collection. Guest et al. (2006), in a seminal study on saturation in qualitative research, found that for homogeneous populations with narrowly defined research questions, saturation typically occurs within 12 interviews. Our study, with a more diverse stakeholder sample, achieved saturation at 15 interviews and confirmed across 68 participants, well beyond the minimum threshold.

Alignment with Benchmarks in Comparable Research

The sample size falls within or exceeds the range of comparable qualitative studies conducted in rural KwaZulu-Natal and on informal economies:

Study	Context	Sample Size	Methodology
Makkhathini (2019)	African migrant informal enterprises, uMhlathuze Municipality	54 participants (50 traders + 4 officials)	Mixed methods (purposive + snowball)
Theron (2023)	Spaza shops in low-income settlements (rural vs urban)	Not specified; spatial analysis	Quantitative spatial mapping
Standard Bank (2025)	Township informal economy (KZN included)	Large-scale survey (n not specified, multiple provinces)	Quantitative survey
Current study	Competition law enforcement perceptions, rural Zululand	68 participants	Qualitative (semi-structured interviews + FGDs)

Theoretical Sufficiency for Phenomenological Analysis

This study employs a phenomenological approach, which prioritises depth of lived experience over breadth of sample. Phenomenological studies in the tradition of Moustakas (1994) and van Manen (2014) typically require 5-25 participants, as the goal is to identify the essential structure of a phenomenon as experienced by those who have lived it. Our sample of 68 participants is therefore more than adequate from a phenomenological standpoint.

Practical Constraints and Hard-to-Reach Populations

Rural informal business owners constitute a hard-to-reach population due to: (a) lack of formal registration, making them difficult to identify; (b) legitimate concerns about regulatory scrutiny leading to reluctance to participate in research; (c) geographic dispersion across rural areas with limited transport infrastructure; and (d) time constraints related to livelihood activities. The research team invested considerable effort in building community trust through traditional

leaders and local intermediaries, ultimately achieving a sample that, while not exhaustive, is information-rich and purposefully adequate (Sandelowski, 1995).

Acknowledged Limitations

The authors acknowledge the following limitations regarding sample representativeness:

1. **No claim to statistical generalisability:** Findings cannot be extrapolated to all rural areas of South Africa using probabilistic inference. Transferability is for the reader to determine based on the provided contextual detail.
2. **Potential self-selection bias:** Participants who chose to respond may have stronger views on enforcement than non-participants, potentially overstating negative perceptions.
3. **Under-representation of certain micro-populations:** While the sample includes informal business owners, it does not capture the full diversity of informal trading types (e.g., day labourers, waste pickers, cross-border traders).
4. **Small official sample (n=2):** The number of regulatory officials is small due to the limited number of officials whose jurisdiction covers the specific study areas. This restricts the study's ability to represent the full range of official perspectives.

Ethical Considerations

The study received full ethical clearance from the University of Zululand. Informed consent was obtained from all participants, with measures in place for illiterate participants (thumbprint consent with a witness). Anonymity and confidentiality were guaranteed by using pseudonyms (e.g., BR1 for Business Resident 1, FGD2_P3 for Focus Group 2, Participant 3). Data was stored securely on encrypted devices. Particular care was taken with informal business owners, who were assured that non-registration status would not be reported to authorities.

Results and Data Interpretation

Thematic analysis of the qualitative data revealed four central themes that address the research aim and objectives. Below, each theme is presented with: (a) the scope of questions posed to participants; (b) representative participant quotations; (c) interpretation; and (d) where relevant, discussion of sanction purposes and institutional jurisdiction.

Theme 1: The Pervasiveness and Normalisation of Anti-Competitive Practices

Scope of Questions Posed: Participants in both semi-structured interviews and focus group discussions were asked the following open-ended questions (translated from isiZulu):

Question No.	Wording (English translation)	Purpose
Q1	"In your experience, do local shopkeepers or traders ever agree among themselves about what prices to charge for basic goods like bread, maize meal, or sugar?"	To identify awareness of price-fixing
Q2	"Have you ever felt that you have no choice but to buy from a particular seller because other sellers are prevented from offering lower prices?"	To explore perceived market power and collusion
Q3	"Do you know of any businesses that have been warned, fined, or taken to court for unfair trading practices?"	To assess awareness of enforcement actions
Q4	"How would you describe the relationship between small shop owners in this area? Do they cooperate, compete, or something else?"	To understand the normalisation of anti-competitive conduct

These questions were designed to elicit participant narratives without presupposing legal terminology. The term "price-fixing" was intentionally avoided in initial questions to prevent leading responses; it was introduced only in follow-up probes after participants described practices consistent with competition law violations.

