CCRED
CENTRE FOR COMPETITION REGULATION AND ECONOMIC DEVELOPMENT

Quarterly Competition Review

Centre for Competition, Regulation and Economic Development

August, 2015

www.competition.org.za

In this issue:

Course: Economics for Competition and Regulation, Nairobi, 19 & 20 August

Course: Law for Competition and Regulation in East Africa, Nairobi, 18-20 August

SLP: Financial Analysis and Cost Accounting, Rosebank, 9-11 September

Open Lecture: African Development and the Political Economy of Industrial Policy
Mushtaq Khan & Chris Cramer
Rosebank, 2 September

UNIVERSITY OF JOHANNESBURG

Editor's note

This quarter has been a busy one for CCRED. In June 2015, CCRED had the opportunity to present our recent research on coordination in regional fertilizer markets at the World Bank and OECD conference on Promoting Effective Competition Policies for Shared Prosperity and Inclusive Growth, in Washington. Several CCRED papers on regional development were presented at the TIPS Annual Forum on Regional Industrialisation and Regional Integration. And, in July, we had the honour of hosting Prof Eleanor Fox from New York University who presented on competition policy and its potential contribution towards achieving the Millennium Development Goals. Her talk challenged the audience to reconsider the narrow conception of competition enforcement in terms of investigation and litigation of cases. Instead, she contextualised this work within the bigger picture of making markets work as tools for giving the poorest people in the world access to fundamental needs and granting people the dignity of participating and sharing in the economy.

The theme of competition, inclusion and inequality is picked up in this year's Competition Commission and Tribunal conference in November which considers competition policy and enforcement in BRICS countries. There is a clear common thread in the thinking of practitioners and researchers in terms of leveraging the enforcement muscle, reputation and scope of competition regimes to contribute to reversing patterns of stagnant economic growth and high barriers to participation that have left so many in Africa in a state of dire poverty. Debates about public interest clauses and narrow interpretations of the competition law detract from the fact that the rights to food and healthcare, amongst other fundamental needs of individuals, are enshrined in the Constitution of South Africa and many others in the developing world. Those that seek to undermine the attainment of these rights, through exploitative and exclusionary abuses, or cartel violations should be penalised to the fullest extent of the law.

While the law, of course, needs to uphold the principles of fairness and while respondents have every right to have their day in court, current practice in competition jurisdictions across African countries has seen firms get away with undermining the potential for greater inclusion and participation, at the expense of those at the bottom of the pyramid without the wherewithal to argue their case. This perhaps speaks to the greater role of all government agencies and departments as developmental institutions that should be tasked with making the tough, unpopular decisions that lead towards 'a better life for all', including through crafting and interpreting the law to take on development challenges head-on. To echo Prof Fox's message, this requires a bold approach that directly addresses the distributional failures of markets and makes markets work for the poor. The question we may want to ask is how competition law in developing countries can be framed and applied more directly to become part of the solution for achieving inclusive development goals?

This Review considers the 'black industrialists' programme in South Africa in the context of strategic barriers to entry and inclusion. We also assess developments in the regional pay-tv market, price fixing in forex markets, and developments in the telecoms markets of South Africa and Zimbabwe. We have included the details of several upcoming CCRED events, such as the exciting evening seminar with Prof Mushtaq Khan and Prof Chris Cramer on the political economy of industrial policy in Africa, and information on training courses that we will be hosting with our partners in Kenya and South Africa in the coming months.

We trust you will find this Review interesting and relevant to your work. Please share with us any feedback and comments you may have.

Thando Vilakazi

The black industrialists programme in context: the real barriers to entry

Anthea Paelo

South Africa has one of the highest levels of income inequality in the world with a Gini coefficient that has remained around 0.65 over the past decade.[1] In addition, South Africa's unemployment rate, using the narrow definition, at 26.4% is very high.[2] Much of this has been attributed to the legacy of apartheid during which the majority of South Africans were economically marginalised with few economic opportunities.

Efforts have been made to try to reduce this gap in access to economic opportunities through regulation such as the Broad-Based Black Economic Empowerment Act. The New Growth Path and the National Development Plan also provide a framework for increasing investment in industrial activity and highlight key constraints to inclusive growth in the South African economy.[3] In May 2015, South Africa's Minister of Economic Development Ebrahim Patel announced that R23 billion would be put aside over the next five years to support black industrialists in a strategy to increase investment and participation.[4] While access to capital would be beneficial to increasing the participation of so-called black industrialists in the economy, a recent CCRED project on barriers to entry demonstrates that firms face more challenges than access to capital when attempting to enter an industry. By using case studies on the wholesale fuel sector and the entry of a new brand, Soweto Gold, into the beer industry, the studies show how structural and strategic barriers to entry could present an obstacle for entrant firms and 'black industrialists'. This article highlights some of these findings.

Concentration and market power in South Africa's economy

The South African economy is concentrated and comprises a small number of dominant firms in key sectors, a legacy of the industrial development strategies of the apartheid government, where the economy was structured principally to cater for the industrial policy of the apartheid state.[5] Sectors such as telecommunications, agriculture, mining and energy were allowed to develop national champions in the form of state-owned firms that have since become vertically integrated, and in many cases owned by a handful of conglomerates and family groups.

Over time, the entrenched position of large firms and groups has persisted in key economic sectors resulting in the exclusion of a large proportion of the population from both ownership of assets and participation in the economy. From industrial organisation theory, we know that industries with a high concentration of firms and high barriers to entry are often characterized by limited competition, low incentives for innovation and few efficiency gains.[6] Concentration in a sector, particularly in the production of homogenous goods, also creates strong incentives for firms to collude and jointly charge monopoly prices for products and services.[7] In order to protect supernormal profits, firms with market power may engage in anti-competitive conduct and strategic conduct to discourage entrants. They may for instance raise their rivals' costs and reduce rivals' revenues to encourage exit of new firms or deter entry,[8] creating an environment which is not conducive for the successful entry of new (black-owned) firms.

In this context, recent studies on the liquid fuel wholesale sector[9] and the beer industry[10] in South Africa highlight the types of barriers to entry encountered by entrant firms in each sector, providing some insights into the real and often neglected challenges of firms that the black industrialists programme would need to consider and address in its design. These go beyond granting access to capital and the lack of skills and training for entrants. The research shows that there are also the challenges of gaining access to key inputs and customers (and not only through government procurement programmes which may not ensure sufficient offtake for firms to achieve scale), and the strategic reactions of incumbents to entry. These aspects speak to the actual contestability of markets in which new firms seek to enter.

Access to supply

In many sectors, large firms are vertically integrated at every level of the value chain i.e. input supply, production and distribution. New entrants often have to compete with their source of supply or enter at multiple levels of the value chain. This is certainly the case in both the liquid fuel wholesale (energy) and beer (agro-processing) sector. In the fuel industry for instance, the supply of fuel is in the hands of the seven major oil companies. These companies have the ability, infrastructure and capital to import and refine large volumes of fuel and also own infrastructure for the transportation and storage of the fuel. Wholesalers therefore have to access their fuel from the seven oil companies exacerbated by the fact that there is no viable alternative for sourcing or importing the product independently. This dependency usually means that the suppliers are able to dictate contractual terms to the wholesalers. Moreover, the independent wholesalers interviewed in the study found that it was not possible to play suppliers off against one another because they were often too small to significantly affect the majors. The nature of the relationship between wholesalers and suppliers also means that in situations where there are shortages of fuel supply, oil companies will tend to supply their own branded wholesalers ahead of independent wholesalers.

