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⇒ **SLP 1: Advanced Competition Economics** *facilitated by Dr Giulio Federico, Prof Chiara Fumagalli, and Prof Simon Roberts*

⇒ **SLP 2: Core Principles in Economic Regulation and Competition Economics** *facilitated by Prof Simon Roberts, Reena das Nair, Thando Vilakazi, and Tamara Paremoer*

⇒ **SLP 3: Financial Analysis for Economic Regulation and Competition** *facilitated by Thabiso Madiba, CA (SA) and Ryan Hawthorne*

⇒ **SLP 4: Law for Economic Regulation and Competition Economics** *facilitated by Judge (Dr) Javier Tapia, Prof Jonathan Klaaren, and Wendy Ndlovu*

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Shipping cartel fines in South Africa

Anthea Paelo

In August this year, two shipping companies were fined by the Competition Commission of South Africa for restrictive horizontal practices including; fixing a purchase or selling price of a product or service, dividing markets and collusive tendering in the transport of vehicles, equipment and/or machinery by sea on the route between Japan and South Africa.[1] Nippon Yusen Kabushiki Kaisha (NYK) admitted to 14 instances of restrictive practices listed in section 4(b) of the Competition Act and was fined an administrative penalty of close to R104 million. Wallenius Wilhelmsen Logistics (WWL) agreed to a settlement of R96 million for taking part in the cartel and engaging in 11 instances.[2] The settlements follow an investigation into the collusive behaviour of a number of shipping firms including Mitsui O.S.K Lines, Kawasaki Kisen Kaisha Ltd, Compania Sud Americana de Vapores, Hoegh Autoliners Holdings AS, Wallenius Wilhelmsen Logistics, Eukor Car Carriers, and NYK between 1999 and 2012. Given the length of time the shipping cartel operated on South African routes, this article uses international comparisons to demonstrate the likely impact of this arrangement on the region.

The shipping services provided in South Africa can generally be divided into two main categories; liner and non-liner services.[3] The main distinction between these is that liner services are regular and scheduled transport services while non-liner services involve the shipping of products based on the needs of a customer involving unscheduled and irregular shipments. Within the ship liner services is a sector for containerised shipping. The shipping of products such as cars requires specialised containers and is thus conducted by select shipping liners.

International agreements

Restrictive horizontal practices in the shipping industry have been a particular concern historically due to the practice of accepting "conference agreements" between shipping companies.[4] Conference agreements constituted formal agreements between liners on a route in which they fixed prices, managed capacity, allocated routes and offered loyalty discounts.[5] With the emergence of containerisation in the shipping industry, other forms of collusive arrangements developed such as consortia, strategic alliances, capacity accords and discussion agreements.[6] While these kind of agreements clearly represented clear restrictive practices, several countries globally provided the liner shipping industry with exemptions that allowed these agreements to continue. They have in fact been in existence since 1875 following the Calcutta Conference. One such agreement, the Far Eastern Freight Conference was established as early as 1879 and was only dissolved in 2008.[7] The main justifications for these arrangements have been to ensure stability of shipping services through capacity control and price fixing as well as to prevent destructive competition such as that which characterised the 1800s and resulted in an unstable industry.[8]

Proponents of conference agreements and exemptions argued that liner shipping was a unique industry in which cooperative agreements were necessary to prevent excessive volatility in price and ensure regular and frequent services from the shippers.[9] Another argument is that of 'destructive competition'. The claim is that high sunk costs form a barrier to exit the market. This accompanied by rigid demand and supply in liner shipping could result in freight rates that are higher than the average cost. Entrants are then attracted into the industry creating over supply which drives freight rates below average costs, thus destabilising the market.

However an OECD report in 2002 showed that collusive arrangements between shipping companies raised prices above the competitive level and aligned them with the least efficient companies in the industry.[10] The report showed that industries such as liner shipping are not unique and in fact share the same characteristics as industries that provide regular scheduled services, like air and rail transport. Empirical evidence does not support the theory of destructive competition. The European Commission subsequently launched a study into exemptions in the liner shipping industry which culminated in a repeal of the block exemption on liner shipping conferences. Authorities in countries such as Israel, Australia, New Zealand and Canada made amendments to their own exemptions also.[11] However, Japan which is tied with the firms that have been fined in South Africa, has maintained cooperation agreements in the industry.

Shipping and transportation in South Africa

In South Africa, such exemptions were never part of the shipping industry which is likely to be because the maritime transport sector's contribution to the country's GDP is negligible.[12] The country has no shipping companies which makes South Africa's international trade dependent on foreign companies. Particular trade routes are thus dominated by shipping companies from trade partners. For instance, the route between South Africa and Europe is dominated by European liners while the route between South Africa and Japan is dominated by Japanese liners. Concentration on the different routes is thus a reflection of the concentration levels in the country where the import and vessel is sourced.[13]

Shipping is not the only mode of transport where the Competition Commission has found evidence of collusion and cartels. The airline industry and freight forwarding segments of South Africa's intermodal transport network show a history of collusive conduct. In 2012, South African Airways admitted to and was fined for collusive conduct with Cathay Pacific and other Far East participants to raise the prices on the Johannesburg Hong Kong route.[14] This is not the first time South African Airways has been found guilty of collusive conduct. The Commission has on two other occasions fined SAA for collusive conduct and/or price fixing. The first fine was as a result of an identical fuel surcharge levied almost simultaneously by the members of the Airlines Association of Southern Africa (AASA). The fuel surcharge was placed on the price of tickets for carriage on all legs of the routes, both domestic and international. The other parties involved were Comair and SA Express. The other case concerned a price fixing charge against SAA and Lufthansa. The airlines were found to be using a code-sharing agreement to fix prices of tickets on the Cape Town/Johannesburg and Frankfurt route.[15] Similarly, in freight forwarding Schenker South Africa (Pty) ltd, Kuehne+ Nagel (Pty) Ltd along with a number of other freight forwarders admitted to colluding on several occasions to raise prices and/or introduce surcharges on their services.[16]

