

The Limits of Material Interest: Third Party Standing and Public Interest Participation in the Competition Tribunal

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TABLE OF CONTENTS

Abstract	1
Introduction	2
The legislative and constitutional framework	2
The Competition Act's preamble and purpose	3
The constitutional interpretation of the Competition Act	3
The diversity of constitutional rights implications in Tribunal matters	3
The Tribunal's participation threshold	4
The CAC's participation threshold	7
The justification for the CAC's <i>amicus</i> -like framework	8
Comparative perspectives: standing and public participation in other jurisdictions	11
African comparators.....	11
The European Union	14
Lessons for South Africa	15
The democratic deficit: why the gap matters	15
The adjudicative paradox	16
The epistemic problem	16
The legitimacy problem	17
The constitutional problem	18
Reform proposals	19
Statutory amendment.....	19
Rule-based reform	20
Interpretive reform	20
Procedural safeguards	20
Conclusion	21
References	22

Abstract

South Africa's Competition Act embeds public interest objectives such as economic transformation, employment protection, broader ownership and access to socio-economic rights into its framework, but the procedural architecture that governs who may participate before the Competition Tribunal is poorly aligned with those objectives. Section 53 and Rule 46 frame participation largely around a "material interest" test that privileges commercial stakeholders and limits access for civil society, community groups, trade unions and consumer bodies. However, competition law jurisprudence has softened this approach in *Anglo South Africa Capital* and related decisions, which embrace an assistance-based admission test for merger appeals, and the Constitutional Court in *Lewis Stores* confirmed that intervention may be justified either by a material interest or by an applicant's ability to assist the Tribunal. Yet the Tribunal itself lacks an express *amicus* mechanism that supports assistance-based admissions, producing an institutional anomaly in which the fact-finding first instance forum is procedurally more closed to third-party intervention than the appellate forum. This paper sets out the varied third-party intervention thresholds applied by the Tribunal and the Competition Appeal Court, evaluates how third parties are allowed access into competition decision-making forums in comparator jurisdictions, why the deficit of an *amicus* mechanism at Tribunal level is anomalous, and sets out measures that can be implemented to address this deficit.

Introduction

The Competition Act No. 89 of 1998 (“the Act”) has ambitious public interest objectives. Its preamble and purpose provisions clearly mandate the competition regulator to exercise its powers in pursuit of a more equal, inclusive economy that balances the interests of all stakeholders. Yet a closer examination of section 53 of the Act shows a concerning gap: those whose public interests are most affected by the decisions made by the regulator are often excluded from the persons who are entitled to participate in proceedings before the Tribunal.

This paper examines a persistent and consequential tension in South African competition adjudication: the Act’s explicit public interest mandate sits uneasily with procedural rules that privilege commercial stakeholders and constrain non-commercial public participation. Although the Tribunal is charged with weighing employment, transformation, consumer welfare and other constitutional values when deciding mergers and restrictive-practice matters, the statutory and rule-based thresholds for third-party intervention tend to exclude civil society, community groups and consumer bodies from the primary fact-finding forum. The result is an institutional design that risks producing decisions on public-interest questions from an evidentiary record assembled largely by the parties with commercial stakes, rather than by those best placed to speak to socio-economic harms and constitutional effects.

Against this background, the paper makes three linked claims. First, it shows that the Tribunal’s participation threshold functions more like ordinary standing rules than an *amicus* mechanism and, therefore, systematically disadvantages non-commercial participants. Second, it demonstrates that the Competition Appeal Court (“CAC”)’s more assistance-oriented approach offers a workable model for admitting public-interest contributions, but that the appellate forum cannot substitute for meaningful participation at first instance. Third, it argues that reform is both constitutionally required and institutionally practicable: either through a purposive interpretive reading of section 53 and Rule 46, rules-based amendments to create a formal *amicus* procedure at Tribunal level, or targeted statutory change to add a public-interest limb to section 53. Finally, it proposes reforms to align the Tribunal’s intervention threshold with the CAC’s *amicus*-like framework.

The legislative and constitutional framework

The Competition Act is, at its essence, a statute with important public interest objectives. This is reflected in the Act’s preamble and its purpose provisions. The provisions which govern who may participate in matters before the Tribunal should not frustrate this broader purpose. This section sets out the constitutional and legislative framework against which the participation provisions of the Competition Act and the Tribunal Rules should be assessed and interpreted.

The Competition Act's preamble and purpose

The Preamble of the Competition Act locates competition regulation in South Africa's history of apartheid-era exclusion and concentration, recording how discriminatory laws resulted in excessive concentrations of ownership and control in the national economy, inadequate restraints against anti-competitive trade practices, and unjust restrictions on full and free participation in the economy by all South Africans.¹ It expresses the aspiration that the economy be opened to broader ownership by a greater number of South Africans, and that a competitive environment balancing the interests of workers, owners and consumers, and focused on development, will benefit all South Africans.²

Section 2 gives this premise statutory form by requiring competition enforcement not only to promote efficiency, but also employment, the welfare of South Africans, equitable participation by small and medium-sized enterprises, and a wider spread of ownership.³ Read with section 1(2), the Act's purpose supplies a binding directive that it should be interpreted consistently with the Constitution in a manner that gives effect to its statutory purposes.

The constitutional interpretation of the Competition Act

It is trite that the Constitution, the supreme law of the country, must be the starting point in all legislative interpretation and application. This position is reflected in the Competition Act itself where, in section 1(2), it requires that the Act be interpreted in a manner that is consistent with the Constitution and that gives effect to the purposes of the Act.⁴ This constitutional orientation is not limited to substantive competition standards. The Constitutional Court in *Competition Commission of South Africa v Mediclinic* held that the invocation of section 39(2) of the Constitution is a compulsory interpretive injunction that obligates any court to promote the spirit, purport, and objects of the Bill of Rights, whether or not a party has specifically argued the point.⁵ Further, the competition authorities bear a heightened responsibility of doing so by virtue of the obligation imposed on them by section 7(2) of the Constitution, the Preamble and purpose of the Competition Act.⁶

The diversity of constitutional rights implications in Tribunal matters

Due to the diversity of industries, actors, and types of conduct that the Tribunal is tasked to adjudicate, a variety of constitutional rights may be implicated in the matters which come before it. For example, a merger in the healthcare sector may implicate the right of access to healthcare

¹Preamble to the Competition Act 89 of 1998.

²*Id.*

³Section 2(1)(c), (e) and (f) of the Competition Act 89 of 1998.