In the beer industry, this concern arises in the context of access to key ingredients. SABMiller is the dominant producer of beer with a market share of almost 90% and is present at every level of the value chain including the growing and supply of key ingredients such as hops and barley. This gives them the ability to raise prices of these ingredients for their rivals. However, beer production only constitutes around 15% of the total selling price of beer and the relative costs of barley and hops are a small percentage. The price therefore is not a primary concern. The quality of the ingredients supplied however is critical as it significantly affects the flavour profile and quality of the output. SABMiller has an incentive to provide rivals such as Soweto Gold with less than ideal quality of ingredients, and rivals such as Soweto Gold have no choice but to buy ingredients from their primary competitor.

Access to customers

For any new firm to enter and grow in a sector, they require access to customers. However, in industries with strong incumbents, dominant players can tie in customers to lock out rivals including through staggered, long term contracts. For example, in the fuel sector, most of the larger customers are tied into long term contracts with the majors which keeps entrants away from the more lucrative opportunities in major urban areas. The incumbents are also better able to provide customers with more favourable payment terms such as better credit terms and discounts which rival distributors are not able to match, in a low margin environment. While the customer is (rightfully) able to benefit from access to greater discounts, this practice can be a concern from a competition perspective if incumbent firms are shown to be offering deep discounts that may be below marginal costs, for instance. An entrant in fuel wholesaling is usually required to purchase fuel on a cash basis from the suppliers and therefore cannot afford to give favourable credit terms as this would affect the business' operational cash flow. Entrants therefore have to ensure that they compete in terms of reliability, quality of service and a good relationship with the customers, and can seldom compete on price.

In the beer industry access to customers comes down to a company's distribution network. Soweto Gold distributes its beer to 35 restaurants and bars through kegs. However, restaurants and bars represent only about 20% of the beer consumption market. Primary access to market is through shebeens and taverns, however it is difficult to get access to this customer base due to the incentives SABMiller provides to shebeen and tavern owners to place their beer products in the most strategic positions. Some of these incentives include provision of refrigerators to retailers on condition that they do not place other beer products in the same or in prominent positions in the fridge.

Furthermore, marketing is integral to accessing customers. Soweto Gold being a new entrant, does not have a sufficiently large budget to spend on the more effective advertising media. It thus limits its marketing to social media and viral marketing. SABMiller and other larger rivals such as Brandhouse can better afford to advertise on the more expensive platforms such as television, radio and billboards. SABMiller also has a very good distribution network and the infrastructure and systems to transport its beer from the breweries to their customers seamlessly. Economies of scale also enable SABMiller to distribute their products at considerably less cost than entrants are able to, an issue discussed at length in the abuse of dominance case brought against the firm which was heard by the Competition Tribunal in 2014.[11]

Incumbents' reaction to entry

A new firm needs to contend with the likely competitive reaction to their entry by incumbents. If an incumbent realises that an entrant is a potential threat they can leverage their position in the market to lower prices to levels close to or even below marginal or average variable costs to discourage or undermine entrants, or they could expand their capacity to signal to their rivals that they have the ability to flood the market.[12] In the fuel industry, because of the vertical integration and transparency in the sector, incumbents have insight into the capacity to grow and expand of downstream rivals. Since they also supply the rivals' key inputs, they have the ability to 'manage' the growth of rivals. In fact new entry into the liquid fuel sector benefits incumbent suppliers in that it indirectly provides additional customers for the oil majors given that the entrants still have to source fuel for new customers from the majors. However, in cases where entry is deemed to be threatening enough such as the proposed development of independent storage in Cape Town, the oil majors are likely to put up a fight.[13]

SABMiller has also for the most part appeared to accommodate entry with respect to small brewers. However, in 2014, the beer company launched its own craft beer called 'No. 3 Fransen Street', at a time when the specialty beer market was experiencing some growth. In promoting the beer, SABMiller offered incentives to retailers such as a premium draught tap, branded glassware and merchandise, management of aged stock and draught machine services which rival firms are not able to match.

Skills and training

An obvious issue that needs to be addressed in the context of the black industrialists programme is accessing the skills to operate businesses or the sector-specific knowledge to drive the business forward. Even as the Department of Energy is taking steps to have Historically Disadvantaged South Africans (HDSAs) enter the fuel sector, a 2011 Liquid Fuels Charter audit report showed that very few HDSAs were in ownership or management positions. Many of the HDSAs in these positions appeared as part of fronting to allow a company get a higher BBBEE score.[14] The general lack of high-end skills in the country also means that new entrants to most sectors find it difficult to develop good operational and cash flow managers which are essential in a sector where operating margins are thin and success depends on having cash to purchase the primary input.

Conclusion

From the above discussion on the experiences of entrants in the liquid fuel and beer industries, it is clear that black industrialists as envisaged need more than access to financing in order to successfully enter certain industries. They often have to contend with competitors who have been in the market for decades and have ownership of strategic infrastructure in the value chain. The decades of experience and vertical integration in the value chain give the incumbents competitive advantage that would be difficult for entrants to acquire.

The black industrialists programme should consider giving entrants access to public procurement opportunities such as those in municipalities, although depending on the sector these may not be sufficient to allow an entrant to achieve scale. The procurement guidelines advocate for preferential treatment of small and medium enterprises and HDSAs, however the actual implementation has been poor.

In terms of strategic barriers that are likely to be encountered, constraints in the competition law that make it difficult for the prosecution of abuses of dominance are a critical concern. It might be more viable for relevant government departments or private actors to facilitate direct partnerships with incumbent firms on agreeable terms which assist new industrialists to gain access, although it is important to caution against the creation of perpetual dependency. Entrants may thus over time gain their own customer base, develop their productive capabilities, and in the long term become effective rivals. This is akin to the concept of incubation of firms often cited in industrial policy strategies, which essentially acknowledges that entry dynamics encompass more than just access to finance, but a network of supportive policies as well, that both support firms to grow but also provide effective performance disciplines which entrench the principles of competition and rivalry.

Perhaps the end-game of developmental programmes of this nature should not be that every entrant needs to rise to become the same size as global giants such as SABMiller. The overarching principle may be to ensure that markets remain contestable, free from unilateral abuses of market power, and open to contestation even if only in smaller localised markets. The DTI will need to find the answer to the very difficult question of how big is big enough, and what size and type of entrant industrialist firms will be the markers of success for the programme?

Different industries may require sector-specific solutions to ease entry such as creating viable alternative sources of supply in the fuel sector. These sector-specific solutions would need to be sufficiently comprehensive to encourage entry and provide requisite support without interfering with the role of the entrepreneur in learning-by-doing, investing and innovating to retain their access to this support. In this context, R23 billion may be a drop in the ocean in terms of what is needed to enable effective entry in many key sectors.

Notes

1. World Bank. (2015). 'GINI index (World Bank estimate)'. *World Bank.*
2. Statistics South Africa (2015). 'Quarterly Labour Force Survey, Q1 2015'.
3. Banda, F., Robb, G., Roberts, S. and Vilakazi, T. (2015). 'Review Paper One: Key debates in competition, capabilities development and related policies: drawing the link between barriers to entry and inclusive growth'. *CCRED Working Paper No.* 4/2015.
4. Joubert, J. J. 'R23bn over 5 years to support black industrialists: Ebrahim Patel' (13 May 2015). *Times Live.*
5. See note 3.
6. See note 3.
7. Palmer, J. (1972). 'Some Economic Conditions Conducive to Collusion'. *Journal of Economic Issues,* Vol. 6, (2/3), p. 29-38.
8. Church, J. and Ware, R. (2000). 'Industrial organization: A strategic approach'. New York: Mcgraw-Hill, 2000.
9. Paelo, A., Robb, G., and Vilakazi, T. (2014). 'Study on Barriers to Entry in Liquid Fuel Distribution in South Africa'. *CCRED Working Paper No.* 13/2014.
10. Mondliwa, P., Banda, F. and Matumba, C. (2015). 'Research on Competition and Regulation: Competition, barriers to entry and inclusive growth. Soweto Gold Case Study'. *CCRED Working Paper No.* 6/2015.
11. See Kaziboni, L. (2014). 'SA Tribunal finds no case against SAB distribution' (August 2014). *CCRED Quarterly Competition Review No.* 6/2015; and, Competition Tribunal, Competition Commission and South African Breweries Ltd and SAB's Appointed Distributors, Case No. 134/CR/Dec07.
12. Cabral, L. M. B. (2000). 'Chapter 15: Strategic behaviour, entry and exit'. *Introduction to Industrial Organization*. MIT Press.
13. Slabbert, A. (2015). 'Chevron opposes Cape diesel terminal'. (6 March 2015). *The Citizen.*
14. Maoto, M. (2012). 'Oil empowerment trusts warned'. (5 December 2012). *BDLive*.