Approximately 90% of South Africa imports and exports are transported by sea.[17] 60% of the imports into South Africa come through the port of Durban.[18] The Durban port in fact handles the highest volume of sea cargo in southern Africa.[19] By the end of 2014, the port had handled about 36% of the ships calling at South African ports by gross tonnage. Durban is strategically positioned in one of the world busiest trade corridors and this combined with its large capacity, makes it the busiest port in the SADC region as well as an important sea trade gateway for South-South trade, Far East trade, Europe and the USA, East and West Africa regional trade. 80% of the cars on South African roads are imported from outside South Africa.[20] Ro/Ro car terminals at the port of Durban serve most of South Africa's motor manufacturers and vehicle importers, handling 66% of the nation's vehicle imports and exports.[21] Given that South Africa is the main trading partner by percentage share of imports for a number of countries in southern Africa including Botswana, Namibia, Malawi, Zambia, Mozambique and Zimbabwe;[22] and vehicles make up one of the top 5 imports of each of these countries,[23] restrictive practices on the part of the shippers would have a substantial impact on the car industry not just in South Africa but in the great southern African region. This is especially relevant for the importation of second-hand vehicles from east Asian markets to various countries in the SADC region.

Shipping costs account for about 7% of the cost of goods.[24] Given that the cost of freight and insurance for landlocked developing countries is on average 50% higher than that of coastal countries, anti-competitive practices could result in the substantial additional cost of imports for countries such as Zimbabwe, Zambia, Botswana and Malawi.[25] This is important especially when considering that there is a strong negative relationship between shipping costs and economic growth.[26] Artificially raised prices by way of collusive agreements and division of markets has the ability to significantly reduce welfare. High transport prices have also been linked to reduced competitiveness on the international market and slower economic growth.[19] Firms have to pay more for manufacturing and intermediate goods whilst receiving less for their exports. This in turn affects the price of key consumer goods and services.

Notes

1. See, Competition Commission v NYK Logistics and BLL (NLB) of South Africa (Pty) Ltd, Case No. CO055Jun15.
2. See, Competition Commission v Wallenius Wilhelmsen Logistics AS, Case No. CO084Jul15.
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6. See note 4.
7. See note 4.
8. See note 3.
9. See note 4.
10. OECD. (2012). 'Competition Issues in Liner Shipping – Final Report'. DSTI/DOT(2002)2.
11. See note 4.
12. Department of Transport. (2011). 'Growth of a South African Maritime Transport Industry'. Maritime Shipping Economic Study, part one.
13. See note 3.
14. See, Competition Commission v South African Airways (Pty) Ltd, Case No. 42/CR/APR10.
15. See note 14.
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Uber: a game-changer in passenger transport in South Africa?

Shingie Chisoro Dube

The entry of the app-based Uber service into South Africa's local passenger transport industry in 2013 raises important competition and regulatory issues. Uber is a taxi smart phone application that uses the customer's smartphone to detect their specific location using the global positioning system (GPS), and instantly connects the customer to the nearest available driver.[1] Uber taxis work in exactly the same manner as traditional metered taxis in that they both take the customer to their intended destination for a metered fee. However, Uber is a technology-driven service that uses a convenient electronic taxi-hailing system to find, book and pay for taxi services. This presents an innovative new technology platform in the local taxi industry.[2] In South Africa, Uber operates in the major cities of Johannesburg, Pretoria, Cape Town and Durban and is planning to expand into smaller cities. Beyond South Africa, the internet ride-sharing service has been introduced in Nairobi, Kenya and Lagos, Nigeria.[3] Uber's rapid expansion in terms of market share and geographic areas since 2013 shows an innovative new entrant that has disrupted the existing systems in the passenger transportation industry.

However, the entry of Uber into the local taxi industry was met with hostile challenges around regulations and allegations of unfair competition practices in several cities such as Washington[4], Paris, Mexico City[5], Lisbon in Portugal[6], Bandung in Indonesia[7] and Cape Town in South Africa, amongst others. South Africa's Metered Taxi Council accuses Uber of engaging in unfair competition practices and failure to comply with local transport regulations. Metered taxi operators have alleged that Uber is using aggressive below-cost pricing and operating without metered taxi permits which are charged on an annual basis or as a once-off payment (approx. R1 500.00) according to section 54 and 62 of the National Land Transport Act No.5 of 2009.[8] Uber is apparently also failing to comply with transport rules and regulations for metered taxis such as; sealed meters for the purpose of determining the fare payable, detailed description of the specific route, stipulated minimum and maximum fares per kilometer, displaying of approved rates on the vehicle and on the sealed meter, vehicle standards and safety specifications.[9]

Uber's business model appears to have enabled it to bypass local transport rules and regulations including successfully adopting technological solutions to overcome local transport regulatory barriers. In response, South African regulators are currently amending the National Land Transport Act to include a new section for Transport Network Operators that caters for the regulation of operators using technology platforms such as Uber.[10] Appropriate regulation, it has been argued in other countries, will lessen negative externalities and other market failures associated with this and similar services.[11]

On the other hand, stiff competition from the entry of Uber in places like New York, has forced traditional metered taxis to become more innovative, through the introduction of a new taxi app to compete with Uber.[12] In South Africa, a new cab-hailing app called Taxify was introduced in 2015 in the main cities of Johannesburg and Cape Town as a direct competitor to Uber.[13] In Vancouver, Canada; the entry of Uber forced the four main metered taxi companies to integrate and develop an eCab application in order to compete with Uber and ensure their survival in the industry.[14]

