PRESENTATION TO SMALL BUSINESS PORTFOLIO COMMITTEE

THE COMPETITION COMMISSION'S ROLE IN CREATING OPPORTUNITIES FOR SMALL BUSINESS

16 MARCH 2022

a growing, deconcentrated and inclusive economy

competition commission
south africa

About the Competition Commission

- Established in terms of the Competition Act 89 of 1998.
- Three main functions: (1) investigate anti-competitive conduct; (2) regulate mergers and acquisitions; and (3) conducting market enquiries, research and advocacy.
- The Competition Act is administered by the Competition Commission (an investigative body); the Competition Tribunal (an adjudicative body); the Competition Appeal Court (an appeal body); and the Constitutional Court, where constitutional matters arise

SMME's in context

- By 1994 South Africa was a highly concentrated economy. At that time the largest five conglomerates controlled entities accounting for 84% of the capitalisation of the stock exchange, and the largest conglomerate alone – Anglo American – accounted for 43%.
- One of the reasons why the Competition Act of 1998 was enacted was to dissolve this concentration in favour of inclusivity, democracy and level playing fields.
- Fast forward to 2018 and we found that, although the picture had shifted somewhat, the top 20 shares on the JSE still made up 67% of the overall market capital.

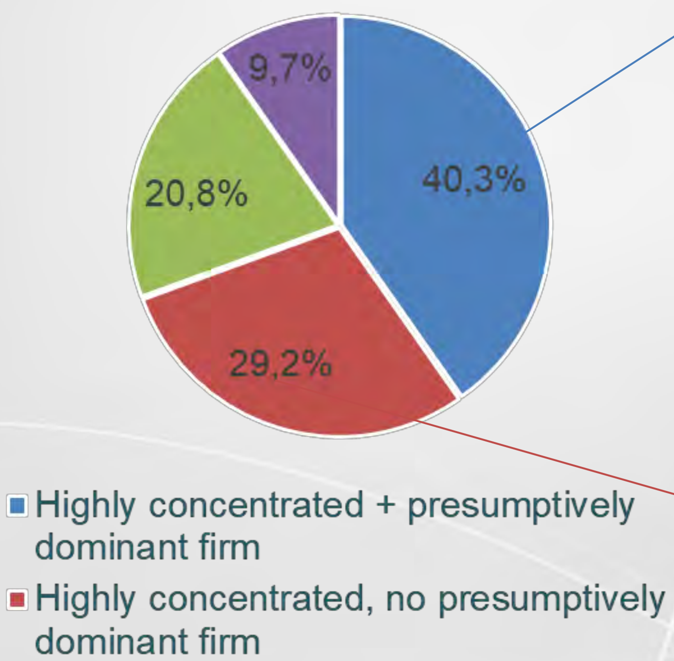
Our concentration study

- Further, at the end of 2021 we completed a comprehensive concentration study using industry-level data from various sources including SARS, the CC, business associations and publicly available company reports.

- The study covered a wide range of sectors and sub-sectors in the past 5 to 8 years.

Insights from the Study: Persistence of high levels of concentration

Summary of concentration across the economy using industry data



- Farming inputs (various seeds and seed treatment, fertiliser)
- Agro-processing (grain processing for human consumption, fisheries)
- "Sin" industries (alcohol, gambling and cigarettes)
- Healthcare (medical schemes and administration, pathology)
- Communications (mobile, FTTH, publishing and broadcasting)
- Upstream steel value chain (iron and ferrochrome mining, crude steel production) and chemicals (plastics, ethanol)

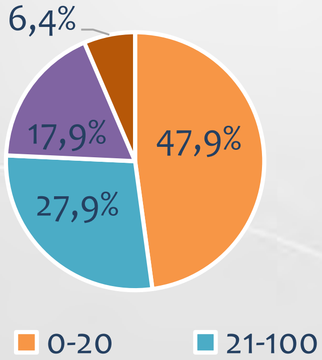
- Farming inputs (grain storage, fungicides and insecticides, animal feed)
- Agro-processing (grains processing for animal consumption, bread, poultry, sugar processing)
- Healthcare (hospitals and pharmacy)
- Transport (airlines and commercial vehicles)
- Financial services (all areas of insurance, banks)