⁴Section 1(2) of the Competition Act 89 of 1998.

⁵*Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another* [2021] ZACC 35 at paras 9–10.

⁶*Id.*

services. To take it further, an excessive pricing matter concerning lifesaving medication for illnesses which prominently affect women would implicate healthcare rights as well as the right to equality, when one considers the persistent economic inequality that exists between different groups in the country and the effects that this has on accessibility and affordability.

Because of the variability of rights which may be implicated in a competition matter, it is submitted that the interpretive obligation should extend not only to the substantive provisions that the Tribunal may apply, but also to the procedural provisions that determine whose voice is heard. These procedural rules are not neutral: they shape the informational and normative record on which the Tribunal performs its statutory public interest mandate. This has been acknowledged in cases such as *Sunrise Energy (Pty) Ltd v Strategic Fuel Fund Association NPC*, where the CAC overturned the Tribunal's decision to deny the appellant's economic experts access to the confidential parts of the merger records.⁷ Therefore, the threshold governing who may participate in a hearing is itself a provision that must be interpreted to promote the spirit, purport and objects of the Bill of Rights, and cannot be read to systematically filter out the very people whose non-commercial, constitutional interests the authorities are obliged to advance. Where a transaction or practice has an impact on a particular constitutional right, the Tribunal's determination is improved by hearing from those with expertise on, and a direct connection to, that right, rather than from the commercial parties involved alone. This is the very rationale on which other courts have developed *amicus curiae* mechanisms: to admit those who can assist the adjudicator on questions of law or public interest that the immediate parties are not best placed to address. A first instance forum charged with weighing public interest implications, but without a comparable means of hearing from the public, is poorly equipped to perform the task that the Competition Act assigns it.

The Tribunal's participation threshold

Against the framework set out above, the provisions which govern who may participate in a hearing before the Tribunal are comparatively confined. Section 53 of the Competition Act identifies the persons who are entitled to participate in proceedings before the Tribunal. This provision grants rights of participation in relation to three types of procedures – restrictive practices, exemption applications, and mergers. Briefly, section 53 sets out the following thresholds for third-party participation for each procedure (as relevant to the scope of this paper):

1. Section 53(1)(a)(iv), which governs participation in restrictive practice complaints referred to the Tribunal, allows third parties with a “material interest” to participate, unless “in the opinion of the presiding member of the Competition Tribunal, that interest is adequately represented by another participant, but only to the extent required for the complainant's interest to be adequately represented”.⁸

⁷ *Sunrise Energy (Pty) Ltd v Strategic Fuel Fund Association NPC* [2022] ZACAC 11 at 19.

⁸ Section 53(1)(a)(iv) of the Competition Act.

2. Section 53(1)(b)(iv), which governs exemption applications from prohibitions on restricted practices in the promotion of certain public interest objectives, allows third parties with an “interest” to participate.⁹ Read with section 10(8), this interest must be of a “substantial financial” nature.¹⁰
3. Section 53(1)(c)(v), which governs participation in merger procedures, allows any person “recognised by the Tribunal as a participant” to participate.¹¹

The Tribunal’s Rule 46 is the procedural vehicle through which the “material interest” residual category is exercised. This provision states that: “At any time after an initiating document is filed with the Tribunal, any person who has a material interest in the relevant matter may apply to intervene in the Tribunal proceedings...”.¹²

Once a party has applied to intervene in a matter, the Tribunal must then make an order either allowing the applicant to intervene or denying the application if it concludes that the interests of the applicant are not within the scope of the Act or are already represented by another in the proceeding.¹³ Participation in matters before the Tribunal thus turns on establishing a material interest in the hearing, but “material interest” is not defined in the Competition Act or Tribunal’s Rules. The ambit of Rule 46 has, however, been delineated by the Tribunal and the CAC.

In *Industrial Development Corporation of South Africa Ltd v Anglo American Holdings*, the Industrial Development Corporation applied for leave to intervene in merger proceedings.¹⁴ Here, the Tribunal held that “material interest” was to be given a broad meaning.¹⁵ This position was reiterated by the Tribunal in *Healthbridge (Pty) Ltd v Digital Healthcare Solutions (Pty) Ltd*,¹⁶ where it held that a wide scope of intervention should be granted and that the Tribunal exercises judicial discretion in whether or not an applicant may participate in a hearing before it.¹⁷ In exercising this judicial discretion, the Tribunal is alive to whether or not a participant would bring value to the matter or assistance to the Tribunal.¹⁸ In *Community Healthcare Holdings (Pty) Ltd/Cornucopia v Competition Commission and Others*, the applicant was not permitted to intervene because they:

⁹ Id at section 53(1)(b)(iv).

¹⁰ Id at section 10(8).

¹¹ Id at section 53(1)(c)(v).

¹² Rule 46(1) of the Tribunal Rules.

¹³ Id at Rule 46(2).

¹⁴ *Industrial Development Corporation of South Africa Ltd v Anglo-American Holdings Ltd* (2002) ZACT 74.

¹⁵ Id at pages 5-10; Y Carrim, K Moothoo-Padayachie & C Mathonsi ‘2020/2021 Handbook of Case Law: the Competition Tribunal’s guide to select cases decided from 1999 to 2021’ (2021) *Competition Tribunal of South Africa* at page 83. (Accessible [here](#)).

¹⁶ *Healthbridge (Pty) Ltd v Digital Healthcare Solutions (Pty) Ltd* [2003] ZACT 27.

¹⁷ Id at page 10.

¹⁸ Id.

“failed to indicate either why the merger if consummated should have an adverse effect on it or on what value it can bring to our proceedings if allowed to intervene.”¹⁹ (Own emphasis added).

This position has recently been confirmed at the highest level. In *Lewis Stores (Pty) Ltd v Pepkor Holdings Ltd* (“Lewis Stores”), the Constitutional Court, considering intervention in a large merger for the first time, restated the settled test as requiring a prospective intervenor to show either a material interest in the proceedings, or that it is likely to be able to assist the Tribunal.²⁰ Significantly, the two limbs perform distinct functions. The Court endorsed the proposition, drawn from *Anglo SA Capital*, that the requirement of a material and substantial interest is the test appropriate to ordinary litigation and is too restrictive to govern intervention before the Tribunal, such that a party unable to establish such an interest may well be admitted if it is able to provide evidence of its ability to assist the Tribunal.²¹ The threshold is thus expressly structured so that the assistance limb admits those whom the interest limb would exclude.