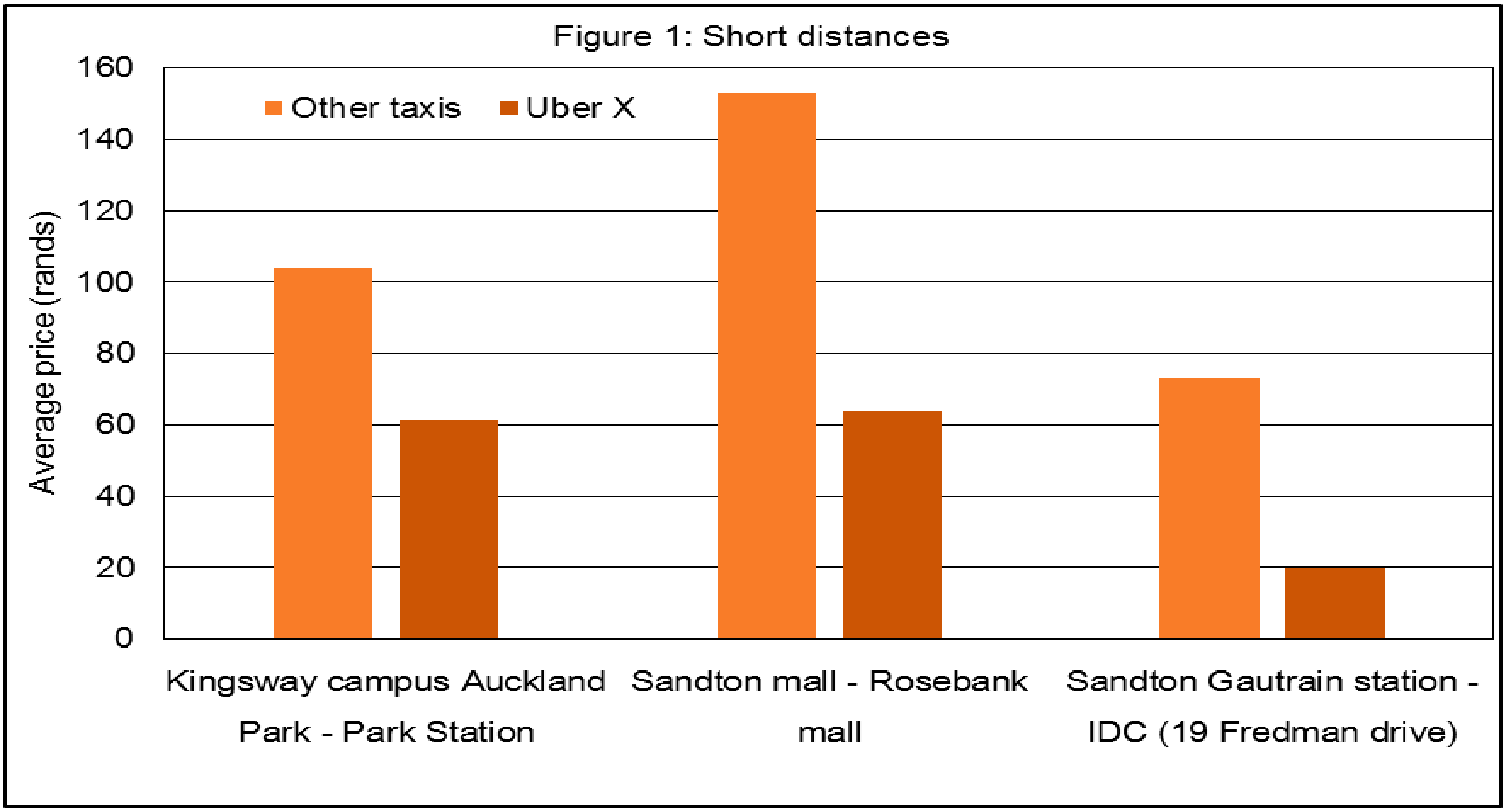
Comparison of metered taxi and Uber fares

Price comparisons between Uber service and the average quoted prices of four anonymized sedan-based metered taxi companies for five different short and longer distance routes is used to assess the impact on prices following the entry of Uber into the industry. A cheaper line of Uber's taxi offering, Uber X is used in the analysis. The routes assessed comprise a busy route from Sandton Gautrain station to O.R. Tambo International Airport, Johannesburg to Pretoria and short distances within Johannesburg.

Figures 1 and 2 show that Uber is significantly cheaper than metered taxis across all distances. Metered taxis charge significantly higher premiums for short distances reaching as high as 265% above Uber X.

However, it is clear that price is not the only competitive factor driving the growth of Uber services. Before the entry of Uber, the majority of Uber customers were indifferent about using traditional meter taxis as an option. Is growing demand for Uber service purely driven by cheaper prices or is there other competitive aspects driving its rapid growth in market share? This also raises the question of whether Uber is directly taking customers from traditional metered taxis, drawing in new demand in the market, or a combination of these effects. Although metered taxis and Uber share common features they have different users and user experiences. Importantly, the growth of Uber services demonstrates the responsiveness of consumers to lower prices and improved services, and the ability for improved product offerings and prices to create benefits for not only existing, but new customers as well.

Uber has an additional convenience-based competitive advantage which allows the service to tap into a whole new market of unmet demand for convenient, fast, and flexible point-to-point urban transportation.[15] The Uber application makes it easy to hail or order a cab from any location, at flexible times. Unlike Uber, traditional taxis are usually located at central depots or central places such as bus stations or train stations. In some instances the customer keeps the taxi's cellphone number to contact the driver whenever the customer needs the service. This means that a customer needs to physically walk and search for a taxi or place a phone call to



Note: Quotations obtained from four anonymised taxi companies on the 18th of September 2015 Time: 2:30 -3:30. Distance from Kingsway campus Auckland Park to Park Station is 6.5km; from Sandton mall to Rosebank mall is 5.2km; and from Sandton Gautrain station to Fredman drive is 1km.