Emerging competition dynamics in regional pay-tv markets

Tatenda Zengeni and Genna Robb

The recent public outcry in Zimbabwe, Zambia and Nigeria over a decision by Multichoice to increase its subscription fees points again to the competition issues that characterise the pay-tv market in the continent. Due to high prices, subscribers in Zimbabwe have resorted to buying decoders and paying their subscription in South Africa, which is relatively cheaper.[1] In Zambia, Multichoice (DSTV) subscribers launched a campaign on social media calling on subscribers to boycott the new prices.[2] The federal High Court in Lagos Nigeria ordered Multichoice not to effect the increase in its subscription fees in April 2015 following two cases submitted against it by subscribers.[3] Multichoice is by far the largest provider of pay-tv in the continent.

We first highlighted issues in the pay-tv market in an article titled '*Exclusive agreements in the pay-tv market*'.[4] This article presents new developments in the region, including the expansion and entry of new players in the pay-tv market across the continent. The article also analyses what the International Telecommunication Union deadline of 17 June 2015 on switching from analogue to digital migration means for competition in the broadcasting environment in the continent. The impact of the change from analogue to digital is that more TV content can be squeezed into the same amount of spectrum than is possible under analogue transmission. For instance, where a single analogue channel requires a whole frequency, digitalised signal can allow for up to ten TV channels to use the same frequency.[5] Last, the article provides an assessment of the likely effect on competition considering the experiences of the United Kingdom (UK) and United States of America (US).

Changing market structure and new entry

The pay-tv market has been changing in the continent, characterised by new entry and expansion of existing service providers. Zuku TV from Kenya continues to expand its operations across the continent having set up in Malawi in June 2014.[6] Zuku has also given rights to Zambia's My TV to broadcast its content in the Zambian market.[7] In terms of content, Zuku TV has differentiated itself from Multichoice, offering a combination of a very strong Asian package and African soaps, along with lower prices for its bouquets.

StarSat, a Chinese firm which is a subsidiary of Star Times, has made inroads into the pay-tv market in the continent. It recently entered the Malawi market in January 2015.[8] The coming on board of Zuku and StarSat TV now means Multichoice no longer has a monopoly in the pay-tv market in Malawi. StarSat, also set up its home satellite TV service towards the end of 2014 in Kenya, increasing competition to Multichoice and Zuku. Star Times has recently acquired the rights to broadcast Germany's Bundesliga football games across the continent starting in August this year.[9]

Similarly, US internet-based content provider Netflix has announced its entry into South Africa and is expected to start broadcasting in 2016.[10] The entry of Netflix is likely to challenge Multichoice which currently holds exclusive rights to broadcast some top American TV shows which are also screened by Netflix. Although Netflix is entering the market using an internet-based model, its proven ability to provide some of the top content means that consumers are presented with an alternative which is potentially more tailored to the specific needs of customers who prefer to only watch certain programmes and not a bouquet of channels. However, their ability to compete will be constrained by the availability of internet and also sporting content. By 2011 only 35.2% of South African households had access to internet, which may be an overstatement in the census data.[11]

The Independent Communications Authority of South Africa has licensed five new pay-tv companies. Of the five, Siyaya was given the green light to commence broadcasting in August 2014 and the company had already secured a R1-billion deal for the rights to broadcast Bafana Bafana football games (which were due to start in May 2015).[12]

The existence of exclusive content agreements continues to be the norm in the pay-tv sector and may have the effect of reducing the ability of new entrants such as Siyaya to compete effectively.[13]

Convergence

Convergence, which is becoming a feature of regional markets, is defined as the coming together and interaction of consumer devices such as the telephone, television and personal computer such that different network platforms can effectively carry the same kinds of services.[14] The implication of this development is that it can facilitate new entry. Mobile telecommunications operators in the region are entering the pay-tv market. Safaricom, a mobile operator from Kenya recently entered the pay-tv market through launching 'The Big Box decoder' which allows users to access both TV content and internet.[15] MTN South Africa also launched 'MTN FrontRow' Services which provides customers access to movies and series on mobile phones.[16] Econet Wireless Group from Zimbabwe has also expressed its intention to launch pay-tv.[17]

The increase in entry of firms in the television market has largely been driven by convergence in information communication technology, which has reduced some barriers to entry in the sector, particularly those related to access to content and infrastructure. Migration from analogue to digital terrestrial TV could bring further benefits in that it frees up more spectrum for broadcasting. A number of SADC countries are working on meeting a new June 2016 deadline they have set.[18] Migration creates spectrum space which acts as a barrier to entry to new players. There are several countries that have completed migration such as the UK and US which can provide some lessons for developing countries.

International experience in the UK and US

In the UK, digital terrestrial TV was introduced in 1998.[19] The switchover from analogue television to digital was regulated so as to allow for more TV channels in order to stimulate competition, expand choices and provide a more efficient use of frequency spectrum.[20] After digitalisation, the audience of UK's four main television companies fell.[21] However, the market shares of these companies shows that they have started offering a new portfolio of digital channels delivered through both pay-tv and digital terrestrial platforms in response to competition, and their total audience has grown subsequently.[22]

In the US, digital TV was implemented with a view to preserving the essential characteristics of the analogue TV service.[23] The US TV market has been characterised by fluctuations in concentration as a result of multiple entry of TV channels and regulatory changes which encouraged mergers and acquisitions.[24] The American experience shows that diffusion of new technology can be slow due to high prices of receivers and low uptake from consumers who still largely subscribe to pay-tv services.

Conclusion

Competition in pay-tv markets in the continent remains limited, although there are encouraging signs in terms of the entry of new rivals. Despite the lowering of barriers to entry brought by digital migration and new technologies, and the dynamic effects of convergence, traditional incumbent players are able to retain their position in the market as characterised by the UK experience. The experience shows that traditional incumbent firms have been forced to be more innovative and become conscious of their pricing strategies in an increasingly competitive environment. Digitalisation alone cannot be expected to end the challenges of the pay-tv market in the continent, particularly where exclusive content agreements remain a feature of national markets. Competition authorities will need to be aware that due to technological advancement and greater convergence, application of competition law in terms of delineating relevant competition markets will become more complex as rivalry in the pay-tv sector takes on new and changing dimensions.

