

Introduction to competition law

DE Nxumalo

25 August 2025

More about me

- Dumakude Nxumalo
 - Until recently, I was a full-time Lecturer at the University of Pretoria. I'm now an Extraordinary Lecturer (a fancy title for a part-timer)
 - I'm a Managing Consultant at Berkeley Research Group. Where I work on competition and regulatory economics cases in various jurisdictions
 - I started working in this field after my masters as a junior at Genesis Analytics in their competition and regulatory economics practice
- Where can you reach me?
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Competition Economics Mini-Module

- The aim of this mini-module is to introduce you to the interesting field of competition economics.
- In this module we'll discuss how economic concepts interact with the legal framework that restricts certain types of firm behaviour: competition law.
 - Introduction to competition law and market definition
 - Merger analysis and market definition
 - Tools for economic analysis of mergers
 - Collusion and horizontal agreements
 - Abuse of dominance in digital markets

Competition Economics Mini-Module

Economic models

- Please note that this course will cover a range of topics
- There will be a lot of discussion but also formal derivation of economic concepts
- These are important for Economics/Econometrics students to work through and understand

Readings

- I will suggest readings before each session.
- Combination of formal guidance (from competition authorities), academic texts and decided cases

Competition Economics Mini-Module

Lecture dates and times

- 25 August 2025: **17:15 - 19:30**
- 1 September 2025: **17:00 - 19:30**
- 8 September 2025: **17:00 - 19:30**
- 22 September 2025: **17:00 - 19:30**
- 29 September 2025: **17:00 - 19:30**

Assignment

- You'll be given a take home assignment for you to complete and

Quick question

- What is your understanding of the role of the Competition Commission of South Africa
 - Or what do you think is competition law/policy?

Competition policy – A definition

- The following from Motta (2004) is instructive:

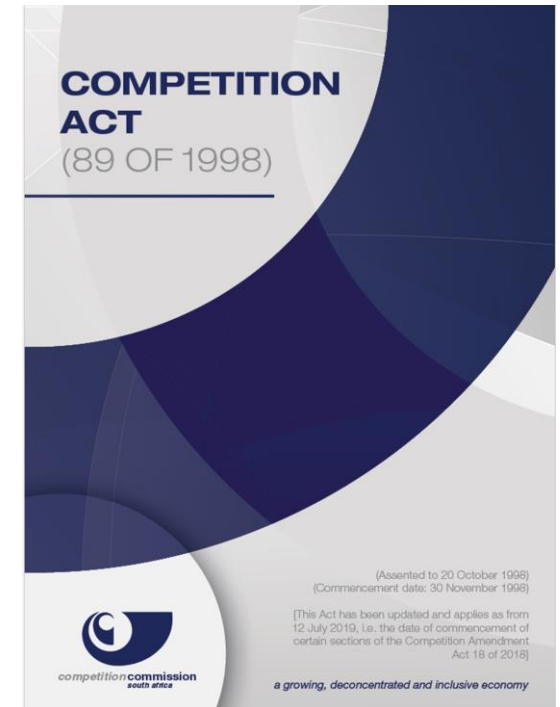
“The set of policies and laws that ensure that competition in the marketplace is not restricted in a way that is detrimental to society”

Motta (2014) – Competition Policy. Theory and Practice

- How we define what is “*detrimental*” depends on a specific nation
 - Consumer welfare?
 - Producer welfare?
 - Economic welfare?
- Nations set up competition laws that eliminate ways in which firms can lessen competition and harm society

Competition Act of 1998

- The purpose of this Act is to promote and maintain competition in the Republic in order -
 - (a) to promote the efficiency, adaptability and development of the economy;
 - (b) to provide consumers with competitive prices and product choices;
 - (c) to promote employment and advance the social and economic welfare of South Africans;
 - (d) to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
 - (e) to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and
 - (f) to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.