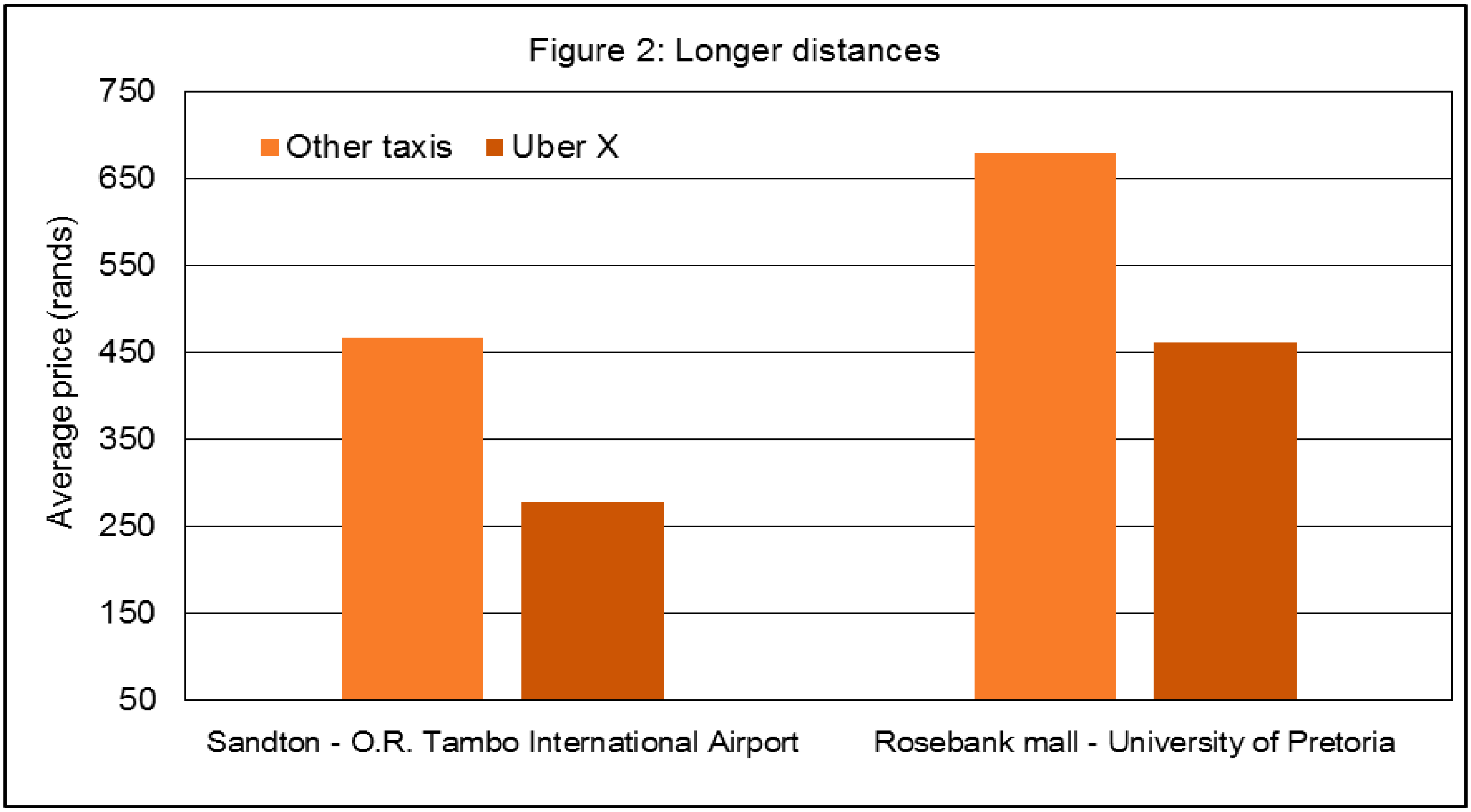
order a taxi and wait for the taxi to arrive. This process is relatively more cumbersome from the perspective of consumers. With Uber a customer simply orders a taxi right at their doorstep at the least cost with the added service to track the arrival time of the Uber taxi through a dedicated driver-passenger Uber application.[16] Uber may thus be filling a 'convenience gap' in the market.

It is likely that the app-based service is tapping or inducing new demand of customers that were previously using their own vehicles through providing a reliable and apparently safer mode of transport that is an attractive alternative to driving. Uber is attractive for its consistent shorter waiting and travel times rendering the service more reliable than traditional taxis.[17] Customers know with precision the approximated time of travel to their destinations using the dedicated driver-passenger application which tracks the entire journey.[18] Uber also has a quality-based competitive advantage in terms of cleanliness and customer service standards including a rating system for drivers. The current system is that the driver's details are sent to the customer upon ordering an Uber taxi which provides some degree of passenger security.

In terms of fares, customer requirements for a secure, transparent and easy payment system are important considerations. Uber's transparent, standardized way of calculating fares per kilometer which is all available on the app is likely to be appealing to customers. Customers are able to request a quote for a trip before hailing an Uber taxi allowing the customer to know beforehand the cost they are going to incur.[19] Uber's ease of payment means that customers are not required to hold cash for the purposes of paying for the trip as the application deducts the cost of the trip directly from the customer's bank account. In a context like South Africa with a high crime rate, security of payment is essential as holding cash is dangerous.