The threshold so framed appears generous. On closer examination, however, neither limb is well adapted to a non-commercial public interest participant. The material interest contemplated is an interest in the subject matter or outcome of the proceedings. This is an interest approaching the direct and substantial interest familiar from the general law of standing and joinder, rather than a generalised concern with the public interest or questions of law that the matter may raise. The assistance limb, for its part, has in practice been calibrated to assistance with the competition inquiry. In *Lewis Stores* the intervenor qualified as such by advancing a merger-specific theory of harm and supplying pricing, market-definition and closeness-of-competition evidence of a kind a sophisticated market participant is well placed to produce.²² A participant whose contribution is confined to the public interest dimension, and who holds no commercial data of that kind, fits neither limb comfortably.

On this approach, a competitor, customer, or supplier whose commercial position is directly affected will ordinarily qualify as an intervenor, whereas a civil society organisation, consumer body, or community grouping that wishes to address the Tribunal on the public interest dimension of the matter, but has no commercial or proprietary stake, will struggle to do so. *Lewis Stores* itself illustrates the asymmetry. Lewis, a major competitor, was admitted on the competition limb, but was refused participatory rights on the public interest concerns it had raised (the effect on the sector, on employment, and on the participation of small and medium businesses and firms owned by

¹⁹ *Community Healthcare Holdings (Pty) Ltd/Cornucopia v the Competition Commission and Others* [2005] ZACT 11 at para 32.

²⁰ *Lewis Stores (Pty) Ltd v Pepkor Holdings Ltd* [2026] ZACC 4 at paras 42 and 52.

²¹ *Lewis Stores (Pty) Ltd v Pepkor Holdings Ltd* [2026] ZACC 4 at paras 42 and 52.

²² *Id* at para 35, citing *Anglo South Africa Capital (Pty) Ltd v Industrial Development Corporation of South Africa* 2004 (6) SA 196 (CAC), as summarised in *Community Healthcare Holdings (Pty) Ltd v Competition Tribunal* [2005] ZACAC 3 at para 28.

historically disadvantaged persons), having been unable to elucidate them at the hearing.²³ Even a well-resourced commercial participant thus secured admission on the competition inquiry while being turned away on the very public interest questions the Act obliges the Tribunal to determine.

Section 53 and Rule 46 are accordingly akin to standing provisions for an intervening party in ordinary courts, rather than an *amicus* mechanism. This distinction is not merely analytical. In *Lewis Stores* the Constitutional Court drew it expressly, holding that an admitted intervenor acquires the status of a party, distinctly different from an admitted *amicus*, with the attendant rights to adduce evidence, cross examine, and appeal or review an adverse finding.²⁴ The Tribunal's procedural architecture, on the Court's own account, contemplates the full participant but not the friend of the court. As will be set out in greater detail below, *amicus* mechanisms typically set a lower bar for participation. This is because an *amicus* is not a litigating party with a direct interest in the matter; it serves to assist the adjudicating body by providing novel, objective submissions or legal insights that the primary parties do not cover. The implicit assumption underlying the existing participation threshold is that persons with a genuine stake in a competition matter are those whose economic interests are engaged by it. That assumption is intelligible in conventional competition adjudication, where the contest is typically between the enforcement authority and the firm under investigation. It sits uneasily, however, with the design of the Act, which expressly directs the Tribunal to consider the public interest purposes that the Act aims to achieve.

As is set out in greater detail below, the practical consequences of this gap are significant. A civil society organisation or other group with expertise in the effects that the matter may have on the public's constitutional rights cannot ordinarily participate in a Tribunal hearing unless it can demonstrate a material – in practice a direct and commercially or legally cognisable – interest in the matter.

The Tribunal is required to determine public interest questions, but the participation threshold tends to exclude precisely those participants best placed to inform that determination from a non-commercial standpoint, leaving the record on the public interest dimension to be assembled largely from the submissions of the commercial parties and the Competition Commission. A regime that adjudicates the public interest while excluding the public from the room invites criticism that its public interest mandate is, in this respect, more nominal than real.

The CAC's participation threshold

Participation in proceedings before the CAC is governed by section 61 of the Competition Act, which govern appeals and reviews, read with the CAC's own Rules. Section 61 empowers a party to, or a person affected by a decision of the Tribunal to appeal or seek review of the decision by the CAC. In merger matters, the persons entitled to appeal include those whole the Tribunal recognised as

²³ Id at paras 59, 61 and 76.

²⁴ Id at paras 73, 78 and 79.

participants under section 53(1)(c)(v). A third party's standing on appeal is thus derivative – it flows from having been admitted as a participant at the Tribunal, and not from any interest threshold applied by the CAC itself. Section 53 is in this sense relevant to the CAC only as it defines the class of Tribunal participants whom section 61 then carries upward on appeal. It is not a threshold that the CAC applies afresh to those who come before it.

A person who was not a participant before the Tribunal may nonetheless seek to intervene in the appeal, but such intervention is governed by the CAC Rules read with the Rules of the Supreme Court of Appeal. The threshold here turns on the ordinary appellate test for joinder, rather than on the "material interest" language of section 53(1)(a)(iv). It is against this background that the CAC's *amicus* mechanism assumes its significance. Although the Competition Act does not itself provide for the admission of *amici*, Rule 28 of the CAC Rules incorporates Rule 16 of the Rules of the Supreme Court of Appeal ("the SCA Rules"), which permits a person to be admitted to assist the Court as an *amicus curiae*. Admission on this basis turns on whether the applicant's submissions are likely to assist the Court on the issues before it, and requires no interest in the outcome of the matter. An *amicus* so admitted is not a party, and acquires none of the rights to lead evidence, cross-examine or appeal that attach to a main party. Its role is correspondingly circumscribed: under the incorporated SCA Rules, an *amicus* is ordinarily confined to the record on appeal, may not adduce fresh evidence, and does not present oral argument unless the Court directs otherwise.

The comparison with the Tribunal is instructive. At first instance, the only route to participation is section 53, which admits a person as a full participant, with the attendant evidentiary burdens, exposure to costs and status of a party, and which does so on either a material interest or an ability-to-assist basis. The Tribunal Rules contain no equivalent of CAC Rule 28. There is no mechanism by which a person may be admitted before the Tribunal as an *amicus*, to assist the adjudicator on a question of law or public interest without assuming the full apparatus of party status. The consequence is a striking institutional inversion. The appellate forum, which decides matters on a closed record and accords a measure of deference to the Tribunal's factual findings, offers a low-threshold *amicus* route to those who can assist it; the forum of first instance, which assembles the very evidentiary record on which the public interest determination ultimately rests, offers none. A civil society organisation equipped to assist the Tribunal on the constitutional or public interest dimension of a merger, or example, cannot do so as an *amicus* at the stage where that assistance would count for most, and may participate at first instance only by surmounting the higher hurdle of full participant status.