Competition Act of 1998

- Our Act has many Chapters and Sections
- Economists are often concerned with a few of these Sections
- Chapter 2 – Restrictive and abuse of dominance practices
- Chapter 3 – Mergers and acquisitions

Competition Act of 1998

4. Restrictive horizontal practices prohibited

(1) An agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if-

(a) it has the effect of substantially preventing or lessening competition in a market, unless a party to the agreement, concerted practice, or decision can prove that any technological, efficiency or other pro-competitive, gain resulting from it outweighs that effect; or

(b) it involves any of the following restrictive horizontal practices:

- (i) directly or indirectly fixing a purchase or selling price or any other trading condition;
- (ii) dividing markets by allocating customers, suppliers, territories, or specific types of goods or services; or
- (iii) collusive tendering

Competition Act of 1998

- Sections 4(1)(b) considers behaviour that is per se prohibited
 - directly or indirectly fixing a purchase or selling price or any other trading condition;
 - dividing markets by allocating customers, suppliers, territories, or specific types of goods or services; or
 - collusive tendering
- Section 4(1)(a) applies a rule of reason approach
 - All other agreements/practices that have the effect of substantially preventing or lessening competition in a market
 - These parties can also show technological, efficiency or other pro-competitive, gain resulting from it that outweighs the anti-competitive harm
 - Balancing effect

Competition Act of 1998

5. Restrictive vertical practices prohibited

(1) An agreement between parties in a vertical relationship is prohibited if it has the effect of substantially preventing or lessening competition in a market, unless a party to the agreement can prove that any technological, efficiency or other pro-competitive, gain resulting from that agreement outweighs that effect.

(2) The practice of minimum resale price maintenance is prohibited.

(3) Despite subsection (2), a supplier or producer may recommend a minimum resale price to the reseller of a *good or service* provided-

- (a) the supplier or producer makes it clear to the reseller that the recommendation is not binding; and
- (b) if the product has its price stated on it, the words “recommended price” appear next to the stated price

Competition Act of 1998

- Similar to Section 4. Section 5 allows applies a rule of reason approach
- An agreement that has the effect of substantially lessening competition in a market is a problem
- Unless shown that there are “*any technological, efficiency or other pro-competitive, gain resulting from that agreement outweighs that effect*”
- The per se prohibition is applied when there is minimum resale price maintenance (unless simply recommended)

Competition Act of 1998

7. Dominant firms

A firm is dominant in a market if-

- (a) it has at least 45% of that market;
- (b) it has at least 35%, but less than 45%, of that market, unless it can show that it does not have market power; or
- (c) it has less than 35% of that market, but has market power.

Competition Act of 1998

8. Abuse of dominance prohibited

(1) It is prohibited for a dominant firm to—

(a) charge an excessive price to the detriment of consumers or customers;

(b) refuse to give a competitor access to an essential facility when it is economically feasible to do so;

(c) engage in an exclusionary act, other than an act listed in paragraph (d), if the anti-competitive effect of that act outweighs its technological, efficiency or other pro-competitive gain; or

Competition Act of 1998

8. Abuse of dominance prohibited

(1) It is prohibited for a dominant firm to—

(d) engage in any of the following exclusionary acts, unless the firm concerned can show technological, efficiency or other pro-competitive gains which outweigh the anti-competitive effect of its act—

(i) requiring or inducing a supplier or customer to not deal with a competitor;

(ii) refusing to supply scarce goods or services to a competitor or customer when supplying those goods or services is economically feasible;

(iii) selling goods or services on condition that the buyer purchases separate goods or services unrelated to the object of a contract, or forcing a buyer to accept a condition unrelated to the object of a contract;

(iv) selling goods or services at predatory prices;

(v) buying-up a scarce supply of intermediate goods or resources required by a competitor; or

(vi) engaging in a margin squeeze.

Competition Act of 1998

9. Price discrimination by dominant firm as seller prohibited

(1) An action by a dominant firm, as the seller of goods or services, is prohibited price discrimination, if-

(a) it is likely to have the effect of—

(i) substantially preventing or lessening competition; or

(ii) impeding the ability of small and medium businesses or firms controlled or owned by historically disadvantaged persons, to participate effectively;

(b) it relates to the sale, in equivalent transactions, of goods or services of like grade and quality to different purchasers; and

Competition Act of 1998

9. Price discrimination by dominant firm as seller prohibited

(1) An action by a dominant firm, as the seller of goods or services, is prohibited price discrimination, if-

(c) it involves discriminating between those purchasers in terms of-

- (i) the price charged for the goods or services;
- (ii) any discount, allowance, rebate or credit given or allowed in relation to the supply of goods or services;
- (iii) the provision of services in respect of the goods or services; or
- (iv) payment for services provided in respect of the goods or services

Competition Act of 1998

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WHEN MUST THE COMPETITION COMMISSION BE NOTIFIED OF A MERGER?