Insights from the Study: Growing Participation remains a challenge

- Low levels of participation more generally but especially in concentrated sectors
  - Numerous concentrated sectors with broader participation of smaller fringe firms unable to scale

- SME's represent 95% of firms, 38% of employment but only 24% of value by tax-paying firms, compared to OECD average of 50-60% of value

Summary of participation across the economy using industry data



Percentage of industries with different concentration & participation

	0-20 participants	21-100 participants	101-1000 participants	>1000 participants
Highly concentrated with a presumptively dominant participant	32.7%	8.7%	1.0%	0.0%
Highly concentrated without a presumptively dominant participant	20.2%	7.7%	1.9%	0.0%
Moderately concentrated	1.9%	11.5%	2.9%	1.0%
Unconcentrated	0.0%	5.8%	3.8%	1.0%

Insights from the Study: SMEs hold a low share of value and face increasing exit rates

- In recent challenging times exit rates have climbed and even overtook entry rates in some years. Also see more industries with declining participation (38%) than increasing (24%)

Exit and entry rates, 2012-2015

	All firms		SMMEs		Large firms	
Year	Entry rate	Exit rate	Entry rate	Exit rate	Entry rate	Exit rate
2012	10%	4%	11%	4%	4%	1%
2013	9%	8%	9%	8%	3%	3%
2014	15%	9%	15%	9%	5%	3%
2015	10%	11%	10%	11%	4%	4%
Average	11%	8%	11%	8%	4%	3%

Changes in participation

	Industries with declining participation	Industries with increasing participation	Relatively consistent (<10% change)	Total
≤20 participants	32.0%	30.0%	38.0%	50
21- 100 participants	38.9%	25%	36.1%	36
101-1000 participants	33.3%	19%	47.6%	21
>1000 participants	87.5%	0.0%	12.5%	8
Total	38.3%	24.3%	37.4%	115

Insights from the Study: There is a high degree of inequity in the distribution of firm income

- The top 10% of firms have 86% of total turnover compared to 1.6% for the bottom 50% of firms
- The Gini Coefficient for firm turnover distribution is 0.84 compared to the Gini for household income distribution of 0.63

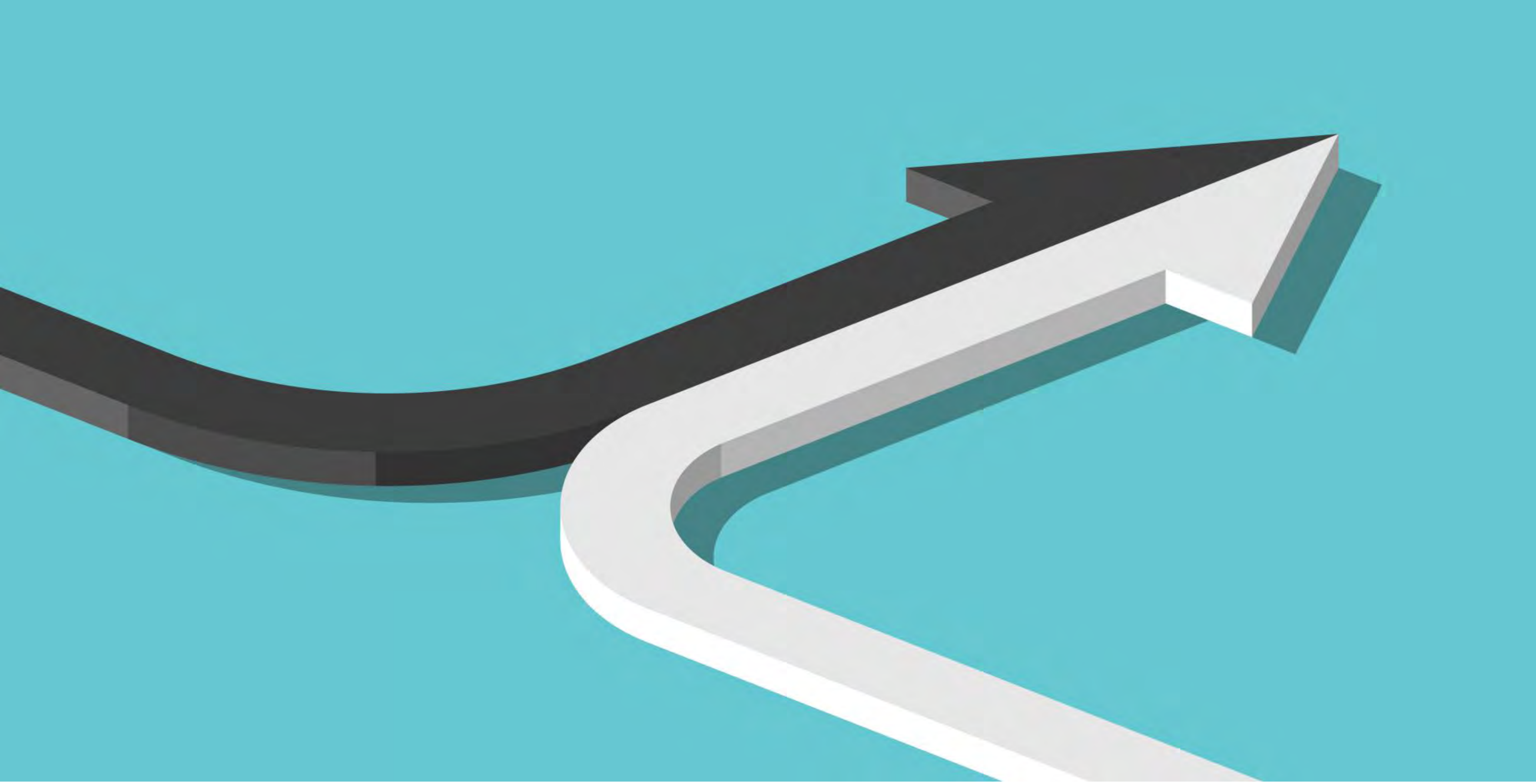
Turnover share of top 10% and bottom 50%