Notes

1. Munanavire, B. 'DStv to cut off SA subscriptions' (23 March 2015). *Daily News*.
2. Lisulo, S and Lungu, F. 'Zambians protest DSTV price hike' (14 March 2015). *The Post Zambia.*
3. Adebiyi, D. 'Court orders DStv to suspend increase in subscription fees' (9 April 2015). *The Guardian*.
4. Paelo, A. and Mondliwa, P. 'Exclusive agreements in the pay-tv market' (November 2014). *CCRED Quarterly Competition Review.*
5. Berger, B. (2010). Challenges and perspectives of digital migration for African media.
6. 'Pay-tv competition in Malawi to benefit consumers, no more Multichoice monopoly' (19 February 2015). *Nyasa Times.*
7. Chulu, K. 'Strong to air Zuku channels' (10 November 2014). *Zambia Daily Mail.*
8. See note 6.
9. Nan. 'StarTimes acquires right to broadcast German Bundesliga in Nigeria, others' (13 June 2015). *The Guardian*.
10. Gedye, L. 'Competition breaks TV hegemony' (30 January 2015). *Mail and Guardian*.
11. Hawthorne, R. (2014). 'Review of economic regulation of the telecommunications sector'. CCRED.
12. See note 10.
13. See note 4.
14. European Commission (1997). 'Green Paper on the convergence of the telecommunications, media and information technology sectors, and the implications for regulation'.
15. Agutu, N. 'Safaricom enters TV market with The BigBox decoder at Sh10, 000 one-off fee' (8 May 2015). *The Star.*
16. 'MTN launches video-on-demand services' (15 January 2015). MTN website.
17. Kabweza, L.. 'African pay TV & fibre operator, Wananchi, raises $130m for regional expansion' (6 October 2014). *TechZim*.
18. Mochiko, T. 'Sadc agrees on new target for digital TV' (3 July 2015). *Business Day*.
19. Menezes, E. and Carvalho, R. (2009). 'Impacts of New Technologies on Free-to-Air TV industry: Lessons from Selected Country Cases'. *Journal of Technology Management & Innovation*, Vol. 4(4), p. 82-94.
20. Goodwin, P. (2005). 'United Kingdom: Never mind the policy, feel the growth', in Brown, A. and Picard, R. G. (eds.) (2005), *Digital terrestrial television in Europe*; Lawrence Erlbaum Associates Publishers, Mahwah, NJ; p. 151-180.
21. See note 19.
22. See note 19.
23. See note 19.
24. See note 19.

Global foreign exchange price fixing

Shingie Chisoro Dube

In May 2015, the Competition Commission of South Africa (CCSA) lodged an investigation into cartel conduct by major banks in the foreign currency exchange market affecting the South African rand. The CCSA alleges that certain banks have colluded to fix prices in currency pairs involving the rand.[1] The banks alleged to be involved in the collusive arrangement, called the "ZAR domination" include BNP Paribus, BNP Paribus South Africa, CitiGroup Inc, Citigroup Global Markets (Pty) Ltd, Barclays Bank Plc, Barclays Africa Group Ltd, JP Morgan Chase & Co, JP Morgan South Africa, Investec Ltd, Standard New York Securities Inc and Standard Chartered Bank.[2] The above traders in foreign currencies are under investigation for directly or indirectly fixing prices on bids, offers and bid-offer spreads with regard to spot, futures and forwards currency trades.[3] The CCSA alleges that this conduct is anti-competitive in nature, breaching section 4(1)(b)(i) of the Competition Act No. 89 of 1998. This arrangement is facilitated through electronic messaging platforms used in foreign currency trading, which allow the banks to coordinate and share information regarding their trading activities and charge a stipulated price for a given amount of foreign currency. The conduct under investigation has the effect of distorting foreign exchange prices and artificially inflating the cost of trading in foreign currency, in relation to the rand.[4]

There have been several investigations globally by competition authorities into cartel conduct in foreign exchange markets. Barclays, JP Morgan, Citigroup, Royal Bank of Scotland and UBS were issued heavy penalties amounting to $5.7 billion in the United States and United Kingdom, following their involvement in the manipulation of the foreign exchange markets.[5] However, it is becoming clear that that there are difficulties in detecting these practices in forex markets.[6] An important aspect of financial markets is the ability to collect and publicise information as part of ensuring efficient and transparent markets. However, this sharing of information can result in arrangements which closely mirror anticompetitive information sharing and price fixing especially in cases where banks use such information to determine each other's strategy. Hence, there is a very fine line between bank collusion and market research in the forex space, which raises the question: how do banks do market research or intelligence research without colluding? This implies a role for financial regulators in regulating the exchange of competitively sensitive commercial information. This follows the concern that the disclosure and receipt of non-public pricing information by competitors is likely to contravene competition law especially in instances where competitors are caused to change the way they conduct business in future based on the information received.[7] Lastly, advancements in technology enhances the possibility and ease of information sharing as in the case of electronic messaging platforms.

The Financial Conduct Authority (FCA) in the UK issued their largest financial penalty in history to Barclays Bank (just more than 280 million pounds) for manipulating the foreign exchange rate. Barclays was found to have been involved in inappropriate sharing of information and manipulation of the spot foreign currency exchange rate.[8] Barclays shared information with other banks using electronic messaging systems, facilitating price fixing through helping traders to determine each other's trading strategies. Barclays unlawfully made huge profits by manipulating the price of currency rates in the market, through making sure that the price at which the bank agreed to sell a particular currency to the market exceeded the average rate at which the bank had bought the same currency in the market. The FCA found Barclays guilty of inappropriate sharing of confidential information in the spot foreign currency exchange market. The disclosure of such information gave other market participants additional information with regard to Barclays' trading activities, which altered their behaviour.[9]

In response to the above challenges, the UK financial regulators, the Fair and Effective Markets Review (FEMR), in June 2015 introduced legislative change meant to prohibit the manipulation of foreign exchange markets in addition to setting up a market standards body meant to oversee the banks' operations.[10] The additional laws are meant to tighten existing loopholes and regulatory gaps which previously made it possible for the banks to manipulate the foreign exchange market. In addition to record fines for banks, the authorities intend to take further personal sanctions against individuals involved in price fixing beyond senior executives and non-key executives.

The United States Department of Justice (USDOJ) also carried out investigations into collusion affecting foreign exchange markets with a particular emphasis on the spot market for trading U.S. dollars and Euros. This process saw the prosecution of five major banks - Citicorp, JPMorgan Chase & Co., The Royal Bank of Scotland, UBS AG, and Barclays PLC -- by the U.S Criminal and Antitrust division in May 2015.[11] Together, these banks account for 25% of annual dollar-euro exchange rate transactions in the US. The respondents admitted to parent-level guilty pleas, and the USDOJ issued unprecedented criminal penalties of more than $2.5 billion and three years' probation, during which time the authorities would monitor the banks' efforts to effectively implement compliance programs.[12]

The Competition Commission of South Korea is currently undertaking investigations into price fixing of foreign exchange rates by global banks involving Bank of America, Citigroup, JP Morgan Chase, Royal Bank of Scotland and UBS. This investigation came after the commission alleged that foreign currency price fixing by global banks negatively affected South Korean firms.[13] The investigation is centred on determining whether the manipulation of the price of US dollars and Euros including in derivative markets negatively affected South Korean financial institutions and firms.[14]

Prices of foreign currencies matter to all sectors of the economy, including consumer groups and producers. Price fixing cartels facilitate the creation of market power for players in the financial market and the maintenance of such positions for long periods of time. This has the effect of eliminating smaller players in the market and heightening barriers to entry.[15] In addition, manipulation of exchange rates artificially creates high prices for local firms and manufacturers who source key industrial inputs from international markets. This has the effect of raising costs of production or even rationing the amount of output produced. These practices in financial markets also have the effect of making products and services, including various financial products, more expensive for the consumer.[16]

Notes

1. 'Competition Commission probes foreign currency traders for price fixing' (19 May 2015). *CCSA Media Release*.
2. See note 1.
3. See note 1.
4. See note 1.
5. The Guardian. 'Five banks fined over foreign exchange scandal' (20 May 2015). *The Guardian.*
6. Binham, C. 'Financial regulators target high profile cases' (14 June 2015). *The Financial Times*.
7. McGrath, B., Reddy, T., and Proctor, C. 'Too much information! Recent competition law cases in the banking sector' (July/August 2014). *Butterworths Journal of International Banking and Financial Law.*
8. Financial Conduct Authority (FCA). 'FCA fines Barclays £284,432,000 for forex failings' (20 May 2015).
9. See note 8.
10. Jenkins, P. 'Review to seek new laws banning manipulation of markets' (8 June 2015). *Financial Times*.
11. US Department of Justice. 'Five major banks agree to parent-level guilty pleas' (20 May 2015).
12. US Department of Justice. 'Assistant Attorney General Bill Baer Delivers Remarks at a Press Conference on Foreign Exchange Spot Market Manipulation' (20 May 2015).
13. AFP. 'South Korea probes forex market rigging by global banks' (17 June 2015). *Seoul Economic Daily*.
14. See note 13.
15. See note 12.
16. 'Price fixing and its impact on communities'. Third Anti-Corruption Summit.