Directional selling by companies such as Discovery, which in this case involves the use of customer incentives agreed between Discovery and Uber to channel customers or traffic towards using Uber services, may also affect competition in the taxi industry enabling Uber service to tap into new passengers or market segments. This is akin to similar partnerships between Discovery and selected airlines operating in the South African market. Discovery, which provides various health and general insurance products, encourages its customers to use Uber with attached benefits and discounts.[20] Uber's partnership with Hilton Hotels around the world to provide hotel guests with a reliable means of transport to and from hotels, airports and restaurants, directly takes away customers that were traditionally served by metered taxis.[21]

Uber appears to have identified a gap in the taxi market and used innovation to gain competitive edge over incumbent traditional metered taxis. Incumbent operators have been forced to search for new solutions in order to respond to new forms of competition driven by technological developments. Competition policy has its objective to encourage competition not only on price, but through innovation, effort, consumer choice and quality. To the extent that the introduction of new services such as Uber encourages these outcomes, existing and new consumers are likely to benefit significantly. It is worth cautioning however, that directional selling and instances of below-cost pricing (as alleged) can lead to anti-competitive outcomes as demonstrated in several other markets such as air travel in the relationship between airlines and



Note: Quotations obtained from four anonymised taxi companies on the 18th of September 2015 Time: 2:30 -3:30. Distance from Sandton to O.R. Tambo International Airport is 36.5km; from Rosebank mall to University of Pretoria is 54.6km.

travel agents. Similar practices and the use of loyalty rebate schemes provided by airlines have been investigated by the competition authorities in the context of the South African market.[22] It is important for those that have raised concerns regarding these services, and those regulators tasked with addressing these new challenges, to consider carefully the propensity of incumbent firms to use regulation and lobbying behaviour to protect their position in the market. On the other hand, there are clear socio-economic issues resulting from the displacement of traditional service providers through technology that cannot be ignored in a developing country context, and regulation at least has to ensure that conditions for competition (including licensing requirements) are consistent and fair across competing services where possible.

Notes

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3. 'Uber plans to expand in South Africa' (3 September 2015). News24hour.
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15. See note 11.
16. See note 1.
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18. See note 1.
19. See note 11.
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Reflection on the Coca-Cola bottling merger

Tatenda Zengeni

The merger between Coca-Cola Sabco's African bottling operations and SABMiller was recently approved by the COMESA Competition Commission, while it is still under review in some other countries such as South Africa. SABMiller is Coca-Cola's biggest bottler in Africa with operations in 15 African countries.[1] The merger involves SABMiller acquiring Coca-Cola Sabco's bottling operations in Ethiopia, Kenya and Uganda.[2] The bottling assets will be jointly housed in a new company called Coca-Cola Beverages Africa.

The merged entity will account for 40% of Coca-Cola's total volumes sold on the continent and will create the continent's biggest bottler of soft drinks.[3] This article highlights some of the likely competition concerns that arise from this merger taking into account the market structure of the beverage industry on the continent and lessons from the European Union.

Market structure and competition in the region

Coca-Cola and Pepsi dominate the soft drink market globally and in Africa.[4] Pepsi re-entered the Kenyan market in 2010 (after having exited the market in 1970) and has recently invested in a new bottling plant in Nairobi.[5] Its entry has offered competition to Coca-Cola where Pepsi is selling its 350ml bottle at the same price as Coca-Cola's 300ml.[6]

In most countries, competition is largely between the two firms, although in some countries such as Uganda there are a number of smaller producers in operation as well. In Uganda, the entry of three new competitors; Riham, Fizzy and Azam (a brand owned by Tanzanian privately-owned firm Bakhresa Group which began producing carbonated drinks in 2011), led to increased competition with Coca-Cola and Pepsi who had enjoyed a duopoly in the sector since 1996 after the collapse of Creeps.[7] Competition led to price wars in the sector as companies competed for a share of the market.[8]

The Ethiopian market has seen large investment by the two leading multinational companies through their investment companies, East African Bottlers and Mahu Soft Drinks Industry, owned by Coca-Cola and Pepsi, respectively.[9] In general, the increase in investment in Africa is as a result of increasing incomes and a rising middle class in the continent, which is expected to boost consumption of soft drinks.[10] The consolidation of Coca-Cola's business in Africa can be viewed as an effort to fight increasing competition from the company's long-time competitor, Pepsi, and other new entrants in some domestic markets. The merger is particularly important given the nature of the soft drinks market which exhibits significant economies of scale in bottling and, importantly, in distribution, as explored below.

Competition in beverage markets

The beverage industry has unique characteristics which can raise barriers to entry for new firms. Soft drink manufacturing involves three stages. First in the chain are syrup producers who produce the syrup that is later used by bottlers. The bottlers mix the syrup with other ingredients and pack the product into different sizes to suit consumer needs. Once bottled, the soft drinks may be distributed through a variety of different channels to the final consumer.[11] Some of the drinks are sold to middlemen such as wholesalers and some are sold directly to the consumer.[12]

When considering the soft drink value chain above, competition concerns most often arise in the distribution and retail legs of the chain. This flows from the fact that dominant producers such as Coca-Cola and Pepsi, who have invested heavily in marketing and distributing their product, generally exclude competitors from using their distribution networks and the in-store coolers and fridges in which their drinks are displayed. In fact, a number of distribution cases in the soft drinks market have been investigated in different jurisdictions including Mexico, Chile, and the European Union. In the European Union, Coca-Cola had exclusive agreements with distributors that directly prevented customers from being able to offer competing brands.[13] Moreover, competing suppliers could also be denied access to outlets by virtue of the effects of Coca-Cola's financing agreements and technical sales equipment arrangements on beverage coolers and fountain dispensers. The EU Commission entered into a commitment agreement with Coca-Cola in 2005 restricting certain exclusive agreements, tying practices and rebates between Coca-Cola and distributors and shops which included freeing up 20% of space in its coolers to competitors.[14]

The merger marks a huge step towards convergence in the beverages industry, given that SABMiller is also a major player in beer production and distribution in Africa and globally, in which there have been prominent competition investigations as well. For example, SABMiller was accused of exclusionary conduct involving independent (downstream) wholesalers/ distributors in South Africa, although they were found by the Competition Tribunal not to have contravened the Act.[15] In addition, the merging parties are potential rivals in each other's markets, as SABMiller already supplies non-alcoholic beverages such as Appletiser and could be a bottler for other soft drinks suppliers. Similarly, the Coca-Cola bottlers could be potential bottlers for beer rivals to SABMiller.