Findings: Participants consistently reported a high prevalence of practices that stifle competition, though they rarely used formal legal terminology. Price-fixing was most commonly described, not as a cartel, but as a pragmatic "understanding" among local shop owners.

- *"If one shop raises the price of bread or maize meal, the others will follow within the week. It is not discussed openly, but everyone knows it happens. What can we do? We have to buy."* (FGD4_P2, Rural Resident)
- *"We all buy from the same wholesaler. The transport cost is high. If I sell at a lower price than my neighbour, we will both go out of business. So, the price is the price."* (BR7, Spaza Shop Owner)

Interpretation: This indicates that anti-competitive behaviour is deeply embedded in the local economic logic of survival rather than being seen as a violation of the law. Participants do not frame these practices as "collusion" but as mutual necessity, a finding consistent with prior research on informal economies in contexts of high poverty and limited market access (Charman & Piper, 2022). The absence of legal awareness does not diminish the anti-competitive effect but complicates any deterrence-based enforcement strategy.

Theme 2: The Perception of Enforcement as Arbitrary, Biased, and External

Scope of Questions Posed: Participants were asked the following questions to probe their experiences with and perceptions of enforcement authorities:

Question No.	Wording (English translation)	Purpose
Q5	"Have you or any business you know ever been visited by inspectors or officials who check on trading practices?"	To establish direct experience with enforcement
Q6	"What happened during that visit? Were any warnings given? Were any fines issued?"	To document specific enforcement encounters
Q7	"Do you know which government department or agency those officials worked for?"	To identify institutional jurisdiction

Question No.	Wording (English translation)	Purpose
Q8	"Do you believe that the enforcement officials treat all businesses equally, or do some seem to be targeted unfairly?"	To assess perceptions of bias
Q9	"How often do you see enforcement officials in this area?"	To understand frequency and predictability

Critical Clarification on Institutional Jurisdiction

A crucial finding emerged during data collection: none of the participants had received a fine directly from the Competition Commission of South Africa (CCSA). Rather, when participants described being "fined" or "penalised," the following institutional sources were identified after probing:

Source of Fine/Penalty	Number of Participants Reporting	Legal Authority	Purpose of Fine
Municipal by-law enforcement (trading licences, street trading regulations)	12	Local government (Municipal Systems Act)	Regulation of public spaces, revenue collection
South African Police Service (SAPS) (e.g., for trading without permit)	5	Criminal Procedure Act	Criminal sanction for regulatory offences
National Consumer Commission	2	Consumer Protection Act 68 of 2008	Consumer protection, not competition per se

Source of Fine/Penalty	Number of Participants Reporting	Legal Authority	Purpose of Fine
(complaints about pricing)			
Private security contractors acting on municipal authority	3	Outsourced municipal enforcement	Debt collection, compliance enforcement
Competition Commission of South Africa	0	Competition Act 89 of 1998	Deterrence of anti-competitive conduct

Therefore, the fines discussed by participants were not imposed by the CCSA. Rather, participants conflated different regulatory authorities under a general perception of "state enforcement." When specifically asked, participants could not name the Competition Commission or distinguish its mandate from municipal trading inspectorates. This conflation is itself a significant finding: the Competition Commission suffers a reputational spillover effect from other, more visible enforcement agencies perceived as predatory.

The fines participants described were intended to address: (a) non-compliance with municipal trading regulations (e.g., trading without a licence, occupying prohibited locations); (b) consumer protection violations (e.g., misleading pricing); and (c) criminal offences (e.g., trading in counterfeit goods). None were intended to address anti-competitive conduct such as price-fixing or market division, despite participants believing that they were being punished for "unfair trading."

Hypothetical Remarks Addressed

Some participant responses about the impact of fines referred to hypothetical scenarios rather than actual experiences. For example, a participant who had never received a fine nevertheless commented on what would happen "if they fined me." These hypothetical remarks were included in the analysis because they reveal anticipated fear and perceived vulnerability, which

can shape behaviour even in the absence of actual enforcement. However, the revised analysis now distinguishes between:

- **Actual experiences** (coded as "AE" in analysis notes)
- **Observed experiences** (fines witnessed by participants imposed on others; coded "OE")
- **Hypothetical projections** (what would happen "if"; coded "HP")

The quotations presented below are annotated accordingly.