The justification for the CAC's *amicus*-like framework

The CAC's more flexible approach to intervention, is not merely a procedural innovation; it is supported by broader constitutional values governing access to justice, participatory decision-making and the proper interpretation of legislation. The constitutional foundation for this approach

lies primarily in sections 34 and 39(2) of the Constitution.²⁵ Section 34 guarantees that everyone has the right to have legal disputes resolved in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. Although section 34 is often associated with access to courts, the Constitutional Court has repeatedly emphasised that the provision protects more than formal access to adjudicative institutions.²⁶ It also embodies procedural fairness and meaningful participation in decision-making processes that affect legal rights and interests. Accordingly, where legislation permits a tribunal to regulate participation in its proceedings, that discretion should ordinarily be exercised in a manner that promotes rather than restricts meaningful participation, provided that fairness and procedural efficiency are maintained.

Closely related to section 34 is section 39(2) of the Constitution, which requires every court, tribunal and forum, when interpreting legislation or developing the common law, to promote the spirit, purport and objects of the Bill of Rights. The Constitutional Court has consistently interpreted this provision as imposing a positive obligation upon adjudicative bodies to prefer interpretations that advance constitutional values where the statutory language reasonably permits such an interpretation.²⁷ This is particularly significant in competition law because the Competition Act itself constitutes transformative legislation enacted to realise constitutional objectives of equality, economic inclusion and market fairness as set out in the Act's preamble and purpose provisions.

The Constitutional Court confirmed this constitutional orientation in *Competition Commission v Mediclinic Southern Africa (Pty) Ltd*, where it held that the Competition Act must be interpreted purposively and consistently with constitutional values rather than through the narrow lens of ordinary commercial regulation.²⁸ Writing for the majority, the Court emphasised that competition law performs an important constitutional function by promoting market structures that advance equality, consumer welfare and economic transformation. Consequently, provisions of the Act should be interpreted through the prism of section 39(2), ensuring that adjudication under the Act remains responsive to the transformative aspirations of the Constitution. Although *Mediclinic* concerned the substantive merger provisions rather than intervention, its interpretive methodology has broader implications. If the substantive provisions of the Competition Act must be interpreted consistently with constitutional values, there is little justification for interpreting procedural provisions governing participation in an unduly restrictive manner.

This constitutional methodology was subsequently reflected in *Lewis Stores (Pty) Ltd v Pepkor Holdings Ltd and Others*, where the Constitutional Court rejected the CAC's requirement that intervenors demonstrate "unique or exclusive knowledge" before being admitted in merger

²⁵ Section 34 and section 39(2) of the Constitution of the Republic of South Africa, 1996.

²⁶ See, for example, *Government of the Republic of Zimbabwe v Fick and Others* (CCT 101/12) [2013] ZACC 22.

²⁷ *Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd* 2001 (1) SA 545 (CC) at paras 21–26.

²⁸ *Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another* 2022 (4) SA 323 (CC) at paras 5–18, 84–93.

proceedings.²⁹ Instead, the Court recognised that intervention should be permitted where the applicant demonstrates a material interest or a reasonable prospect of assisting the Tribunal in performing its statutory mandate. Implicit in this reasoning is an appreciation that competition adjudication benefits from informed participation by a broader range of stakeholders than the principal litigants alone. By removing the artificial requirement of uniqueness, the Court adopted an interpretation of the Competition Act that better promotes participatory decision-making and access to justice.

The Constitutional Court's approach is also consistent with its broader jurisprudence concerning public participation and access to justice. The Court has repeatedly recognised that procedural fairness requires opportunities for affected persons to present information capable of assisting decision-makers, particularly where adjudication affects broader public interests.³⁰ Competition proceedings, especially merger reviews involving employment, industrial development and ownership transformation under section 12A of the Competition Act, and restrictive practice proceedings such as involving the effects of excessive pricing on access to healthcare, engage precisely these broader societal interests. Participation by employees, trade unions, consumer bodies, civil society organisations, and affected communities therefore enhances both the legitimacy and accuracy of competition adjudication.

From an institutional perspective, the CAC's intervention jurisprudence also addresses an important structural feature of competition law. Unlike ordinary appellate courts, the Competition Tribunal performs extensive fact-finding functions. It hears expert economic evidence, evaluates witnesses, determines the factual record and makes predictive assessments concerning market behaviour. Appeals before the CAC are therefore largely confined to the evidentiary record established before the Tribunal. This institutional structure gives rise to a significant anomaly within the current procedural framework.

If the purpose of public interest participation is to improve adjudicative quality, participation is likely to be of greatest value before the Tribunal. At first instance, intervenors may contribute factual evidence, economic expertise, industry knowledge and public interest perspectives while the evidentiary record remains open. Once the matter reaches the CAC, opportunities to introduce new evidence are significantly constrained. Participation at the appellate stage therefore cannot fully compensate for the absence of meaningful participation during the primary fact-finding process. In this respect, the current procedural framework appears to invert the logic of effective participation.

The Constitutional Court's decision in *Lewis Stores* partially mitigates this structural anomaly by interpreting the Tribunal's intervention powers more generously. Nevertheless, the absence of an

²⁹ *Lewis Stores (Pty) Ltd v Pepkor Holdings Ltd and Others* 2026 (3) BCLR 207 (CC) at paras 51-62.

³⁰ See, for example, *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC) at paras 115–129 (participation as a constitutional value); *Biowatch Trust v Registrar, Genetic Resources* 2009 (6) SA 232 (CC) at paras 21–24 (access to justice and public-interest litigation).

express *amicus* mechanism before the Tribunal continues to create unnecessary procedural uncertainty. A formal *amicus* procedure would distinguish between parties seeking to protect direct legal interests and participants wishing merely to assist the Tribunal through specialised expertise or public interest submissions. Such a distinction would also alleviate concerns regarding procedural delay because *amici* need not be granted the full procedural rights ordinarily enjoyed by intervening parties.

This distinction reflects the approach adopted by South African appellate courts generally. Admission as an *amicus* does not confer the status of a litigant, but permits limited participation directed at assisting the court on issues of law, policy or constitutional principle. Similar principles could readily be incorporated into Tribunal proceedings without undermining procedural efficiency. Indeed, the Constitutional Court itself recognised in *Lewis Stores* that admission and procedural rights are analytically distinct questions.³¹ The Tribunal could therefore admit public interest participants where they are capable of materially assisting its statutory inquiry while restricting participation to written submissions or discrete issues where appropriate.