Intermediate Merger

Large Merger

Merger thresholds as at 1 October 2017

Thresholds	Combined turnover / Asset value	Target turnover / Asset value
Lower threshold	R 600m	R 100m
Higher threshold	R 6.6b	R 190m

Competition Act of 1998

12A. Consideration of mergers

(1) Whenever required to consider a merger, the Competition Commission or Competition Tribunal must initially determine whether or not the merger is likely to substantially prevent or lessen competition, by assessing the factors set out in subsection (2), and if it appears that the merger is likely to substantially prevent or lessen competition, then determine—

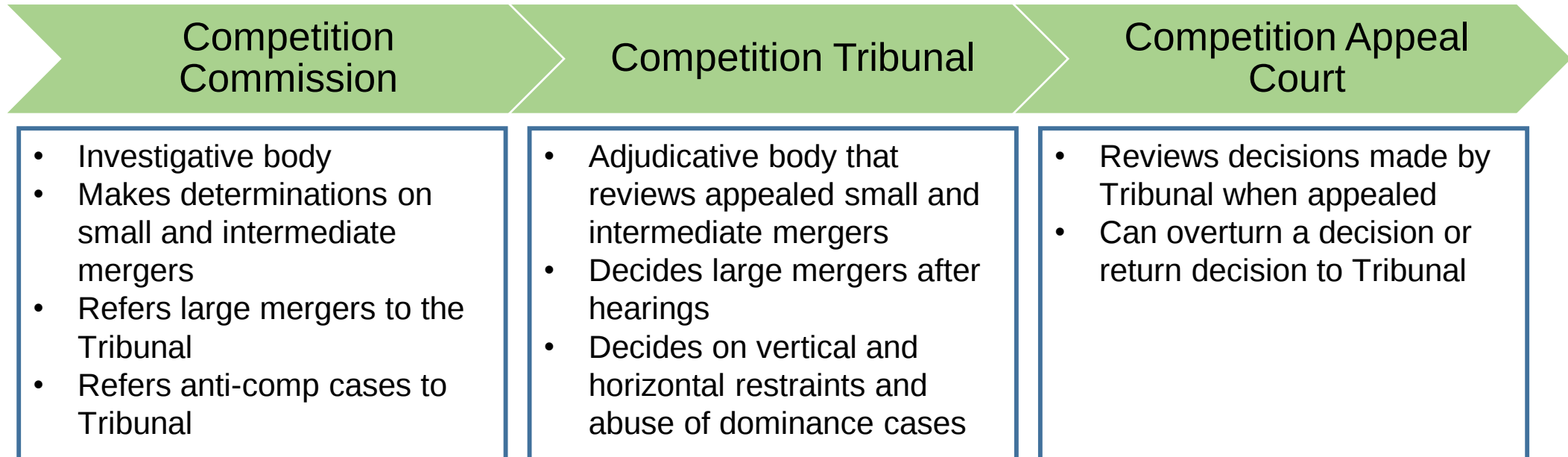
(a) whether or not the merger is likely to result in any technological, efficiency or other procompetitive gain which will be greater than, and offset, the effects of any prevention or lessening of competition, that may result or is likely to result from the merger, and would not likely be obtained if the merger is prevented; and

(b) whether the merger can or cannot be justified on substantial public interest grounds by assessing the factors set out in subsection (3).

Institutional architecture of competition law in SA



Competition Appeal Court



International legislation

US

- Sherman Act, 1890
- Clayton Act, 1914
- Federal Trade Commission Act, 1914
- Robinson Patman Act, 1936
- Cellar-Kefauver Act, 1950
- Hart-Scott-Rodino Act, 1976
- Individual states have their own statutes as well

SA

- Competition Act of 1998, as amended
- Has been amended as few times

EU

Treaty on the functioning of the European Union

- Article 101 – horizontal and vertical agreements
- Article 102 – Abuse of dominance

Countries in the EU have their own competition laws

Articles 101 and 102 cover actions that relate to activities taking place across the common market