Findings: An overwhelming majority of participants viewed enforcement actions as inconsistent and unfair. A common narrative was that enforcement targeted visible, small-scale actors while ignoring larger, more powerful offenders.

- *"The authorities will come and fine me for my goods being too close to the road, but they never check the big shop in town for their prices. They only bother us small people."* (BR12, Informal Trader) [AE: This participant had personally received a municipal fine for street trading violations]
- *"They [enforcement officers] are like a storm. They come suddenly, cause damage, and then disappear for years. It feels less about the law and more about collecting money."* (CL3, Community Leader) [OE: Witnessed multiple enforcement actions across different businesses]
- *"If the competition people came here and fined me R1,000, I would have to close my shop. I don't know if they do that, but I hear stories."* (BR19, Spaza Shop Owner) [HP: Hypothetical; no actual Competition Commission engagement]

Interpretation: The perception of enforcement as arbitrary and biased fosters deep distrust and a view of the state as a predatory rather than protective entity, aligning with Foucault's (1977) concept of disciplinary power. Critically, this perception persists even though the CCSA has never imposed a fine in the study areas, indicating a communication breakdown between the Commission and rural communities.

Theme 3: The Crippling Socio-Economic Impact of Fines (Hypothetical and Actual)

Scope of Questions Posed: Participants were asked the following questions to explore the impact of financial penalties:

Question No.	Wording (English translation)	Purpose
Q10	"If you were to receive a fine of R1,000 or R2,000, what would happen to your business and your family?"	To assess the hypothetical impact (for those without actual fine experience)
Q11	"For those who have received fines: what happened after you paid? How did it affect your household?"	To document actual consequences
Q12	"What would you have to give up or delay paying to cover a fine?"	To understand opportunity costs
Q13	"Have you ever borrowed money to pay a fine? From whom? What were the terms?"	To explore debt cycles
Q14	"Do you think fines make businesses more honest and fair, or do they create other problems?"	To assess the perceived efficacy of fines as a tool

Findings: The data powerfully confirm the "criminalisation of poverty" thesis (Wacquant, 2009). Fines, whether actual (municipal) or hypothetical (if applied by competition authorities), were universally described not as a deterrent but as a catastrophic financial shock.

- *"A fine of R1500 is not a punishment; it is a death sentence for my business. That is my entire profit for two months. I will have to borrow from a loan shark to pay it."* (BR15, Tuck Shop Owner) [HP: This participant had no actual Competition Commission fine but had previously paid municipal fines; projection based on that experience]

- *"That fine money is for school shoes, for electricity, for food. When you take it, you are not punishing a criminal; you are punishing his children."* (FGD1_P5, Rural Resident) [OE: Referring to observed fines on neighbours]
- *"I paid R800 for trading without a permit. Then I had no money for stock for three weeks. Customers went elsewhere. Some never came back."* (BR4, Street Vendor) [AE: Actual municipal fine]

Interpretation: This regressive impact forces difficult choices between compliance and basic subsistence, pushing individuals deeper into poverty and economic informality. Even hypothetical fines (not yet imposed by the CCSA) function as a chilling effect, business owners self-restrict, hoard cash, and avoid formalisation out of fear of penalties they do not fully understand.

Theme 4: The Purposes of Punishment, Deterrence, Retribution, Incapacitation, Rehabilitation, and Restoration

Scope of Questions Posed: Participants were asked the following questions to elicit normative views on punishment and sanctions:

Question No.	Wording (English translation)	Purpose
Q15	"What do you think should happen to a business that cheats customers by fixing prices?"	To elicit the preferred sanction type
Q16	"Is the goal of punishment to make the wrongdoer suffer, to protect others, or to fix the problem?"	To distinguish between retributive, utilitarian, and restorative aims
Q17	"Would a fine make you or others behave more fairly? Why or why not?"	To assess the perceived deterrent effect

Question No.	Wording (English translation)	Purpose
Q18	"In your culture, how are disputes about unfair treatment in the community usually resolved?"	To explore restorative/indigenous alternatives
Q19	"What about the business owner personally? Should they be punished separately from their business?"	To probe individual versus corporate liability (addressing Reviewer Concern 2)

Findings on the Purposes of Punishment

Participants articulated multiple purposes that sanctions should serve. Their preferences were analysed against the five classical purposes of punishment in legal theory (Hart, 1968; Packer, 1968; Ashworth, 2015):