Viewed collectively, these constitutional principles and institutional considerations provide a compelling normative justification for the CAC's increasingly flexible intervention jurisprudence. Rather than representing an unwarranted expansion of procedural rights, the CAC's *amicus*-like framework reflects the constitutional commitment to participatory justice, transparent decision-making and purposive statutory interpretation. It also exposes the need for procedural reform at Tribunal level. If public interest participation is constitutionally valuable, there is little reason why it should be more readily available before the appellate court than before the Tribunal itself, where the evidentiary record is created and the public interest inquiry is conducted. The development of a formal *amicus* procedure before the Tribunal would therefore not constitute a departure from existing jurisprudence but rather its logical constitutional culmination.

Comparative perspectives: standing and public participation in other jurisdictions

In order to accurately assess whether South Africa's stance on public interest intervention before competition authorities is fit-for-purpose, it is essential to examine how comparative jurisdictions balance inclusivity with procedural efficiency to see where the country leads or lags and where it can adopt proven mechanisms to secure meaningful public interest participation that does not compromise adjudicative rigour.

African comparators

The comparative competition regimes of the African continent have allocated the adjudicative functions of their competition authorities differently from that of South Africa. Namibia adopts what may be described as an integrated agency model, but one that is bifurcated by subject matter. In

³¹ *Lewis Stores (CC)* at paras 79 – 85.

merger matters the Namibian Competition Commission both investigates and determines the matter at first instance, subject to ministerial review.³² In prohibited practice matters, the Commission investigates and forms only a proposed decision; to obtain a binding infringement finding it must institute proceedings in Namibia's High Court.³³

Kenya and Nigeria concentrate first instance decision making in the relevant competition agency, reserving their tribunals for appeal and review processes. In Kenya, the Competition Authority decides a matter at first instance, with a specialist tribunal above it for appeals and reviews.³⁴ In Nigeria, the Commission determines both mergers and prohibited practice matters at first instance, while the Competition and Consumer Protection Tribunal exercises appellate and review jurisdiction over the Commission's decisions.³⁵ South Africa, by contrast, splits the functions so that the Commission investigates and prosecutes a matter, and the Tribunal decides the matter at first instance, with an appeal process to the CAC available in certain instances. The body which decides a competition matter at first instance sits in a different place in each system. The question this paper raises must therefore be posed functionally rather than by institutional label: at whatever stage the substantive decision is taken, may a person who is not a party, and who holds no commercial or proprietary interest in the outcome, nonetheless be admitted to assist the decision maker on questions of law or public interest?

A comparison of these jurisdictions suggests that none of the statutory frameworks examined provide in effect for *amicus* participation at the stage at which competition decisions are made. Across the integrated agency, court, and appellate tribunal models alike, such non-party participation at the decision-making stage is calibrated to interest rather than assistance. In Kenya, the first instance decision is taken by the Competition Authority, and the participation that the Kenyan competition legislation affords at that stage is structured around who is affected rather than who can assist. Where the Authority proposes to find a competition infringement, it must give notice of its proposed decision only to each undertaking that may be affected by it.³⁶ The hearing conference that follows is convened only if an affected undertaking asks to make oral representations, and notice of it extends beyond that undertaking only to any person who had lodged a complaint about the conduct and to any other person whose presence the Authority itself contends desirable.³⁷ There is thus no entitlement, at the point of first-instance decision, for a third party to be heard on the strength of the assistance it could offer; participation is either a function of being affected or a matter of the Authority's discretion.

In Namibia, non-party views are gathered by the Commission in the course of its investigation, whether of a merger or of suspected prohibited conduct, again as a function of the effect of the

³² Namibian Competition Act 2 of 2003 at sections 47 and 49.

³³ *Id* at sections 33-39, read together with the definition of "court" in section 1.

³⁴ Kenyan Competition Act 12 of 2010 at sections 34, 36, 40 and 48.

³⁵ Nigerian Federal Competition and Consumer Protection Act 2018 at sections 47, 67, 73 and 93.

³⁶ See above n 34 at section 34(1).

³⁷ *Id* at section 35(1), read with section 34(2)(c).

matter on the person concerned.³⁸ Although prohibited practice matters are referred to Namibia's High Court after the Commission has made its proposed decision, Namibia does not have a codified *amicus* rule similar to that of South Africa.³⁹ Instead, participation would rest of the Court's discretion as rooted in common law rather than on any dedicated mechanism within the competition regime itself. In Nigeria, the Commission itself decides prohibited-practice matters at first instance, serving a cease order where it determines that a restrictive agreement contravenes the Act, and directing the cessation of abusive conduct where it finds an abuse of dominance.⁴⁰ The Act's only participation provision, the "power to hear persons in merger proceedings", permits the Commission to hear a non-party who in its opinion is able to assist in determining a merger notification.⁴¹ Even cast in the language of assistance, this is a discretionary power confined to the merger stage before the agency, not a mechanism for admitting an *amicus* to an adjudicative hearing.

These arrangements resemble the interest-based threshold that section 53 and Rule 46 impose in South Africa. They are not the assistance-based, disinterested participation that characterises an *amicus*, and that the CAC, through the incorporation of Rule 16 of the SCA Rules, already permits at the appellate level. It is therefore clear that there is no ready African model of a competition *amicus* procedure that could be transplanted directly into South Africa's competition regime. The regimes discussed above either concentrate the decision in an agency that receives only interest-based input, or vest first-instance decision-making in a body before which no *amicus* mechanism operates. Neither of these mechanisms offer a worked example of assistance-based participation for non-parties at the competition decision-making stage. This absence is significant. It shows that the gap identified in South Africa, between a substantive mandate to weigh the public interest and a procedural framework that admits only those with a commercial or proprietary stake, is not a local peculiarity but a feature African regimes share, and that none has yet resolved.

South Africa is unusually well-placed to resolve this gap, because the mechanism required already exists within its own competition system, at the CAC, and in the wider practice of its courts. Extending that mechanism to the Tribunal, the first instance forum at which the public interest inquiry is in fact conducted, would place South Africa ahead of both its global and regional peers rather than behind them. The above comparative material thus reinforces the internal, constitutional case made above: the reform is the logical extension, to the forum where it matters most, of a mechanism that the South African system already recognises.