Is infrastructure sharing a game changer in Zimbabwean telecoms?

Nicholas Nhundu

Econet Wireless is the dominant player in the Zimbabwean mobile telecoms industry with a total of 6.5 million active subscribers in 2014 while NetOne and Telecel held 3.2 million and 2.1 million, respectively.[1] In order to promote investment and enhance competition, the Post and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) is in the process of finalizing infrastructure sharing rules for broadband and other ICT infrastructure which are expected to be implemented by August 2015.[2]

Infrastructure sharing can take different forms depending on the regulatory environment of a given country. Two possibilities are passive and active sharing.[3] Passive sharing involves the sharing of non-electronic infrastructure like cell sites and masts while active infrastructure involves the sharing of electronic infrastructure such as the core network. In Zimbabwe, POTRAZ is in the process of determining the details of how the process will be implemented.[4] This article discusses the possible competitive implications of infrastructure sharing on the Zimbabwean telecoms sector.

The Zimbabwean telecoms industry is characterised by relatively low innovation, poor service quality and high prices. The lack of innovation is manifested in the slow adoption of international technological trends.[5] For example, cellphone internet connectivity was only hosted for the first time in 2009, several years after it was introduced in neighbouring countries like South Africa.[6] Furthermore data prices remain high with 1 gig of data costs R420 (35 dollars) compared to R150 that one would pay in South Africa.[7] Generally, the capital intensive nature of the telecoms sector presents a barrier to entry for new local companies.[8] Infrastructure sharing would allow new operators to enter the market at a much lower cost than what they would encounter if they were required to construct their own network infrastructure in full. Therefore once the infrastructure sharing is implemented there is a general expectation that there will be a shift from coverage competition to service provision-based competition, and as a result consumers could benefit from increased innovation, service choices, quality and fair prices.[9] From the incumbent operators' perspective infrastructure sharing may also reduce the investment in capital expenditure significantly. POTRAZ has stated that passive infrastructure sharing can yield overall cost savings of as much as 15% to 30%, while savings on yearly site capital are anticipated to be 60% due to less investment duplication and reduction in operation costs such as fuel and the costs of renting sites.[10] A decrease in capital expenditure would result in less costs being transferred to customers potentially leading to lower prices.

Nevertheless for infrastructure sharing to be effective other regulations which can affect entry in the Zimbabwean telecoms sector need to be aligned with the objectives of infrastructure sharing. For example license fees for mobile network operators are extremely high which makes it very difficult for new entrants to enter into the industry. As of February 2014, the license fees were US$137.5 million for a 20-year license.[11]

Moreover there are also empowerment rules that applicants need to comply with before they can be considered for the license. In May 2015, Telecel's license was revoked because the firm is majority owned by a foreign entity called Telecel International - the indigenisation laws require a 51/49 percent shareholding threshold between indigenous Zimbabweans and foreigners. Telecel's license was reinstated after a high court ruling.[12]

An important aspect of enhancing competition in network industries, is the ability of customers to switch between operators in a relatively simple and affordable manner. POTRAZ had proposed the implementation of number portability towards the end of 2013, although this has yet to be adopted.[13] The inability of subscribers to retain their mobile telephone numbers when they change service providers is a potential constraint to greater rivalry in the sector.

Concerns have been raised regarding the manner in which POTRAZ seeks to implement infrastructure sharing. Under the proposed guidelines, infrastructure will be compulsorily shared for free amongst all companies. Econet which has made the largest investments in network infrastructure[14] has argued against compulsory utilisation of its infrastructure by other companies that have not made efforts to invest in their own networks. In Econet's opinion the current process is most likely to lead to unbalanced benefits for other operators who decided to use their capital for other purposes.[15] The Ministry of Information Communication Technology has issued further statements requiring compliance from the network operators.[16]

However, it is important to understand that the success of infrastructure sharing is also dependent on its implementation. In a scenario where companies have invested disproportionately like in Zimbabwe, infrastructure sharing has to be negotiated rather than imposed. In different countries infrastructure sharing has been applied differently. However in most successful cases authorities are known to have relied on structuring remedies that increase the economic incentives of operators to comply, such as in India.[17] POTRAZ may need to present pricing and sharing mechanisms which allow for adequate compensation for incumbent firms that have already made substantial investments in infrastructure.

Infrastructure sharing is a positive step towards liberalization and enhancing competition within the Zimbabwean telecoms industry. POTRAZ will need to structure and implement regulations and incentives that motivate entities to share their infrastructure in a manner that does not undermine investment incentives. There is also a need to address other areas that are key to enhancing competition and facilitating investment within the sector, such as the issuance of licenses and number portability.

Notes

1. Post and Telecommunication Regulatory Authority of Zimbabwe (POTRAZ). Postal and Telecommunications Sector Performance Report (Fourth Quarter 2014).
2. Post and Telecommunication Regulatory Authority of Zimbabwe. (2014). Consultation Paper on Infrastructure Sharing Framework. Consultation Paper No.1.
3. Kaziboni, L. and Robb, G. 'Infrastructure sharing in telecoms: Consolidation in South Africa' (February 2015). *CCRED Quarterly Competition Review*.
4. Post and Telecommunication Regulatory Authority of Zimbabwe website.
5. Newzimbabwe. 'Econet launches Zim's first broadband service' (21 October 2010). *Newzimbabwe*.
6. My Broadband. 'The internet in South Africa: 1991 to 2015' (18 July 2015).
7. Econet website.
8. Karombo, T. 'High costs a barrier to entry for Zim telcos' (14 February 2013). *ITWeb Africa.*
9. See note 2.
10. See note 2.
11. Mungadze, S. and Karombo, T. 'Challenging times in Zimbabwe telecoms'. (6 February 2014). *Financial Mail*.
12. NewsdzeZimbabwe. 'Mandiwanzira: Why I cancelled telecel Licence' (4 May 2015). *NewsdzeZimbabwe*; and NewZimbabwe. 'Telecel granted provisional order to continue operating' (7 May 2015). *NewZimbabwe.*
13. Pembere, K. 'Mobile number portability talk underway'. (11 November 2013). *The Herald*.
14. Gambanga, N. 'Here is why Econet doesn't want to share' (30 March 2015). *TechZim*.
15. Gambanga, N. 'Minister of ICT accuses Econet of extortion, gives MNO an ultimatum' (30 March 2015). *TechZim.*
16. See note 16.
17. Cohen, T. and Southwood, R. (2008). Extending Open Access to National Fibre Backbones in Developing Countries. The 8th Global Symposium for regulators, International Telecommunication Union. Pattaya, Thailand.