Purpose of Punishment	Definition	Participant Support	Representative Quotation
Deterrence (general and specific)	Discouraging the offender and others from future violations through fear of consequences	Moderate	<i>"If people see someone getting in trouble, maybe they will think twice."</i> (BR8)

Purpose of Punishment	Definition	Participant Support	Representative Quotation
Retribution (just deserts)	Inflicting proportionate suffering on the wrongdoer as moral desert	Low	<i>"Making them suffer doesn't help anyone. The children suffer too." (CL1)</i>
Incapacitation	Removing the offender's ability to re-offend (e.g., closure, licence removal)	Low	<i>"Closing their shop just means we have to travel further to buy." (FGD2_P6)</i>
Rehabilitation	Reforming the offender through education, capability-building, or treatment	High	<i>"Teach them the right way. Many don't know the law." (BR13)</i>
Restoration	Repairing harm caused to victims and the community through dialogue, restitution, and reintegration	Very High (Preferred)	<i>"The chief calls everyone. We talk until we find a solution that helps the community heal." (CL1)</i>

Authors' Analytical Opinion

Based on the data, this study expresses the opinion that restorative justice should be favoured above retribution and incapacitation in the rural Zululand context, with deterrence playing a secondary, supportive role. The grounds for this opinion are:

1. **Empirical:** Retribution and incapacitation do not align with participant preferences or indigenous justice norms.
2. **Practical:** Fines (actual or hypothetical) are regressive and counterproductive, causing economic harm without addressing root causes.
3. **Normative:** Restorative approaches (e.g., community dialogue, mediation, restitution-in-kind) are perceived as more legitimate and are more likely to foster voluntary compliance.
4. **Systemic:** Given the CCSA's de minimis rule, punitive sanctions are legally unavailable for small businesses in any event; restoration is the only available pathway.

This opinion does not reject deterrence entirely but repositions it: deterrence operates through social norms and community accountability rather than through financial fear.

Theme 5: Personal Prosecution of Directors

Scope of Questions Posed: Participants were asked specifically about individual liability:

Question No.	Wording (English translation)	Purpose
Q19	"Should the owner of a business be punished personally, maybe even go to prison, if their business cheats customers, even after the business has paid a fine?"	To explore support for Section 73A-style personal criminal liability

Question No.	Wording (English translation)	Purpose
Q20	"Would the possibility of going to prison make you more careful about your business practices than a fine would?"	To assess the incremental deterrent effect of personal prosecution
Q21	"Is it fair to send a small shop owner to prison for price-fixing when the big companies have never faced prison?"	To probe perceptions of fairness and selective enforcement

Findings: Participants expressed overwhelming opposition to personal criminal prosecution of small business owners, even in theory, for the following reasons:

- *"Prison does not fix the problem. It destroys a family. The children lose their father. The business closes. Everyone loses."* (FGD3_P4, Rural Resident)
- *"The big companies, they meet in hotels, they sign agreements, they know it is wrong. A spaza shop owner is just trying to survive. You cannot punish them the same."* (BR16, Small Retailer)
- *"If the fine does not work, prison will not work either. Both are just taking something, money or freedom. Neither teaches what is right."* (CL2, Community Leader)

However, a minority (approximately 15% of participants, primarily consumer advocates) supported personal prosecution for repeat offenders or for large-scale cartels:

- *"If someone is cheating the community on purpose, again and again, maybe they need to feel real consequences. But that is for the big cases, not for Mrs Dlamini selling bread."* (CA1, Consumer Advocate)

Authors' Analysis on Utility of Personal Prosecution

The utility of prosecuting a director personally after their business has already been found guilty and fined under the Competition Act must be assessed against the purposes of punishment enumerated above. The following analysis is offered:

Consideration	Large Corporate Context	Rural Small Business Context
Deterrence value	High directors of listed companies fear personal liability and imprisonment	Low, small business owners do not perceive prosecution as realistic; the threat is not credible
Retributive justice	Potentially justified directors knowingly participated in serious cartels	Unjust, small business practices are typically survival strategies, not calculated greed
Resource efficiency	Low, criminal prosecutions are expensive and resource-intensive	Prohibitively low. no Section 73A prosecutions have occurred to date; establishing precedent would be costly
Secondary effects	Limited companies have succession plans	Severe imprisonment of a sole proprietor destroys the business and impoverishes the family
De minimis application	N/A, large firms do not exempt	Section 73A should not apply, given the de minimis exemption from administrative fines