	Turnover share of top 10%		Turnover share of bottom 50%	
Industry Classification	2011	2016	2011	2016
Agriculture	78.7%	80.7%	1.9%	1.3%
Catering, Accommodation and other Trade	64.1%	55.7%	5.4%	5.7%
Community, Social and Personal Services	65.5%	62.2%	6.4%	7.1%
Construction	72.4%	72.1%	3.4%	3.0%
Electricity, Gas and Water	93.0%	93.3%	0.8%	0.6%
Finance	75.5%	77.2%	4.9%	4.4%
Manufacturing	92.1%	92.6%	0.6%	0.5%
Mining and Quarrying	97.9%	97.0%	0.1%	0.2%
Retail, motor trade and repair services	85.0%	84.1%	1.3%	1.2%
Transport, Storage and Communication	92.1%	90.1%	0.9%	1.1%
Wholesale	86.1%	88.1%	1.0%	0.8%
All Firms	86.4%	85.8%	1.6%	1.6%

Sources: SARS-NT database

Recommend more coordinated government action

- Amendments to the Competition Act address concentration & participation
- But competition law alone cannot achieve the transformation of economic structure. Government levers impact economic structure and can be focused to address entrenched concentration e.g. Legislation and regulations; Licensing and procurement; Investment incentives and support services; and Technology development policies
- A government wide competition policy is required to ensure a coordinated and systematic approach to competition policy across all spheres of government, and that government action don't favour incumbents and work against inclusion
  - Concentration study can aid prioritising initiatives and benchmark for target setting
  - Agricultural value chains warrant immediate focus to support broader land reform initiative
  - Greater coordination is required between regulators and public entities responsible for issuing of licenses and concessions is required, including required for Commission concurrency in ownership transfers.
- Consideration to more systematic funding and support to scaling SMEs and HDI firms including focusing DFIs and regulated changes to private sector funding patterns



COMPETITION LEGISLATION PROMOTING SMALL BUSINESS

Competition legislation promoting small business

- Section 2(e) of the Competition Act states that the purpose of the Act is to, amongst others, ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy;
- Section 2(f) of the Competition Act states that the purpose of the Act is to, amongst others, promote a greater spread of ownership, in particular to increase ownership stakes of historically disadvantaged persons
- The exemption clause (section 10(3)(b)) of the Competition Act makes provision for small and medium-sized enterprises to apply to the Competition Commission to be exempted from the application of the Competition Act if they can show that the practice that they engage in, even though it may be prohibited, contributes to the promotion of the ability of small business or firms controlled or owned by historically disadvantaged persons, to become competitive.