Then and now: The Telkom and Business Connexion merger

Lauralyn Kaziboni

In 2007, the Competition Tribunal of South Africa ("Tribunal") prohibited the merger between Telkom SOC SA Limited ("Telkom") and Business Connexion ("BCX"), following a recommendation for prohibition from the Competition Commission of South Africa ("Commission"). At this time, Telkom was the *de facto* monopoly provider of fixed line infrastructure and services and BCX was an ICT provider. The merger was prohibited on the grounds that it would result in a substantial lessening or prevention of competition in the managed network services market based on a horizontal evaluation.[1]

In 2015, a merger between the same firms has not only been approved without conditions by the COMESA Competition Commission, but has been recommended for approval with conditions by the Commission as the parties await approval by the Independent Communication Regulator of South Africa (ICASA).[2] In this article we assess the market conditions under which the merger was previously prohibited; as well as the prevailing market environment in which it has now been approved, subject to conditions.

In order to understand the context in which the merger has now been approved, it is useful to have some understanding of the structure of the ICT market, the dynamics of competition, and how these have changed over time.

The ICT market is broadly divided into four tiers, namely IT application services, IT hardware, network services, and telecommunication infrastructure. IT hardware is often managed by IT providers who resell, install and manage the hardware. In addition to the role of IT providers, IT application services operators provide software-related services, including development and support. IT network service providers connect and manage local area networks (LAN), wide network areas (WAN), internet access and other services. The last tier comprises the telecommunications infrastructure categorised as transmission services and access connections.[3]

There are instances where a managed network service (MNS) provider can own a network by acquiring a license from ICASA. These providers were called value added network services (VANS) under the Telecommunications Act (in place until 2005). The industry has undergone and continues to experience a number of changes, particularly since a technology neutral framework was introduced through the Electronic Communications Act in 2005.[4] This new framework, in addition to declining communication costs, has resulted in increased competition, and growth of the sector.[5]

The Tribunal's decision in 2007 - Market structure and anti-competitive concerns

The Tribunal analysed the effects in three relevant product markets which were: Supply of telecommunication infrastructure; Managed Network Services; and Information Technology Services.[6]

Telkom was the only supplier of fixed line infrastructure, and did not face significant competition until the entry of the second network operator, Neotel in the mid-2000s. Telkom had a subsidiary in the MNS market, where BCX was also present.[7]

In 2006, Neotel secured a partial national and metropolitan backbone network independent of Telkom's network. It was offering wholesale services in the form of wholesale internet and global services through Teleglobe with a geographical coverage of approximately 0.5% of South Africa's land area which included Johannesburg, Pretoria, Cape Town and Durban. One of the great barriers that new participants faced was that there were no unbundled local loops available for lease from Telkom. New entrants are able to roll out local loops however this is challenging as it entails digging up streets and pavements which requires municipal approval and other bureaucratic requirements. The infrastructure that Neotel had was inadequate for country-wide access to companies and thus required Telkom and/or Eskom's infrastructure to cater for such needs, should they arise. Even though Neotel had the right to access Telkom and Eskom's infrastructure, this was only for a limited period. In addition, Eskom's network was incompatible for city or metro connections as it was designed to service the internal needs of Eskom's power stations. Despite these barriers, Neotel projected to gain 8-9% of Telkom's market share within 5 years, by 2012. Given this time frame, Neotel was not in a position to compete effectively at the time of the first proposed merger.[8]

The downstream MNS market includes the provision and management of enterprise WANS and VPNs including IP-VPNs and the necessary equipment such as routers, switches; but excluded Telkom's fixed access lines. In this segment, Telkom had a market share downstream of between 38.5% - 50% while that of BCX was approximately 8.7%. The only other significant rival in this market was Dimension Data (Didata) whose market share was 13% such that the merger would have increased concentration and lessened competition.[9]

The submarkets in IT services include application management, information systems outsourcing, network and desktop outsourcing, and hosted application management. BCX was primarily involved in the provision of IT services. It had between 12% and 19% market share in the ITS market, and 17.7% to 20% in the outsourcing segment, making it the largest operator.[10]

Therefore, there were clear vertical and horizontal overlaps in the business activities of Telkom and BCX in the ICT industry. BCX and Telkom were competitors horizontally in the MNS market, and had vertical relations from the fixed line services to the IT services market. The Tribunal found that the proposed merger between these two companies in 2007 would have led to anti-competitive effects.

The telecommunications sector is characterised by high barriers to entry which include high capital requirements and economies of scale, among other factors. There are also network externalities, which imply that consumers are attracted to a network that has a large customer base where they benefit from lower on-net communication costs. The high barriers to entry, and the unwillingness of consumers to shift to new networks meant that Neotel was not a timely and sufficient entrant to counter any competitive harm by Telkom. A merger of this nature would ultimately thwart the success of Neotel, leading to its subsequent demise.[11]

The Tribunal found that the lack of a rival to Telkom would have given rise to unilateral effects. In the MNS market, Telkom would be able to raise the prices to just below that of innovative products such as VPNs that consumers are likely to switch to. Secondly, even though the bundle price in the telecommunications industry was regulated at the time, the price of one component could have been increased at the expense of another – with the bundle price still remaining the same – in order to increase the merged entity's margins.[12] Indeed, in 2008 the regulation of the bundle price was removed.[13]

The Tribunal was also of the view that Telkom, due to its dominant position, could offer discounts to secure customers, and discriminate between customers in terms of price until rival firms, who would not be able to match the effective prices, had exited the market.[14]

With respect to vertical effects, the concerns that were raised included the possibility of Telkom foreclosing its rival firms in terms of access to inputs in the downstream market.[15] In the telecommunications industry, the ITS market is unregulated while monopolies are cost regulated. As such there was an incentive for Telkom to vertically integrate into unregulated markets such as the market in which BCX operated.[16]

What has changed? Market structure and regulatory changes since 2007

The telecommunications industry has changed significantly including the fact that the revenue from voice calls has declined, while revenue from data has increased which provided scope for new rivals to compete in the provision of data services. Furthermore, firms are moving towards convergence where previously separated resources such as voice, data and video can now share resources and interact with each other. This can enable businesses to better their mobility, efficiency and productivity; while individuals have more connectivity options.[17]

There has also been an increased need for IT service providers to broaden their portfolios and this has resulted in an influx of acquisitions involving firms in adjacent sectors as providers seek to meet the diverse and complex requirements of customers. Telecommunications operators are acquiring or merging with network-related services and providing cloud and data centre services, while hardware providers are pushing the benefits of integrated systems and offering specialised implementation services.[18] Most recently, Vodacom proposed the acquisition of Neotel which is set to pose competition to Telkom.[19]

In 2014, Telkom again proposed to acquire BCX, which would lead to BCX delisting from the JSE. The Commission and subsequently the Tribunal recommended the approval of the merger, with behavioural and employment conditions. The parties now await approval from ICASA. Telkom has stated that the merger will assist them in addressing the technology and communication needs of South African businesses through the creation of this ICT company. BCX has since grown their services base which enables Telkom to offer better services to customers.[20] In the IT services sector, BCX is now the largest player in this industry followed by Didata and T-Systems.[21]

Telkom still remains the *de facto* monopoly in fixed line services despite the entry of Neotel in 2006.[22] Neotel's market share is set to increase to 14-16% in the year 2016/17 from a market share of approximately 6% in 2012. Neotel is increasing its national capacity including its investment in 12 000km of fibre network around SA and the long distance links between Johannesburg and Durban, and Johannesburg and Bloemfontein. Neotel also has an international presence through access to Tata's 365 000km underwater fibre, connecting 300 cities in 200 countries across six continents.[23] Following the merger with Vodacom, Neotel is set to grow significantly in the fixed line market, and position itself as a stronger competitor to Telkom.[24] These likely developments in the market suggest that although the merged entity would be a significant player across adjacent markets, there is a greater level of rivalry at various levels of the market for the merger to have been approved subject to access conditions.