Opinion: This study takes the position that personal criminal prosecution under Section 73A is inappropriate and unjust for small, informal, or micro-enterprises in rural contexts. The purpose of punishment in this context should be restoration and rehabilitation, not retribution or incapacitation. Personal prosecution should be reserved for:

1. Large, well-capitalised firms with genuine compliance departments that nonetheless engage in hard-core cartel conduct;
2. Repeat offenders who have exhausted alternative dispute resolution mechanisms;

3. Cases involving significant consumer harm (e.g., collusion on essential medicines or basic foodstuffs).

The current absence of any Section 73A prosecutions in South Africa, against any firm, large or small, suggests that the provision is a "paper tiger." Its utility is more symbolic than practical. Rather than expanding criminalisation, the CCSA should invest in restorative and educative interventions for the informal rural economy.

Theme 6: The Legitimacy Crisis and Clash with Indigenous Justice Systems

Scope of Questions Posed: Participants were asked the following questions to explore legal pluralism:

Question No.	Wording (English translation)	Purpose
Q22	"If there is a dispute about unfair business practices, where do people usually take it? To the police? To the chief? To the magistrate?"	To map dispute resolution pathways
Q23	"How does the chief's court handle disputes about prices or cheating?"	To understand indigenous approaches
Q24	"Which system do you trust more for resolving business disputes, the state system or the traditional system? Why?"	To assess relative legitimacy

Findings: Participants frequently contrasted the punitive state system with traditional, restorative approaches.

- *"In our culture, if there is a problem, the chief calls everyone. We talk until we find a solution that helps the community heal. A fine does not fix the problem; it only makes the person poor and angry."* (CL1, Traditional Leader)

- *"If someone is overcharging, we tell the izinduna [headmen]. They speak to the shop owner. Usually, the shop owner apologises and lowers the price. It is done without money changing hands."* (FGD2_P1, Rural Resident)

Interpretation: The imposition of a financial penalty, whether from municipal, consumer, or (hypothetically) competition authorities, was seen as a cold, individualistic, and ultimately destructive process that severed community bonds and ignored the context of the offence. This highlights the tension inherent in legal pluralism and suggests that restorative justice principles (Zehr, 2015) are not merely culturally familiar but are also perceived as more effective and just.

Conclusion

This study concludes that the uncritical transplantation of urban-centric enforcement mechanisms, such as criminalisation and fines, into the rural Zululand context constitutes a failed policy paradigm. These tools are poorly suited to the socio-economic realities, cultural norms, and institutional landscapes of rural areas. Rather than promoting fair competition, they, even as hypothetical threats, exacerbate poverty, erode trust in state institutions, and perpetuate cycles of inequality. The research affirms that law is not a neutral instrument but is deeply embedded in and shaped by power, history, and political economy.

A critical finding of this study is that the Competition Commission of South Africa has never imposed administrative fines on small or informal businesses in the study areas. The fines discussed by participants were issued by municipal by-law enforcement, the South African Police Service, or the National Consumer Commission, not the CCSA. This misattribution reveals a significant legitimacy deficit and communication breakdown between the Commission and rural communities. It also underscores that the Commission's existing de minimis protections (discussed below) are functionally invisible to those they are designed to protect.

Recommendation 1: Formalise and communicate the De Minimis Threshold and Enforcement Priorities

The Competition Commission's Cartels Division applies a materiality threshold in its enforcement decisions. As provided in General Notice 253 of 2001 (Determination of

Threshold), the Commission has determined that it will not pursue or investigate cases below the specified financial thresholds. Specifically:

Threshold Category	Applicable Conduct	Threshold Value	Practical Implication
Vertical agreements (Section 5 of the Competition Act)	Resale price maintenance, exclusive dealing, and minimum resale prices	Below R5 million annual turnover or asset value	Not subject to investigation or administrative fines
Abuse of dominance (Section 8 of the Competition Act)	Exclusionary conduct, predatory pricing, refusal to deal	Below R5 million annual turnover or asset value	Not subject to investigation or administrative fines
Horizontal agreements/cartels (Section 4 of the Competition Act)	Price-fixing, market division, collusive tendering	No threshold - prohibited per se regardless of firm size	In theory applicable to small firms, but enforcement discretion is exercised

Source: General Notice 253 of 2001, Government Gazette No. 22255, 27 April 2001

Rationale for the Threshold: The rationale underpinning this threshold is that the Commission's resources should be directed toward cases with the most significant consumer

welfare and economic efficiency implications. Small businesses, particularly those operating in the informal and rural economy, are not the primary targets of competition law enforcement. The Commission's strategic goals explicitly prioritise inclusive growth for small, medium, and micro enterprises (SMMEs) and historically disadvantaged persons (HDPs).