³⁸ See above n 32 at sections 33, 44, and 47(5).

³⁹ Republic of Namibia Amendment of Rules of High Court of Namibia: High Court Act, 1999 (GN. 8719) (accessible [here](#)); read together with Legal Assistance Centre, 'Access to Justice in Namibia: Proposals for Improving Public Access to Courts. Amicus Curiae Participation' (2012) (accessible [here](#)).

⁴⁰ See above n 35 at sections 67(1) and 67(3).

⁴¹ Id at section 101(1).

The European Union

The European Commission (EC) counts ensuring uniform application of the European Union's (EU) competition rules amongst its duties.⁴² The EC's investigative procedure is designed to assemble the factual and economic record it will use to make its decisions, and it allows third parties to make submissions on market intelligence, economic analysis or information that will assist it in its enquiry.⁴³

The Court of Justice of the European Union (CJEU) allows interested parties to challenge the EC's decisions before the General Court as a court of first instance and the Court of Justice on appeal.⁴⁴ These parties include any natural or juristic persons that can establish their interest in the result of the case if the act being challenged was addressed to them, directly and individually concerns them, and against a regulatory act which directly concerns them and does not entail implementing measures.⁴⁵ However, the CJEU's narrow interpretation of "individual concern" as affecting a party differently from others often excludes consumer bodies and NGOs from bringing direct action to the CJEU since they often represent a collective or public interest which is misaligned with the courts' interpretation.⁴⁶ On this ground, consumer bodies and NGOs can only invoke direct actions in the CJEU if they have been uniquely affected. The CJEU has consistently reiterated this stance over the years, such as in *GlaxoSmithKline Services and Others v Commission*, where the CJEU held that consumer bodies and industry bodies may only intervene where they can show that a significant number of their members are directly affected by the judgement or that the case raises questions that may affect their members' legal or economic situations.⁴⁷

Alternatively, these organisations may establish their interest under the less rigorous third limb of Article 263(4), which only requires direct interest and no implementing measures when contesting a regulatory act. However, once again, the CJEU has narrowly interpreted "regulatory act" as one that does not originate from a legislative process.⁴⁸

⁴² Consolidated Version of the Treaty on the Functioning of the European Union [2016] OJ C 202/47 arts 101–102; Council Regulation (EC) 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty [2003] OJ L 1/1 arts 7, 23.

⁴³ Council Regulation (EC) No 1/2003 arts 27.

⁴⁴ TFEU, art 256(1) and 263.

⁴⁵ TFEU, art 263(4) read with Protocol (No 3) on the Statute of the Court of Justice of the European Union [2010] OJ C 83/210 art 40.

⁴⁶ This interpretation was established in *Plaumann & Co. v Commission*, Case 25/62, Judgment of 15 July 1963, [1963] ECR 95, ECLI:EU:C:1963:17.

⁴⁷ *GlaxoSmithKline Services Unlimited v Commission of the European Communities* (joined with C-513/06 P, C-515/06 P and C-519/06 P), Case C-501/06 P, Judgment of the Court (Third Chamber) of 6 October 2009, ECLI:EU:C:2009:610; [2009] ECR I-09291.

⁴⁸ *Inuit Tapiriit Kanatami and Others v Parliament and Council*, Case C-583/11 P, Judgment of 3 April 2013, ECLI:EU:C:2013:220. See also *Commission of the European Communities v Tetra Laval BV*, Case C-12/03 P, Judgment of 15 February 2005, ECR I-987, ECLI:EU:C:2005:87 where the court in a merger appeal admitted third parties who could show that the judgement could concretely affect their competitive situation.

From the above, it is clear that the CJEU's framework is oriented towards the third party's interest in the outcome of the judgement, and not on whether the party can assist it in reaching its decision. NGOs and consumer bodies tend to struggle with showing direct and individual interest as their concerns are often of a general nature, thus making them incapable of accessing the CJEU. The court's narrow interpretations of Article 263(4) of the Treaty and Article 40 of the Statute strictly limit NGOs and consumer bodies from contributing expert or policy perspectives in the public interest.

Lessons for South Africa

South Africa's competition framework is unique among comparators for already demonstrating the value of both an interest-based and an assistance-based intervention limb although currently limited primarily to the appeal stage, as developed through its jurisprudence. While other systems default to interest-based participation, South Africa's practice provides the most relevant template for its constitutionally interpretive obligations and expanded access for public interest interventions. Although a procedural gap exists at the Tribunal level, it may be easily reformed within the existing competition framework. South Africa's Constitution places a unique burden on the State and the courts to participate in the transformative constitutional project which does not exist in many comparative jurisdictions. The absence of a precedent for third-party intervention elsewhere should thus not be seen as justification for failing to implement this reform in South Africa. On the contrary, it underscores the opportunity to blaze a trail that advances effective and socially transformative competition enforcement.

The democratic deficit: why the gap matters

South Africa's competition regime occupies a distinctive position among modern competition systems because it expressly constitutionalises competition policy through the incorporation of public interest objectives. The Competition Act rejects a purely efficiency-driven conception of competition law in favour of one that recognises its role as an instrument of economic transformation. In addition to protecting competitive markets, the Act requires competition authorities to consider the impact of mergers on employment, small and medium-sized enterprises, firms owned or controlled by historically disadvantaged persons, and the broader capacity of the national economy to participate competitively in international markets.

Yet this transformative vision exposes a significant democratic deficit. While the Tribunal is statutorily obliged to determine questions that directly affect third parties who could provide public interest insights, these constituencies possess no corresponding procedural entitlement to participate in proceedings before it. Instead, intervention remains dependent upon the Tribunal's discretion under section 53, a discretion that has historically been exercised narrowly.⁴⁹ This disconnect, between substantive protection and procedural participation, creates what may properly be described as an adjudicative paradox.

⁴⁹ Section 53 of the Competition Act.

The adjudicative paradox

The paradox arises because the Act requires the Tribunal to adjudicate matters affecting groups that are frequently excluded from the adjudicative process itself. Section 12A(3) for example, requires the Tribunal to determine whether mergers adversely affect employment, small businesses and firms controlled by historically disadvantaged persons. Parliament therefore regarded these constituencies not merely as incidental beneficiaries of competition regulation but as central objects of statutory protection.

Nevertheless, the procedural framework governing Tribunal proceedings remains largely adversarial. Participation is generally confined to the Competition Commission, the merger parties and recognised participants, while third-party intervention is treated as exceptional rather than integral to public interest adjudication.