Conclusion

The nature of the beverage industry favours companies that have high capital outlay, established brand names and expansive distribution channels. This poses a threat to new entrants who do not have established brands and distribution networks, although these concerns may be pre-existing and as such not merger-specific. To the extent that distribution and marketing arrangements with retail and wholesale outlets will be applied by the merged entity in country markets throughout the continent, the decision to approve the transaction may have significant adverse consequences for rival manufacturers, including new entrants that may not have strong distribution systems of the incumbents. This is especially concerning if arrangements with the merged entity tie up large proportions of distribution capacity in individual country markets.

Notes

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Zambia CCPC issues new merger guidelines

Mohlahlego Cornelia Matumba

The Competition and Consumer Protection Commission (CCPC) of Zambia released its guidelines for merger regulation in August 2015. This is important for providing clarity on the process for merger regulation in Zambia and provide the commission and stakeholders with a structured and transparent framework for these assessments.[1]

Key features of the guidelines relate to what constitutes a notifiable merger wherein the Commission considers change of control, local nexus and threshold.

- Mergers that occur outside of Zambia but have a local connection (local nexus) either through their presence in the Zambian markets through export sales or presence of their subsidiaries, constitute a notifiable merger.[2]
- Threshold for notification of a merger is a combined annual turnover or assets of ZMK 15 000 000.
- The notification fee is set at 0.1% of the parties' combined turnover or assets, whichever is higher.

Notes

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Multi-firm cartels: Collusive tendering in furniture removal markets in SA

Mohlahlego Cornelia Matumba

Firms engaging in a cartel are attempting to increase their joint profits through an agreement to suppress competition among themselves. The harmful effects of cartels are related to the number of firms involved, the size of the affected market, and the durability of the cartel.[1] Cartelist often agree on the strategy for pricing, supply to the market or market allocation and they face the critical challenge of coordinating the behaviour of all cartel participants around the agreed strategy. This includes monitoring the behaviour of cartel participants to identify and prevent defections from these collusive strategies and preventing entry or expansion by non-cartel firms.[2] Overcoming these challenges is easier in some industries than others. Where there are only a few firms involved, collusion is easier to sustain both by simplifying the coordination issues and by increasing firms' gains from collusion. However, in a case where there are many firms involved the likelihood of coordination is difficult, and the arrangement may be more difficult to maintain.[3]

The Competition Commission of South Africa (CCSA) investigated 69 firms involved in collusive tendering in the furniture removal industry.[4] The cartel was found to have operated from 2007 to 2014. The Commission referred the case to the Competition Tribunal in June 2015 as a violation of sections 4(1)b(i), (ii) and (iii) of the Competition Act. The investigation found that each of these firms (including, for example, Stanley's Removals CC, Langs Removals, J & H Furniture, JH Retief and Cape Express) was involved in multiple instances of collusive tendering. The companies were found to have colluded on furniture removal tenders issued by various government departments and private sector clients through exchanging cover prices. Cover pricing is essentially when a bidder submits a price with the aim of not winning the contract they are bidding for. This price is a price that would have been agreed upon between two or more bidders such that a particular bidder wins the contract. A cover pricing arrangement includes at least one of the following:

- A competitor agrees that they will submit a bid that is higher than the bid of the designated winner;
- A competitor agrees to submit a bid that is known to be too high to be accepted; or
- A competitor submits a bid that contains special terms and conditions that are known to be unacceptable to the customer.[5]

Stanley's Removals and Cape Express were involved in ten separate instances of collusive tendering.[6] For example, during November 2008, Stanley's Removals and Cape Express concluded an agreement on cover prices in respect of a tender issued by the University of Zululand for the removal of furniture which was awarded to Stanley's Removals. Similarly, the two firms exchanged cover prices in respect of a tender issued by the Department of Health to transport furniture to Middleburg Provincial Hospital, which was also awarded to Stanley's Removals. The bids rigged also involved tenders issued by Eskom, South African National Defense Force, Transnet and Alastair.

The Commission has taken a decision to invite companies involved in the cartel to engage in settlement of these contraventions prior to the referral to the Competition Tribunal for adjudication. The invitation gives the furniture removal firms an opportunity to settle and pay a lenient penalty which was set at 4% of their annual turnover for the financial year ended December 2013.[10]

The conduct took place throughout South Africa, involving numerous firms in each geographic area. The success of the arrangement is surprising given the high number of firms involved. Cartel arrangements are found to be most successful where there are fewer firms involved. This is because firms involved in a cartel have to develop internal mechanisms to ensure that collusive arrangements are stable. Such mechanisms mainly relate to selecting and coordinating the behaviour of all cartel participants on mutually consistent collusive strategies, monitoring the behavior of cartel participants to detect and prevent defections, and preventing entry by non-cartel firms. It is easier to coordinate in a highly concentrated market because cartelists are able to simplify the coordinating issues and increase the firms' gains from collusion.[7]

Similar cases involving a high number of firms include the Commission's investigation in 2013 of firms in the construction industry. A total of 21 construction firms responded to the fast track settlement process which uncovered bid rigging in over 300 instances.[8] In 2009, the Commission reached settlements with 28 cycling retailers and wholesalers for conduct which was found to be in violation of section 4(1)(b)(i) of the Act, in that they agreed directly or indirectly to fix prices.[9]

Arrangements of this nature, which are widespread and involve a large number of firms raise some interesting questions in terms of the cartel literature. It is significant in the cases referred to above that the arrangements involved elements of bid rigging. This means that although multiple firms are involved in different agreements at different stages, only a subset of the firms appear to be involved in rigging the bids for each tender or contract. Coordination featuring a large number of firms would be less sustainable in a market where there was a single product (contract) across several geographic areas throughout the country, unless it were possible to coordinate around a single market price guideline or trading condition through a common body such as an industry association. In bid rigging cases, each tender or contract is effectively a market on its own although firms may coordinate over time and around multiple different projects in the same sector.