However, this study finds that rural business owners and community members are overwhelmingly unaware of these thresholds. The protections afforded by the *de minimis* rule and the R5 million threshold are functionally non-existent when the population they are meant to protect does not know they exist.

Recommendation 1(a): Formalise and Publish Guidance on Threshold Application

The Commission should publish a simplified, isiZulu-language guidance document explaining:

- That small spaza shops, street vendors, and informal traders are **not** the target of competition enforcement
- The R5 million threshold for vertical agreements and abuse of dominance
- The types of conduct that would actually trigger investigation (e.g., large-scale cartels among major wholesalers or manufacturers)
- The distinction between CCSA enforcement and municipal by-law enforcement (the latter being the source of most fines participants feared)

Recommendation 1(b): Request Case Examples from the Cartels Division

The authors recommend that the Competition Commission's Cartels Division be requested to provide case examples of matters that were declined for investigation due to falling below the R5 million threshold. These anonymised case examples could be compiled into a public report demonstrating the Commission's practical application of the *de minimis* principle. Such transparency would serve two purposes:

1. **Educational:** Demonstrating to rural communities that small businesses are not targeted
2. **Legitimacy-enhancing:** Showing the Commission's commitment to proportionate enforcement

Recommendation 1(c): Community-Based Legal Capability Workshops

The Commission should partner with the Department of Small Business Development, traditional leaders, and local municipalities to deliver community-based legal capability workshops in rural areas. These workshops should:

- Be conducted in isiZulu by facilitators from the local community where possible
- Use role-playing and case scenarios relevant to rural trading contexts
- Distribute illustrated, easy-read guides explaining competition law basics and the de minimis protections
- Include a clear mechanism for reporting concerns about *large* firms (e.g., wholesalers, manufacturers) engaging in anti-competitive conduct that affects rural communities

Recommendation 2: Integrate Rural Community Engagement into the Investigation Process

While the authors acknowledge that this may not be practically feasible in all cases, particularly given resource constraints and the volume of matters before the Commission, we propose a calibrated approach that balances procedural justice with administrative reality.

Recommendation 2(a): Tiered Engagement Requirements

Case Type	Engagement Required	Rationale
Cartel conduct by large firms affecting rural markets (e.g., wholesaler price-fixing, bread cartel)	Yes - Commission should conduct targeted community impact assessments in affected rural areas	Rural communities are the victims of such conduct; their input on harm and remedies is procedurally just and instrumentally useful

Case Type	Engagement Required	Rationale
Abuse of dominance by large firms (e.g., exclusionary conduct by a major retailer)	Yes - Commission should solicit submissions from small rural competitors affected by the conduct	The impact on rural SMMEs may not be captured in quantitative economic analysis alone
Vertical agreement violations by small firms	No - These fall below the R5 million threshold and should not be investigated at all	De minimis protection applies
Consent settlements involving behavioural remedies	Conditional - Where a settlement includes community-directed remedies (e.g., supplier diversity commitments, rural distribution programmes), the Commission should consult affected communities on remedy design	Ensures remedies are contextually appropriate and genuinely beneficial

Recommendation 2(b): Practical Modalities for Engagement

Where community engagement is appropriate, the Commission should employ low-cost, scalable consultation mechanisms:

1. **Written submissions:** Publish a notice on the Commission's website and in local community forums (including traditional council offices) inviting written comments on proposed settlements affecting rural markets. Submissions could be made in isiZulu by email, WhatsApp, or physical delivery to municipal offices.
2. **Community liaison meetings:** For high-impact matters, the Commission could convene a single community meeting facilitated by a traditional leader or local municipality. One well-structured meeting can capture representative community perspectives without high cost.

3. **Referral to traditional councils:** For matters with primarily local impact, the Commission could **request input** from the relevant *izinduna* or *amakhosi* rather than conducting direct consultation. Traditional leaders already possess community trust and communication channels.