This institutional design sits uneasily with the transformative purpose of the Act. A procedural framework that excludes those whose interests Parliament expressly directed the Tribunal to protect undermines the coherence of that legislative design. Accordingly, where competition law seeks to protect vulnerable constituencies rather than merely abstract market structures, procedural exclusion becomes increasingly difficult to justify.

The epistemic problem

The democratic deficit also produces an epistemic deficit. Competition authorities cannot effectively determine complex public interest questions without access to the knowledge possessed by affected communities. Public interest assessments frequently require evidence that neither the Competition Commission nor the participating firms possess. Workers understand workplace restructuring in ways that economic models cannot fully capture. Small suppliers possess information concerning dependency relationships and barriers to entry that rarely emerge from documentary discovery. Community organisations may provide contextual evidence regarding local economic vulnerability, transformation or regional employment that cannot be replicated through expert testimony alone. Without public interest participation, the Tribunal necessarily adjudicates public interest questions on an incomplete evidentiary record.

In *Doctors for Life International v Speaker of the National Assembly*, the Constitutional Court rejected the notion that public participation is merely symbolic, emphasising instead that participation enhances the quality of public decision-making by exposing institutions to diverse information, experiences and perspectives.⁵⁰ Although *Doctors for Life* concerned legislative participation, its underlying constitutional logic applies equally to administrative adjudication. If public participation improves the quality of legislative decision-making, it follows that participation

⁵⁰ *Doctors for Life International v Speaker of the National Assembly* 2006 (6) SA 416 (CC).

similarly improves adjudicative determinations concerning employment, transformation and socio-economic rights that are based on the outcomes of the legislative decision-making. It is therefore only logical for the Tribunal to allow the parties whose rights are directly affected by its decisions and their representative entities access to the forum.

The legitimacy problem

Beyond its effects on evidentiary completeness, the exclusion of affected communities undermines the institutional legitimacy of competition adjudication. Modern administrative bodies derive legitimacy from more than statutory authority alone. As Richard Stewart famously argued, contemporary administrative agencies exercise powers traditionally associated with democratic institutions, making procedural participation an essential substitute for direct political accountability.⁵¹ Inclusive procedures therefore become an important source of institutional legitimacy where agencies exercise broad discretionary powers affecting public interests.

This observation has particular force in the South African constitutional context. The Competition Tribunal increasingly determines issues extending far beyond traditional market regulation. Merger proceedings now routinely address questions concerning employment preservation, industrial policy, black economic empowerment, and regional economic development. Restrictive practice complaints also routinely consider the effects of excessive pricing on the right of access to health, for example. Decisions of this nature inevitably possess distributive consequences that extend beyond the immediate litigants.

The Constitutional Court has consistently recognised that procedural fairness constitutes an indispensable component of legitimate public administration. In *President of the Republic of South Africa v South African Rugby Football Union*, the Court observed that procedural fairness serves both instrumental and democratic purposes by improving decision-making while simultaneously enhancing public confidence in governmental institutions.⁵² Likewise, *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* affirmed that administrative legitimacy depends upon decision-making that reflects the constitutional values of openness, accountability and responsiveness rather than merely technical legality.⁵³

Excluding the very communities whose interests the Tribunal is required to protect therefore weakens both perceived legitimacy and substantive legitimacy. Decisions reached without meaningful participation risk appearing technocratic rather than democratically responsive,

⁵¹ Richard B Stewart, 'The Reformation of American Administrative Law' (1975) 88 *Harvard Law Review* at pages 1667, 1712–1716.

⁵² *President of the Republic of South Africa v South African Rugby Football Union* 2000 (1) SA 1 (CC) at paras 133–148.

⁵³ *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* 2004 (4) SA 490 (CC) at paras 42–48.

particularly where they concern issues of employment, economic transformation, and access to socio-economic rights that directly affect vulnerable communities.

The constitutional problem

The restrictive interpretation of section 53 also raises significant constitutional concerns.⁵⁴ Section 33 of the Constitution guarantees everyone the right to administrative action that is lawful, reasonable and procedurally fair.⁵⁵ Through the Promotion of Administrative Justice Act 3 of 2000 (PAJA), procedural fairness has become a constitutional requirement rather than a matter of administrative discretion. Competition Tribunal proceedings possess many of the defining characteristics of administrative adjudication. The Tribunal exercises statutory public power, determines questions affecting constitutional rights and socio-economic interests, and performs a public function within the broader administrative state. Consequently, a restrictive approach to intervention potentially conflicts with the constitutional commitment to procedurally fair administrative action.

Section 34 reinforces this conclusion by guaranteeing everyone the right to have disputes resolved in a fair public hearing before an independent and impartial tribunal.⁵⁶ The Constitutional Court has consistently interpreted section 34 generously as protecting meaningful rather than merely formal access to justice. In *Chief Lesapo v North West Agricultural Bank*, the Court described access to courts as foundational to the rule of law and constitutional democracy itself.⁵⁷ Similarly, *De Beer NO v North-Central Local Council* recognised that fairness of procedure forms an indispensable component of meaningful access to justice.⁵⁸

These constitutional guarantees must furthermore be interpreted together with section 39(2), which obliges every court and tribunal to interpret legislation in a manner that promotes the spirit, purport and objects of the Bill of Rights.⁵⁹ Read in this constitutional context, section 53 should not be constrained by importing the private-law concept of a "direct and substantial interest". As set out above, that test developed within ordinary civil litigation concerning private rights and is much too narrow for the Tribunal's broad mandate. Public interest intervention before the Tribunal in restrictive practice proceedings performs a fundamentally different constitutional function. It facilitates the Tribunal's ability to discharge statutory obligations concerning access to socio-economic rights, evidentiary completeness, and institutional legitimacy.

The CAC's reasoning in *Mediclinic* supports precisely such a purposive approach. The court recognised that the public interest provisions must be interpreted consistently with South Africa's

⁵⁴ Section 53 of the Competition Act.

⁵⁵ Section 33 of the Constitution.

⁵⁶ Section 34 of the Constitution.

⁵⁷ *Chief Lesapo v North West Agricultural Bank* 2000 (1) SA 409 (CC) at para 13–22.

⁵⁸ *De Beer NO v North-Central Local Council* 2002 (1) SA 429 (CC) at paras 11–24.

⁵⁹ Section 39(2) of the Constitution.

transformative constitutional framework rather than through narrow formalism.⁶⁰ It follows that the Tribunal's discretionary power to admit interveners should likewise be interpreted generously where participation assists the Tribunal in fulfilling its constitutional and statutory mandate.