There have also been regulatory advancements with ICASA implementing asymmetrical cost-based call termination rates in September 2014. The asymmetry and lower rates led to the growth of mobile usage in the market. Neotel has indicated that the revised call termination rates assisted the firm in reducing their costs. This resulted in a decrease of their calling rates which saw them substantially increasing their consumer base.[25]

The changes in market structure and regulation have coincided with the decision of the Commission to approve the merger, with conditions. Changes in the market suggest that Telkom and BCX may face greater competition at present than they did in the past. Nonetheless, Telkom remains the largest supplier of wholesale leased lines and has the ability to foreclose downstream rivals in terms of access to essential inputs for the provision of downstream services such as MNS, VANs and IT solutions. To deter the likelihood of input foreclosure, the Commission proposed that Telkom:

- Ensure that the prices for wholesale leased lines are based on actual lines utilised and priced at the non-discriminatory transfer price for common components.
- Ensure that the prices for the other services and/or components included in the bundle are based on actual costs incurred.
- Ensure that it does not set prices for its bundled offerings using wholesale leased lines at levels which are less than the sum of the costs of components in the bundle. In other words, the principle is that the prices for wholesale leased lines included in the bundle must exceed the cost applied in internal pricing and the revenues generated from the bundled offering and must exceed the costs associated with providing the bundle plus a positive margin.
- Ensure that when providing any bundled offering which includes wholesale leased line, the price complements for each individual service included in the bundle is clearly reflected in the overall price for the bundle.[26]

The Competition Commission also assessed the likely public interest effects on this merger. The merger would likely result in the retrenchment of maximum of 60 employees. To counter the effects of these retrenchments, the Competition Commission proposed that the losses should be limited to 20 employees per year.[27]

Conclusion

The dominance of Telkom in the fixed line services continues and Didata is now the market leader in the IT services sector. However the entry of Neotel and the proposed acquisition by Vodacom are set to change the market. It remains to be seen whether other developments in the market such as the growth of rivals such as Didata are sufficient to discipline against any foreclosure or unilateral effects considered by the Tribunal in its earlier decision. Certainly, the conditions speak to the primary foreclosure concerns, however as noted in the earlier decision the pricing of the bundle of services offered by Telkom is complex and subject to manipulation by the incumbent.

Notes

1. Competition Tribunal of South Africa. (2007). Telkom SA Limited and Business Connexion Group Ltd, Case No. 51/LM/Jun06.
2. Lourie, G. 'Telkom, BCX deal gets nod of COMESA regulators' (16 March 2015). *TechFinancials.*
3. See note 1.
4. Hodge, J., Lipschitz, R., Sheik, F., and Aproskie, J. (2008). South African 15-year telecommunications policy review. *Genesis Analytics (Pty) Ltd,* for The Office of the Presidency.
5. Cull, D. (2009). Key considerations in telecommunications regulation: An overview of the South African position. *Ellipsis Regulatory Solutions.*
6. See note 1.
7. See note 1.
8. See note 1.
9. See note 1.
10. See note 1.
11. See note 1.
12. See note 1.
13. See note 4.
14. See note 1.
15. See note 1.
16. See note 1.
17. Telkom. 'Convergence: Our Journey.' *Telkom website.*
18. TechCentral. 'BCX takes top spot in IT, says IDC' (16 January 2014). *TechCentral.*
19. Van Zyl, G. 'Vodacom-Neotel deal should worry Telkom, says analyst' (1 July 2015). *Mail and Guardian*.
20. See note 19.
21. IT News Africa. 'Top Ten largest telecoms companies in Africa' (21 August 2012). *IT News Africa.*
22. Mungadze, S. 'Business Connexion secures IT lead in SA' (20 January 2014). *Business Day.*
23. Mawson, N. 'Neotel gains on Telkom' (7 November 2012). *Moneyweb.*
24. See note 23.
25. Parliamentary Monitoring Group. 'Costs of telecommunications: Department of Telecommunications, ICASA Vodacom, MTN, Cell C, Telkom & Neotel briefings'. Parliamentary Monitoring Group Briefings, 7 November 2014.
26. Competition Commission of South Africa. 'Commission recommends approval of Telkom/BCX merger with conditions.' (14 May 2015). Media Release on key decisions on Mergers and Acquisitions.
27. See note 26.

Quarterly competition case update - Mergers and acquisitions			
Country	**Target**	**Acquirer**	**Status**
Botswana	100% issued share capital in Yuagong	Natural Mystik	Approved
	70% equity interest in Imperilog Botswana	Transport Holdings	Approved
	49% issued share capital in Servest Group	Iridescent Investments	Approved
	100% equity interest in Maxshell 114 Investments (Peermont Group)	Sun International South Africa	Ongoing
	51% share in Retail Group	Famous Brands	Approved
	Appletiser brands and the Source Water brand owned by SABMiller Plc	Coca-Cola Company	Approved
	Discovery Copper Botswana	Khoemacau Copper Mining	Ongoing
Kenya	37.3% of UAP	Old Mutual	Approved
	63.3% stake in First Assurance of Kenya	Barclays Africa	Ongoing
	85% stake in Zanzibar Telecom (Zantel)	Millicom (Sweden)	Approved
	Essar Petroleum East Africa	Gulf Petrochem Group	Approved
South Africa	The Business of CitiConnect Communications	City of Johannesburg Metropolitan Municipality	Approved
	Metmar Limited	Traxys Africa	Approved
	The Kromdraai Group of Companies	VKB Agriculture	Approved with conditions
	Servest Group	Iridescent Investments	Approved
	South Canned Products	AECI	Approved
	Future Life Health Products	Pioneer Foods	Approved
	Neotel	Vodacom	Approved with conditions
	DGB	Brait Mauritius	Approved
	Certain immoveable property and rental enterprises owned by Paardevlei Properties	City of Cape Town	Approved
	Plumblink (SA)	The Bidvest Group	Approved
	Active Topco	Drago International Ventures	Approved
	Cinqpet a division of Astrapak Manufacturing Holdings	Boxmore Plastics (SA)	Approved
	AFGRI Poultry and AFGRI's Kinross Animal Feeds Mill	AFPO Consortium Proprietary Limited (AFPO)	Approved
	River Lily Investments, Newshelf 702	Friedshelf 1577	Approved
Swaziland	Partquip Group	Hudaco Trading	Approved
	80% shares of St Vincent Investment	MHG International Holdings	Approved
	Lexshell 834 Investment	Ascendis Health	Approved
	70% shares of Continental Outdoor Media Holdings	JCDecaux South Africa Holdings	Approved
	Shares of Exiprto Wholesale	Taft Trust	Approved

Note: Based on competition authority websites and publicly available sources.