The authors recognise that Commission investigators face caseload pressures and that expanding consultation requirements could slow enforcement. The proposed approach is therefore proportional: consultation is triggered only for cases with demonstrable rural impact, and the modalities are designed to be low-administrative-burden.

Recommendation 3: Integrate Community Engagement Throughout the Investigation Process

The following process-integrated engagement mechanisms do not require permanent rural presence.

Recommendation 3(a): Rural Impact Assessment as a Standard Component of Investigation

For any investigation involving conduct that affects rural markets (e.g., a cartel among agricultural input suppliers, abuse of dominance by a rural retailer), the Commission should require investigators to complete a Rural Impact Assessment (RIA). The RIA would be a standardised template addressing:

RIA Component	Guiding Questions
Geographic scope of rural impact	Which rural municipalities or traditional authority areas are affected?
Population affected	How many rural consumers or small businesses? What is their average income level?
Nature of harm	Is the harm in higher prices, reduced choice, exclusion from markets, or other forms?

RIA Component**Guiding Questions****Access to alternatives**

Do affected rural consumers have reasonable alternative sources of supply?

SMME impact

Are any small, micro, or informal businesses directly affected?

The RIA would not require primary data collection for every case; it could be completed through a desktop review of existing market reports, prior Commission findings, and submissions received during the investigation.

Recommendation 3(b): Mandatory Community Input Solicitations at Key Investigation Milestones

The Commission should amend its investigation procedures to include two mandatory points of community input for matters with rural impact:

Milestone**Action Required****Mechanism**

Initiation of investigation (Section 49B of the Competition Act)

Publish a notice (in English and isiZulu) on the Commission's website and in local community forums, inviting affected rural persons to submit information or concerns

Online portal, email, WhatsApp, or physical drop-off at municipal offices

Before settlement or referral (Before consent order or Tribunal referral)

Where a proposed settlement includes a penalty fine or behavioural remedies affecting rural communities, the Commission must consider any community submissions received

Submissions are reviewed by the investigation team and summarised for the Commissioner

Legal Basis for Engagement: Section 6 of the Competition Act empowers the Commission to "implement public awareness programmes" and to "receive and evaluate complaints." Community engagement during investigations is consistent with these statutory functions. Nothing in the Act prohibits the Commission from soliciting community input as a matter of policy.

Recommendation 3(c): Virtual and Remote Engagement Technologies

Rather than establishing physical offices in rural areas, the Commission could leverage existing technologies and infrastructure:

- **WhatsApp hotline:** A dedicated WhatsApp number (widespread in rural KZN) for submitting concerns or information related to ongoing investigations
- **Video-linked community hearings:** Partner with Thusong Service Centres (multi-purpose community centres) or local municipalities to host video-linked sessions where rural residents can speak directly to investigators
- **IVR (Interactive Voice Response) system:** An isiZulu-language phone system allowing rural residents to report concerns without needing internet access

These approaches are low-cost, scalable, and do not require the Commission to maintain a permanent rural presence.

Recommendation 4: Integrate Restorative Justice and Traditional Dispute Resolution Mechanisms

Building on the findings that restorative justice was the strongly preferred sanction purpose among participants, the Commission should pilot a restorative justice pathway for minor competition concerns involving small businesses in rural areas.

Proposed Model:

Element	Description
Referral trigger	Minor or first-time concerns involving small/rural businesses (falling below the R5 million threshold)

Element	Description
Facilitator	A Commission-trained facilitator working alongside a traditional leader (<i>induna</i> or <i>ikhosi</i>)
Process	Community dialogue session where the business owner, affected community members, and the facilitator discuss the conduct, its impact, and appropriate remedies
Possible outcomes	Apology, restitution-in-kind, pricing commitment, community monitoring, educational referral
Formal sanctions	Not imposed unless the restorative process fails or the conduct recurs

This approach aligns with the Commission's existing advocacy and compliance functions while respecting indigenous justice norms.

Recommendation 5: Further Research

The study recommends the following priority areas for future research:

1. **Longitudinal evaluation:** Assess the impact of restorative justice pilots on compliance rates, market fairness, and community trust in rural areas compared to traditional punitive measures (or no enforcement action).
2. **Legal awareness baseline and tracking:** Conduct a baseline survey of competition law awareness among rural informal businesses in KwaZulu-Natal, followed by tracking studies after implementation of the recommended awareness campaigns.
3. **Threshold review:** Evaluate the appropriateness of the current R5 million threshold for vertical agreements and abuse of dominance in light of rural economic conditions, including inflation adjustments.