Competition legislation promoting small business

- A new provision, on buyer power, was enacted in order to promote the interest of small and medium sized business
- This provision – section 8(4) of the Act – became effective in 2020
- In terms of subsection (4)(a), it is prohibited for a dominant firm as buyer in designated sectors to require from or impose unfair prices or trading conditions on small and medium businesses or firms controlled or owned by historically disadvantaged persons
- The new buyer power provisions apply to sectors designated by the Minister of Trade, Industry and Competition, namely agro-processing, grocery wholesale & retail, eCommerce and online services.

Competition legislation promoting small business

- The objective of the buyer power provisions is to enhance the participation of small and medium businesses and historically disadvantaged persons firms in the economy by protecting these firms from unfair exploitation by dominant buyers of their products.

- The Commission has since issued guidelines to the market which provide clarity to both dominant buyers and suppliers as to how the new legislation will be enforced by the Commission.

- This includes not only the unfair pricing and trading condition provisions, but also the avoidance provisions whereby it is a contravention to avoid buying from designated suppliers in order to avoid the application of fair treatment under the buyer power provisions.

Competition legislation promoting small business

- Amendments to the price discrimination provisions also became effective in 2020.
- Section 9(1)(a)(i) and (ii) of the Competition Act prohibits price discrimination by a dominant firm, as a seller, which is likely to have the effect … impeding the ability of SMEs and HDP firms to participate effectively.
- For competition law purposes, “participate” entails the ability of or opportunity for firms to sustain themselves in the market.
- Section 9(1A) of the Competition Act also prohibits a dominant firm from avoiding to or refusing to sell to an SME and/or HDP firm in order to circumvent section 9(1)(a) of the Competition Act.

Enforcement and advocacy initiatives

- Guidelines for the promotion of competition in the automotive aftermarket. The guidelines are intended to promote market access by SME's and HDP's;
- gave input on the amendments to the Construction Industry Development Board Act, No. 38 of 2000 and amendments to the Construction Industry Development Regulations 2004 – with the aim of promoting market access and lowering barriers
- Fintech Working Group
- LPG Recommendation - abolition of evergreen contracts, set aside for HDP's
- Supermarkets – abolition of long term exclusive lease agreements, establishment of spaza shop distribution centers

Enforcement and advocacy initiatives

- During the 2020/21 year the Commission initiated the Online Intermediation Platforms Market Inquiry. Amongst its objectives, it was established in order to, among others, evaluate whether platform conduct, contracts, prices and terms of use with business users are discriminatory or unfair, and the likely effect thereof on consumer choice, competition amongst business users and the participation of SMEs and firms owned or controlled by HDPs.

- Govechat Facebook exclusionary case referred to the Tribunal 2 days ago.

- Uniplate 2 at the Tribunal – exclusionary conduct.

- Public transport – Parasa case, provincial bus subsidies, ehaling.

- Data pricing.

- Fishing – fishing rights allocations, abalone exemption

EXAMPLES OF MERGERS PROTECTING SMME INTERESTS

Examples of mergers protecting SMME and HDP interests

- Wal-Mart / Massmart merger of 2011
  - Although the merger exhibited no competition concerns, the competition agencies imposed a range of public interest conditions designed to promote SME and HDP interests
  - Such as a supplier development fund to the value of R200 million
  - Capacity building for small scale farmers in the value chain

- HIS/MTN
  - The Commission recently approved the acquisition of MTN towers subject to a comprehensive supply condition targeted at SMMEs and HDPs in the telecommunication sector – payment terms and working capital, R 60m a year supplier development for 10 yrs CPI adjusted.

- COCA-COLA Supplier Development Fund – R 800mil over 5 yrs

- SAB Miller AB InBev among the most comprehensive covering a R1 billion is supplier development fund, local procurement from HDIs and SMMEs, 10% fridge space to SMMEs.

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competition regulation for a growing and inclusive economy

Thank You