Quarterly competition case update - Mergers and acquisitions			
Country	**Target**	**Acquirer**	**Status**
Tanzania	Fair Competition Commission has initiated a process to cancel approval of the 2010 merger between East African Breweries' (EABL) and Serengeti Breweries for not acting on commitments made when it obtained permission for the merger in 2010		
Tanzania	85% stake in Zanzibar Telecom (Zantel)	Millicom	Ongoing
Uganda	33.5% of Hudani Manji Holdings (HMH)	RCL Foods	Ongoing
Zambia	Realtime Technology Alliance	CEC Liquid Telecom	Approved
Zambia	Best Beef Company, Best Pork Company	Real Meat Company	Approved
Zambia	High Court upheld decision by CCPC's decision in 2012 to fine Puma Energy Zambia 2% of annual turnover for violation of merger conditions		
Zimbabwe	Assets and liabilities of Pannar Seeds Zimbabwe	DuPont Pioneer	Approved with conditions

Quarterly competition case update - Main enforcement cases	
Country	**Case summary**
Malawi	The Anti-Corruption Bureau is investigating the National Bank of Malawi CEO for allegations of collusive tendering and bid rigging following a finding by the Competition and Fair Trading Commission that the Bank of Malawi had a pre-existing reference scheme with CRB Africa Limited in which they provided exclusive credit referencing services to its members.
South Africa	The Competition Appeal Court dismissed the findings by the Competition Commission, upheld by the Competition Tribunal, that Sasol had charged domestic customers excessive prices for propylene and polypropylene between 2004 and 2007. The Commission has filed a notice of application for leave to appeal the judgment to the Constitutional Court.
South Africa	Commission has published for public comment draft terms of reference for a Retail Market Inquiry covering six main areas: long term exclusive leases; dynamics of competition between local and foreign-owned small and independent retailers; and the impact of consolidation, regulation (incl. town planning and by-laws), and buyer groups on small and independent retailers.
South Africa	The Commission has fined Japanese shipping company Nippon Yusen Kabushiki Kaisha (NYK) and Norwegian firm Wallenius Wilhelmsen Logistics (WWL) R104 million and R95.7 million, respectively, as part of the investigation into price fixing and collusive tendering on tenders for the transportation of motor vehicles, machinery and equipment by sea. The relates to tenders issued by several automotive manufacturers to and from South Africa including with BMW, Toyota, Nissan, Honda and others.
Zambia	MultiChoice and ZNBC warned to desist from conduct that is likely to restrict, prevent or distort competition in the free-to air and pay television markets. ZNBC had entered into an exclusive agreement with MultiChoice Africa Limited regarding access to ZNBC TV1 and TV2 that foreclosed a rival broadcaster from accessing local content.

CCRED OPEN LECTURE: 2 SEPTEMBER 2015

'AFRICAN DEVELOPMENT AND THE POLITICAL ECONOMY CHALLENGES OF INDUSTRIAL POLICY'

PROF MUSHTAQ KHAN (SOAS) and PROF CHRIS CRAMER (SOAS)

In April 2015, SADC member states met to agree on a regional industrial development strategy. During this meeting, it was agreed that industrialisation would take centre stage. In addition, SADC has also identified regional integration as an important vehicle to accelerate industrialisation. Given that there are strong interests within countries, as well as across countries in the form of multinational corporations, key questions that arise include considerations of how progressive industrial policies can be shaped at the national and regional level, and how industrial policy decisions of each country will affect regional development. In this context, what can SADC countries learn from other experiences, including within Asia and elsewhere in Africa, about industrial policy formulation and implementation?

⇒ **Mushtaq Khan** is Professor of Economics at SOAS, University of London. His recent research covers the economics of rent-seeking, corruption and clientelism, and industrial policy in developing states.

⇒ **Chris Cramer** is Professor of the Political Economy of Development at SOAS, University of London. His latest research includes the political economy of war and peace in Southern Africa, labour market dynamics and fair trade cooperatives.

Venue: CCRED Seminar Room, 2nd Floor, 5 Sturdee Avenue, Rosebank, Johannesburg

Time: 2 September 2015, 18:30

RSVP: infoccred@uj.ac.za

LAW FOR ECONOMIC REGULATION AND COMPETITION CAPACITY BUILDING PROGRAMME

18 to 20 August 2015, Fairview Hotel, Nairobi, Kenya

The three-day course is targeted at staff of competition authorities and regulators in East Africa who are involved in investigating and deciding on conduct of firms. The course will cover:

⇒ Key legal concepts in regulation and the challenges facing legal practitioners, investigators and analysts in applying these to particular sectors and markets.

⇒ Legal and practical guidance on initiating investigations and obtaining evidence, including through subpoenas, summonses, interrogations and search and seizure operations.

⇒ Issues relating to writing investigation reports, holding hearings, confidentiality and privilege.

⇒ Procedural and practical issues with negotiating settlements, resolving disputes, and litigation.

⇒ Pertinent issues of concurrent jurisdiction between competition and regulatory authorities.

The course will be facilitated by highly experienced academics and practitioners including **Professor Jonathan Klaaren** (professor at the School of Law at the University of the Witwatersrand and former Director of the Nelson Mandela Institute at WITS), **Ms Wendy Ndlovu** (Manager in the Office of the Commissioner and former Chief Legal counsel at the Competition Commission of South Africa), **Mr Makgale Mohlala** (Divisional Manager of the Cartels Division at the Competition Commission of South Africa) and **Professor Patricia G. Kameri-Mbote** (Professor of Law and Dean at the School of Law, University of Nairobi and an advocate of the High Court of Kenya).

To access the full course outline please visit our **website** or send enquiries to **antheap@uj.ac.za**.

ECONOMICS FOR COMPETITION AND REGULATION CAPACITY BUILDING PROGRAMME

19 & 20 August 2015, Fairview Hotel, Nairobi, Kenya

This two-day intensive course hosted by the Competition Authority of Kenya is targeted at competition practitioners and those with competition responsibilities in regulatory agencies and companies. Now being offered for the third year running, the course combines the key principles in competition economics and regulation, with their application to real-world cases including recent Kenyan cases. The course will cover:

⇒ The appropriate tests, evidence and assessment for merger analysis

⇒ Restrictive vertical practices, agreements and mergers

⇒ Coordinated conduct, agreements and collusion

⇒ Abuse of dominance and exclusion

Course facilitators include **Professor Simon Roberts** (Director at CCRED, University of Johannesburg), **Dr Javier Tapia** (Judge at Competition Tribunal of Republic of Chile), and **Ms Reena das Nair** (Senior Researcher at CCRED). A certificate of attendance will be awarded to participants.

To access the full course outline please visit our **website** or send enquiries to **antheap@uj.ac.za**.

SHORT LEARNING PROGRAMME: FINANCIAL ANALYSIS FOR ECONOMIC REGULATION

9 to 11 September 2015, 2nd Floor, 5 Sturdee Avenue, Rosebank, Johannesburg

The three-day SLP is targeted at staff employed at competition authorities, economic regulators, departments within government and regulated enterprises, private practitioners and students. The following topics and themes will be covered in the programme:

⇒ Cost of capital (including case studies drawing from international experience)

⇒ Measures of costs, including LRAIC, fully allocated and stand-alone cost, and variable/marginal cost measures appropriate to the regulated entity and policy framework

⇒ Costing principles, including long run incremental cost and historical and current cost accounting

⇒ Financial analysis of regulated entities

The SLP will be led by **Thabiso Madiba**, an accounting professional and academic at the University of Johannesburg. **Dr Stephen Labson**, an international expert on regulation and finance and a Senior Research Fellow at CCRED, will provide specialist training on cost of capital. **Ryan Hawthorne**, a Senior Research Fellow of CCRED, and **Nicholas Nhundu**, a researcher at CCRED, will also teach on and facilitate the course.

To access the full course outline please visit our **website** or send enquiries to **reenadn@uj.ac.za**.

Contact us:

CCRED
CENTRE FOR COMPETITION REGULATION AND ECONOMIC DEVELOPMENT

Physical address

2nd Floor
5 Sturdee Avenue
Rosebank
Johannesburg

Postal address

P.O. Box 524
Auckland Park
2006

Telephone: +27 (0)11 559 7510
Email: infoccred@uj.ac.za
Website: www.competition.org.za