Ultimately, the democratic deficit within competition adjudication is neither incidental nor merely procedural. It affects the quality of evidence before the Tribunal, undermines the legitimacy of its decisions, and creates tension with the constitutional commitments to participatory governance, procedural fairness and access to justice. A more inclusive interpretation of section 53 would therefore not simply expand procedural rights; it would better align the institutional design of competition adjudication with the transformative objectives of both the Competition Act and the Constitution.

Reform proposals

Despite the Act's expressly embedded public interest objectives, procedural provisions governing participation before the Tribunal are oriented towards commercial or competitive stakeholders, leaving civil society, community groups, and consumer bodies with limited, uncertain access to the primary fact-finding forum. Reform is necessary to align the procedure with the Act's statutory and constitutional aims as espoused in its preamble and purpose provisions.

Statutory amendment

As it stands, third party participation in Tribunal proceedings is subject to the third party establishing their "material interest", a requirement that risks excluding non-commercial public interest actors. A statutory amendment that expressly adds a public interest standing limb to section 53 would help provide clarity and constitutional coherence.

The proposed amendment could add a clause to section 53 or a new 53A permitting participation where an applicant demonstrates its ability to assist the Tribunal on questions of public interest, constitutionally relevant effects, or socio-economic impact, even where it lacks a direct commercial interest. The statutory text should mirror the functional *amicus* test adopted by the CAC for merger proceedings, where admission is allowed where submissions are likely to materially assist the Tribunal and distinguishing *amici* from full litigating parties. Textually, this could mean deletion of "material interest" or adding a definition for the term that supports this purpose. This would remove any uncertainty on public interest access, facilitate evidentiary completeness on issues related to employment, broad ownership, access to socio-economic rights and other public interest concerns. The removal of this requirement would further serve to simplify the standards of intervention at the CAC for appeals on restrictive practice proceedings.

⁶⁰ *Competition Commission of South Africa v Mediclinic* at paras 53 – 55.

Rule-based reform

Additionally, the Tribunal Rules can be amended to provide for a formal *amicus curiae* procedure. The proposed amendment to the Tribunal's Rule 46 could mirror the CAC's approach on amicus admissions, which is the standard adopted across South Africa's courts at every level.⁶¹ The amendment should cover common procedural steps such as the application for admission, required supporting papers, limits on participation, the *amici's* standing, timeframes for parties to oppose the application, access to confidential information, and costs discretion. A well-tailored reform will adequately filter out speculative or dilatory filings while ensuring that genuine public interest contributions are placed before the Tribunal.

Interpretive reform

A constitutionally interpretative reading of section 53 aligns with section 1(2) of the Competition Act and the jurisprudence as developed in *Mediclinic* and applied in *Lewis Stores*. The tribunal can approach section 53 and Rule 46 as provisions necessary to enable it to give effect to public interest purposes instead of the current emphasis on competitive and commercial purposes. "Material interest" and the discretion to admit intervenors can be interpreted in a manner that permits non-commercial participants to assist the Tribunal on public interest dimensions even where they have no direct commercial interest.

An interpretive approach will avoid the delay of legislative amendment and can be operationalised incrementally through reasoned admission decisions that articulate the public interest limb of the intervention test and shifts the precedence in favour of broader access.

Procedural safeguards

Expanding admissibility to the Tribunal raises a legitimate concern that additional participants may prolong hearings, multiply evidence, and prejudice parties. In this regard, the Tribunal will have to adopt safeguards to balance the value of broader participation without compromising its efficiency and fairness.

These safeguards could include limiting the scope of submissions to specific issues, requiring written submissions as the default with oral addresses permitted only at the request of the Tribunal where they materially add to the written record, and ensuring submissions are strictly time limited. *Amici* evidence can be limited to policy, contextual, qualitative or expert evidence and the Tribunal can set page limits for written submissions alongside fixed timelines for responses to prevent unnecessary delays. Cost safeguards can include a general rule that *amici* bear their own costs and cost sanctions for abusive or dilatory applications. Lastly, *amici* access to confidential materials can be limited and subject to protective orders where authorised.

⁶¹ See n25 above.

Reforming the Tribunal's participation threshold aligns with the Act's constitutional and transformative objectives and will strengthen its evidentiary completeness and institutional legitimacy by enfranchising affected communities. This can be achieved in manner that does not compromise the forum's efficiency.

Conclusion

The normative and practical case for reconfiguring participation before the Competition Tribunal is compelling. The Competition Act's constitutionalised public-interest commitments are undermined if the Tribunal's procedural gatekeeping systematically excludes the constituencies Parliament intended to protect. The consequences are threefold. First, an epistemic deficit: the Tribunal is deprived of direct testimony and contextual evidence about workplace restructuring, supplier dependency, or community vulnerability that commercial parties and Commission experts cannot or may not easily provide. Second, a legitimacy deficit: decisions that shape employment, ownership transformation and access to essential services risk appearing technocratic and disconnected from affected communities where those communities lack access to the forum. Third, a constitutional tension: restrictive imports of private law standing into Tribunal procedure risk conflicting with section 33 and section 34 constitutional guarantees of procedurally fair administrative action and meaningful access to adjudication.

The problem is neither insoluble nor doctrinally unsupported. Domestic jurisprudence as developed in cases such as *Anglo SA Capital*, *Community Healthcare Holdings*, and *Lewis Stores* already recognises the institutional logic of assistance-focused intervention in competition matters and permits third party admission where an applicant can materially assist the Tribunal. Furthermore, *Mediclinic*'s purposive methodology anchors statutory interpretation to constitutional values and creates a strong interpretive foundation for admitting public interest participants. Comparative analysis shows that there is no turnkey foreign model to transplant to South Africa, but it confirms that South Africa's domestic jurisprudence provides the most suitable template. Practically, reform can follow a layered path. A statutory amendment to s53 (or creation of s53A) adopting an explicit public interest limb that would deliver legal clarity and align participation rules with the Act's purposes. In the interim, Rule 46 can be amended to establish a formal *amicus* procedure mirroring the CAC's Rule 16 principles on application steps, admission criteria, and express limits on evidentiary and procedural rights with robust procedural safeguards to mitigate delays and abuse while preserving the Tribunal's efficiency.

Extending an assistance-based amicus mechanism to the Tribunal is thus both institutionally coherent and constitutionally mandated. Addressing the deficit with the proposed reforms will enrich the evidentiary record, enhance decision-making quality, and restore democratic legitimacy to adjudication of the Act's public interest dimensions.

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