The collusion on furniture removals tenders related to various government department and private sector clients. Cartels harm consumers and have a negative effect on economic efficiency. A successful cartel raises prices above competitive levels and reduces output. Collusive tendering destroys the basis of competitive bidding and is harmful to the public as it usually distorts markets for procurement.[11] Governments devote a large share of expenditure to public procurement and in the presence of these arrangements cannot be sure that they are getting good value for money, which has become a significant area of concern for competition enforcement as in the cases above.

Notes

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New energy in the region's fuel market: Puma Energy - Brent Oil merger

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The recent merger in South Africa between Puma Energy and Brent Oil, recently approved by the competition authorities, may change the competitive landscape in regional and South African markets for fuel retail, leveraging Puma's long-established presence throughout the rest of the region. This article considers the implications of the merger.

The fuel sector is a key strategic one in all economies, with the prices of most goods and services being directly or indirectly driven by changes in fuel costs.[1] Fuel retail markets in the Southern African region are typically highly concentrated, with a relatively small number of firms accounting for large market shares and possessing considerable market power within countries. Moreover, large oil companies are also vertically integrated throughout the value chain, heightening entry barriers into the sector for non-vertically integrated entrants. In South Africa, major oil companies – Engen, Caltex, Sasol, BP, Shell and Total are able to control fuel supply to the downstream levels of the market.[2]

Puma - Brent Oil merger

Puma Energy, an independent oil group originating from Argentina entered the African continent in 2002 at the wholesale and downstream levels of 16 African countries.[3] The wholesale level of the value chain involves storing, marketing and transporting of petroleum and natural gas products, whilst the downstream level involves retail and distribution of petroleum products.[4] Puma Energy's African footprint has expanded over the last decade primarily through the acquisition of major oil companies' assets. Its presence was strengthened in 2010, as a result of its acquisition of BP's downstream operations in Namibia, Botswana, Zambia and Malawi, with branded service stations in 7 African countries, 600 000 storage facilities and 2 500 employees across the continent.

Puma Energy's continued regional expansion is geared towards taking advantage of wholesale and downstream opportunities that arise as oil majors increasingly concentrate on upstream services.[5] Since 2011, large oil companies such as Shell have exited some of Africa's fuel retail markets as a result of dwindling profit margins, increased competition and official price caps. This was evident with Shell closing down its operations in most African countries, BP exiting the Tanzanian fuel market and Total scaling down its Zambian presence. The trend out of downstream retailing oil activities has been a common feature amongst global oil brands.[6]

In South Africa, the fuel sector is regulated in certain respects at the retail level.[7] Until recently, Puma Energy had no plans of operating in the South African retail fuel market which is dominated by the oil majors and has an extensively developed liquid fuels infrastructure. However, as South Africa increasingly becomes an importer of final fuel products, this market has become more attractive for Puma Energy's entry.[8] It has been argued that Puma Energy's entry into South Africa is likely to challenge the dominance of the main fuel retailers and relatively smaller retail players like Sasol.[9]

Puma Energy holds a wholesale licence and was prohibited from holding a retail licence in South Africa, but strategically acquired independent fuel retailers who heavily rely on big oil companies for their supplies.[10] Puma has acquired 40 petrol station sites in Mpumalanga and Kwa-Zulu Natal of which some are to be branded as Puma Energy.

Puma Energy has most recently acquired Brent Oil. Brent Oil entered the South African fuel market in 2003 as a non-refining wholesaler of petroleum and petroleum products to commercial and retail customers with branded fuel stations nationwide. The entrant was only able to source its petroleum products from suppliers such as Sasol and Total. The acquisition of Brent Oil by Puma Energy Africa, which was approved by South Africa's Competition Tribunal in August this year, gives Puma Energy control over all of Brent Oil's operations. According to Puma Energy, this transaction will assist it in expanding its presence in the South African fuel supply industry as it is a relatively new player in this market, while Brent Oil has stated that partnering up with a long-term industry partner will help grow the Brent Oil brand. Both parties are predominantly active in Mpumalanga, Gauteng, Limpopo and KwaZulu-Natal provinces and following the Commission's analysis, the combined post-merger market shares in these provinces will be less than 5% for petrol and diesel products, and less than 5% on a national scale as well. The merged entity will be constrained by competition with other market players such that the merger will not substantially lessen or prevent competition in the identified product market.[11]

The entry of Puma Energy in other regional markets has been different. In Zimbabwe, Engen and Total continue to hold a strong position in the market. However, the exit of BP, Shell and Caltex from the Zimbabwean market created an opportunity for the entry of fuel retailers such as Redan and Sakunda. Puma Energy went on to acquire Redan in 2013, one of the country's largest indigenous oil companies, giving them access to 62 service stations across Zimbabwe.[12] In Zambia, Puma Energy has managed to capture the largest share of the retail network (33.5%) followed by oil majors, Total (25.7%) and Engen (8.4%).[13] In Namibia, Puma Energy took over BP and Caltex assets in 2010 in order to expand the retail segment of its business.[14]

A recent CCRED study on the fuel sector in South Africa highlights the importance of access to a reliable supply of fuel for downstream operators in particular. Evidence suggests that the control by the oil majors of fuel supply chains and key refining and storage infrastructure is a primary constraint for new wholesale entrants who are generally unable to compete effectively against incumbent firms Sasol, Shell, Engen, BP and Total SA.[15] Although the acquisition of Brent Oil by Puma Energy has paved way for a new player in the South African fuel market, it is significant that Puma has had to enter the market by acquisition and that Brent Oil has not itself been able to present an alternative to incumbent refiners upstream. Nonetheless, the ability of Puma Energy to import fuel leveraging Brent Oil's footprint in the market presents a significant opportunity for greater rivalry in the fuel sector.