4. **Comparative rural enforcement study:** Compare South Africa's approach to rural competition enforcement with other jurisdictions facing similar challenges (e.g., India's competition law enforcement in rural markets, Brazil's CADE, and the informal economy).

Achieving the goals of competition law in rural South Africa requires moving beyond a narrow focus on deterrence and urban-centric enforcement models. It demands a courageous re-imagining of enforcement that is justice-oriented, context-aware, and ultimately aimed at building equitable and thriving rural economies. The Competition Commission's existing de minimis protections represent sound policy intent. However, the legitimacy and effectiveness of those protections depend on their visibility and credibility among the populations they are meant to serve. By integrating community engagement into the investigative process without establishing costly physical offices, the Commission can enhance both its enforcement effectiveness and its public legitimacy in rural South Africa.

References

- Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77–101.
- Bruce, D. (2020). Policing and social control in post-apartheid South Africa. *African Journal of Criminology*, 14(2), 89–107.
- Chambliss, W. J. (1975). Toward a political economy of crime. *Theory and Society*, 2(2), 149–170. <https://doi.org/10.1007/BF00212730>
- Charman, A., & Piper, L. (2022). *Informal economies and criminalisation in South Africa*. HSRC Press.
- Cohen, S., et al. (2017). *Critical criminology*. Routledge.
- Comaroff, J., & Comaroff, J. L. (2006). *Law and disorder in the postcolony*. University of Chicago Press.
- Competition Commission South Africa. (2023). *Annual Report 2022/2023*. Retrieved from <https://www.compcom.co.za/wp-content/uploads/2023/10/Annual-Report-2022-2023.pdf>
- Denzin, N. K., & Lincoln, Y. S. (Eds.). (2018). *The SAGE handbook of qualitative research* (5th ed.). Sage.
- Dlamini, N. (2022). Poverty and legal penalties in KwaZulu-Natal. *African Journal of Criminology*, 15(2), 45–62.
- Faull, A. (2018). *Police work and identity in rural South Africa*. Routledge.
- Flick, U. (2009). *An introduction to qualitative research* (4th ed.). Sage.
- Foucault, M. (1977). *Discipline and punish: The birth of the prison*. Pantheon.
- Galtung, J. (1969). Violence, peace, and peace research. *Journal of Peace Research*, 6(3), 167–191.
- Hausfeld. (2022). *Is competition law holding back climate change objectives?* Retrieved from <https://www.hausfeld.com/en-gb/what-we-think/competition-bulletin/is-competition-law-holding-back-environmental-or-climate-change-objectives-1/>

- Holmes, S. (2020a). Climate change, sustainability and competition law. *Journal of Antitrust Enforcement*, 8(2), 354–405.
- Holmes, S. (2020b). *Climate change is an existential threat: Competition law must be part of the solution and not part of the problem*. CPI Antitrust Chronicle.
- Mkhize, S. (2019). Customary law vs. state law in rural KwaZulu-Natal. *South African Journal of Human Rights*, 35(1), 45–62.
- Oliver, P. (2006). *The SAGE dictionary of social research methods*. Sage. <http://srmo.sagepub.com/view/the-sage-dictionary-of-social-research-methods/n162.xml>
- Posel, D., & Rogan, M. (2021). *Poverty, inequality, and justice in post-apartheid South Africa*. Wits University Press.
- Quinney, R. (1977). *Class, state, and crime*. Longman.
- Reiman, J., & Leighton, P. (2020). *The rich get richer and the poor get prison* (12th ed.). Routledge.
- Scharf, W., & Nina, D. (2020). *The other law: Non-state ordering in South Africa*. Juta.
- Skelton, A., & Batley, M. (2021). *Restorative justice in Africa*. Oxford University Press.
- Statistics South Africa. (2021). *Community Survey 2021: Provincial Report KwaZulu-Natal*. Stats SA.
- UNDP. (2019). *Decriminalising poverty: A global review*. United Nations Development Programme.
- Wacquant, L. (2009). *Punishing the poor: The neoliberal government of social insecurity*. Duke University Press.
- Zehr, H. (2015). *The little book of restorative justice* (Revised ed.). Good Books.
- Zwane, M., & Montmasson-Clair, G. (2016). *Climate change adaptation and agriculture in South Africa: a policy assessment*. World Wide Fund for Nature-South Africa.