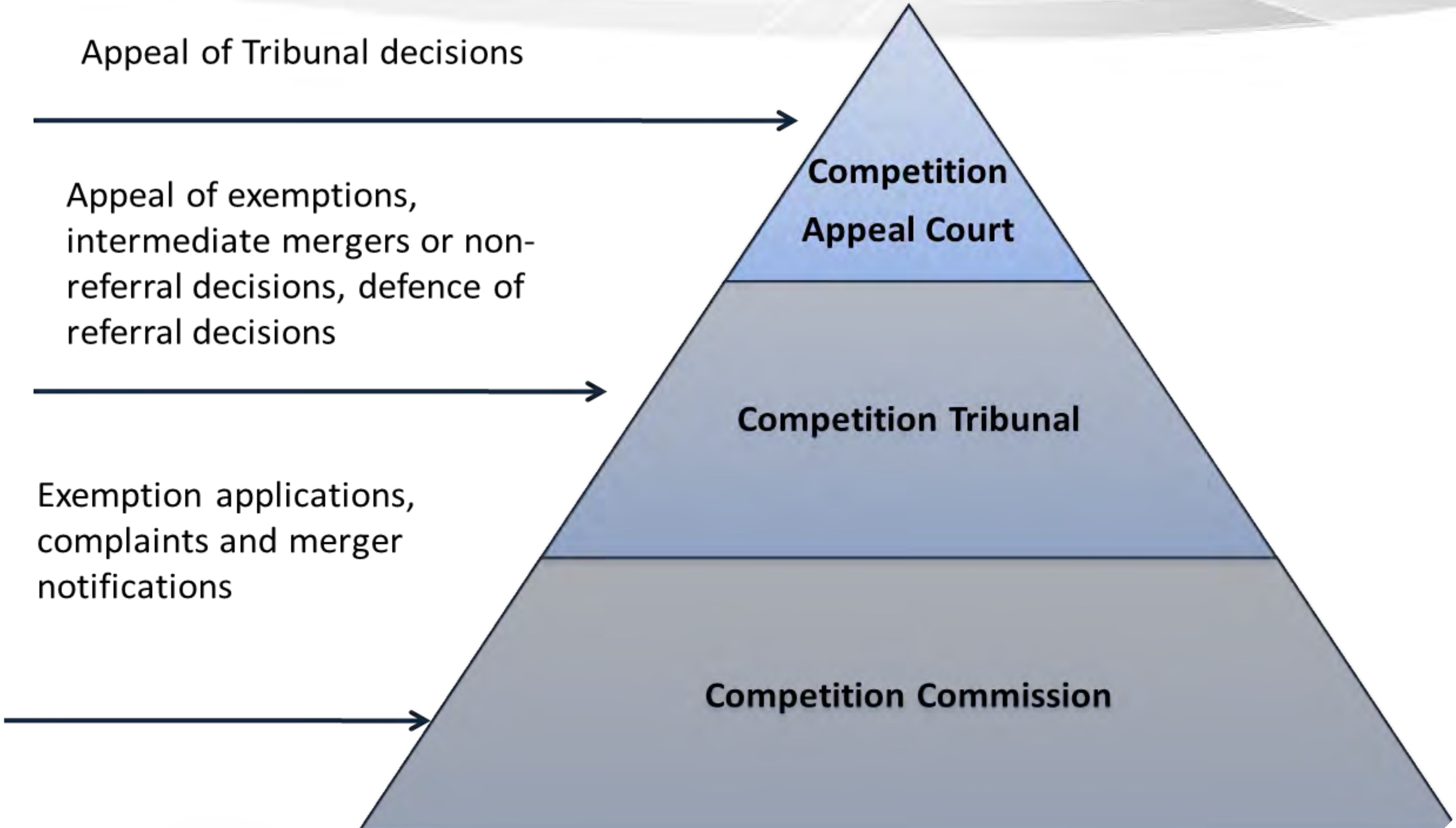
Mfundo Ngobese

competition commission
south africa

competition regulation for a growing and inclusive economy

On investigation, control and evaluation of restrictive business practices, abuse of dominant positions and mergers in order to achieve equity and efficiency in the South African economy

The Competition Authorities



Mergers (Merger Analysis)

Jurisdiction

Is it a merger, as defined in the Act?

No →

Inform parties
Repay fees

Yes ↓

Is the merger likely to substantially prevent or lessen competition?
e.g. Import competition, barriers to entry, concentration

Yes →

Are there any defenses?