Notes

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13. Energy Regulation Board of Zambia. Report on status of the petroleum industry.
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Quarterly competition case update - Mergers and acquisitions			
Country	**Target**	**Acquirer**	**Status**
Botswana	Appletiser Brands and the Source Water Brand	The Coca Cola Company	Approved
	49% stake in Coricraft Group	Actis	Approved
	40% shares in Easigas	Reatile Gaz	Approved
	91.8% issued share capital in Mainstreet 87	Kilimanjaro Sakhumnotho Consortium	Approved
	Lafarge Gypsum Botswana	Etex S.A.	Approved
	100% issued shares in Firestone Diamonds Botswana and 90% issued shares in Monak Venture	Tango Mining Limited	Approved
	Asphalt Botswana	Tshepo Tile Products	Approved
	91.9% issued share capital in Spark Capital	Standard Chartered Private Equity (Mauritius) III Ltd; Development Capital Africa Master Fund, L.P.; and Chalk Farm Investments	Approved
	60% issued share capital in ZCX Investments	Iorn Core	Approved
	100% issued share capital in ZCX Investments	Spark Capital	Approved
Kenya	65% of Burbridge Capital Limited	I&M Holdings	Ongoing
	Central Glass Industries	Consol Glass Africa	Approved
	12.5% stake in Vestas Wind Systems A/S (CPH:VWS)'s 310-MW Lake Turkana wind farm	Google Inc	Approved
	Essar Petroleum East Africa Ltd	Gulf Petrochem Group	Approved
Namibia	Windhoek Gymnasium School	Curro Education Group	Approved
South Africa	Ferro South Africa	Investec Bank Limited	Approved
	Infrasol	Datacentrix	Approved
	KayaGas operations	Totalgaz Southern Africa	Approved
	65% stake of Imperial Holdings's stake in Neska	Häfen und Güterverkehr Köln (HGK)	Approved
	Pilot Peridot Investments 1 (Pty) Limited, in respect of a 50% undivided share in Buildings A,C,D,E and G1 known as Summit Place	Emira Property Fund Limited	Approved
	Itec Group and Itec (Pty) Ltd	Investec Bank Limited as nominee for a private limited liability company (New Itec Holdco)	Approved
	Altech Autopage, a division of Altron TM	Cell C Services Company	Approved
	BP Southern Africa	Masana Petroleum Solutions	Approved
	GPI Slots	Sun International (South Africa)	Approved
	Brandhouse Beverages	Diageo South Africa	Approved
	50% stake in FutureLife	Pioneer Foods	Ongoing
Swaziland	Excel Swaziland	Puma Energy	Approved
Tanzania	25% of Swala Energy	Tata Petrodyne (TPL)	Approved
Zimbabwe	ISP Dandemutande	Gondwana International Networks (GIN)	Ongoing

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

Quarterly competition case update - Main enforcement cases	
Country	**Case summary**
Egypt	Egypt's Oriental Weavers has been referred to the public prosecutor for anti-competitive practices. Oriental Weavers is accused of having agreed with several distributors not to distribute products made by any company that it competes with.
South Africa	The Competition Commission and listed construction group Stefanutti Stocks reached a consent agreement relating to collusive tendering on a Rainbow Farms building tender and Lanxess ground water renewal project in which they would pay a loser's fee of about R56 000 to Inhlanhla Civils.
	The Competition Tribunal is considering whether a merger should have been notified when MultiChoice took control of valuable assets of the SABC and influenced a key SABC policy materially, through an agreement.
	Copper Tubing Africa has been fined R8 million for fixing the selling price of copper plumbing tube products.
	A furniture removals firm, H&M Removals has been fined 4% of its local and long distance revenue worth R196 364 for collusion on tenders issued by the SA National Defense Force.
	The Competition Tribunal found that Media 24 engaged in predatory pricing to drive a rival community newspaper publication, Gold Net News (GNN), out of the market in the Welkom area.
	The Commission has referred a case against WBHO to the Tribunal. The matter is the last case arising out of the Commission's fast track settlement process in the construction sector.
Swaziland	The Board of the SCC has ruled that Eagles Nest and Usuthu Poultry will not have to pay the administrative fine of 10 percent of their turnover for collusion via a supply agreement between the firms. The board of the SCC found that the secretariat did not have powers to impose administrative fines in this case.
	SCC is investigating a complaint against a newspaper director for anti-competitive behaviour involving instructing advertising agents to threaten advertisers that they would not receive discounts if they advertised in the complainant's publication. The complainant also alleged that the accused instructed his circulation employees to sabotage the publication by manipulating its space in shops around the country.
	The SCC has fined three businessmen an undisclosed sum of money, for failure to notify two merger transactions.
Tanzania	Tanzania's Fair Competition Commission is considering a settlement offer from Serengeti Breweries after threatening to withdraw approval of merger with East African Breweries for not honouring pledges made when it obtained permission for the transaction in 2010.
Zambia	The Competition and Consumer Protection Commission is investigating Dangote Cement and Zambezi Portland for alleged price fixing in cement products.
	The CCPC is investigating possible price-fixing of bread between four bakeries in the Copperbelt region.
Zimbabwe	The Competition and Tariff Commission of Zimbabwe is investigating the acquisition of a 29% stake in a stock feed producer, Profeeds by Innscor Africa following an earlier objection from the Commission for a 59% acquisition by Innscor.

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

RESEARCH INTERNSHIP CONTRACT POSITION(S)

CCRED undertakes economic research, teaching and advice on competition, regulation and industrial development in Africa. The economics of competition and regulation is central to understanding the nature and trajectory of economic growth. CCRED has a number of ongoing research programmes around understanding competition, inclusive growth and local economic development (please see **www.competition.org.za** for more details).

CCRED is seeking to appoint **Junior Researchers/Research Interns** on a part-time or full-time basis. The positions are ideally suited for candidates completing a Master's degree in Economics. The candidate should possess the following:

⇒ Strong academic training in economics, and

⇒ Demonstrated ability to produce high quality research.

The position(s) is for 11 months. Interested applicants should forward a comprehensive CV to **infoccred@uj.ac.za** by **03 December 2015**. Enquiries can be addressed to the Director of CCRED, Prof Simon Roberts, at **sroberts@uj.ac.za**.

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