Technology, efficiency or other pro-competitive gains

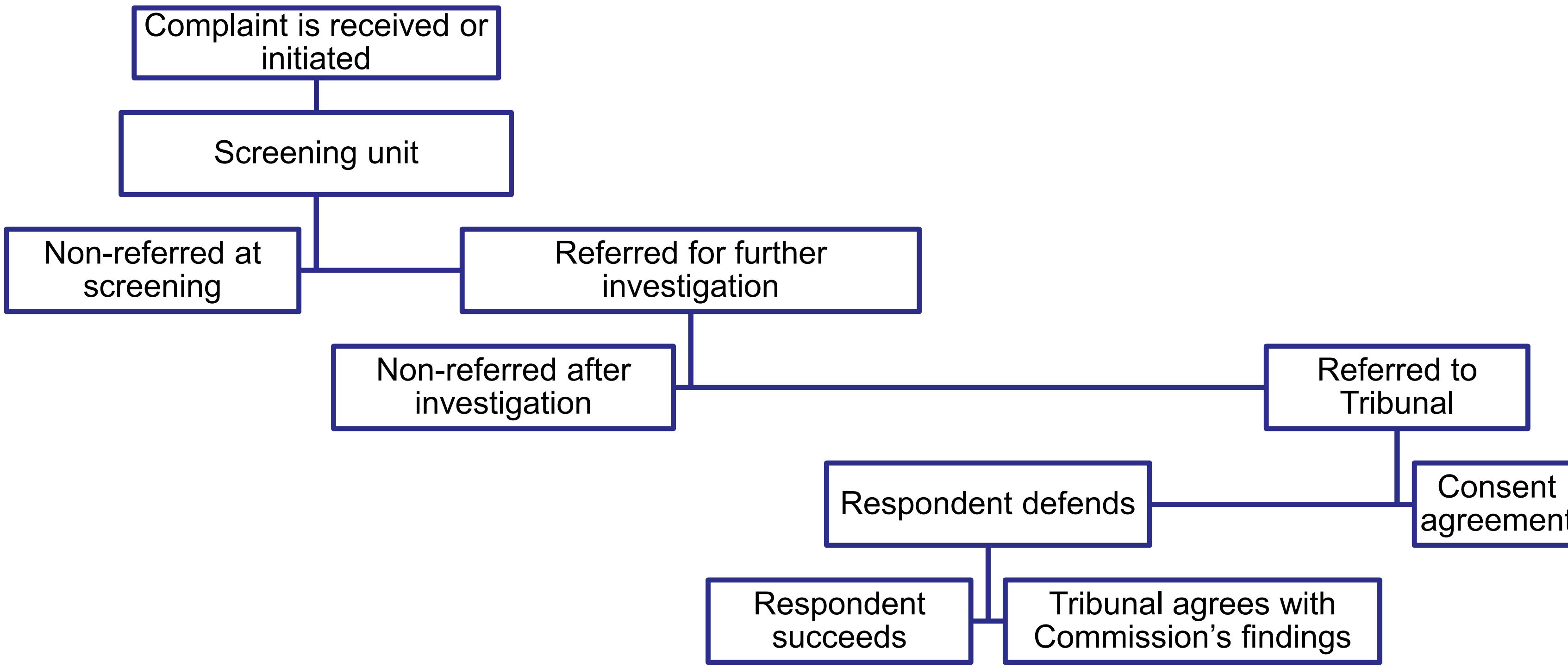
Are there any public interest considerations?

- Effect on a particular sector or region
- Employment
- Competitiveness of SME's or black businesses
- International competitiveness

Prohibited Practices (Types)

- Vertical restrictive practices (resale price maintenance and other exclusionary conduct such as refusal to deal)
- Abuse of dominance (exploitative and exclusionary conduct)
- Horizontal restrictive practices (cartels)
  - Price fixing
  - Market division
  - Collusive tendering

Prohibited Practices (The Investigation Process)



Cartels

- A cartel is essentially an arrangement between two or more businesses in which they agree not to compete when supplying their products or services
- Widespread shapes of cartels conduct are: price fixing, market sharing and bid rigging but ultimately they are designed to inflate prices for customers.
  - In a price fixing cartel the businesses may agree on any of the following:
    - selling or buying price;
    - formula for pricing;
    - discounting goods and services; agreed rebates, and allowances or credit terms; and
    - increases in prices.

Cartels

- In a <u>market dividing cartel</u> the businesses will reach an agreement on any of the following:
  - allocation of customers (e.g. agreeing not to compete for established customers)
  - allocation by geographic area;
  - agreeing not to produce each other's products or services; and

- NB: In a market dividing cartel the businesses are no longer facing competition of other suppliers with whom they have reached an agreement. Therefore, they can charge high prices for the captured customers.

Cartels

- In a bid rigging cartel the businesses will reach an agreement on any of the following:
  - Cover bidding (competing businesses choose a winner while the others deliberately bid over an agreed amount, which ensures the selected bidder has the lowest tender and also helps to establish the illusion that the lowest bid is indeed competitive)
  - Bid suppression (a business agrees not to tender)
  - Bid withdrawal (a business withdraws its winning bid so that a competitor will be successful instead)
  - Bid rotation (competitors agree to take turns at winning business)
  - Non-conforming bids (businesses deliberately include terms and conditions that they know will not be acceptable to the purchasers)
- NB: In a bid rigging cartel the businesses is assured of winning the tender and as such it is able to quote a high price for the tender:

Cartels (Tools used to investigate)

Corporate Leniency Policy

Search and seizure operations

Summons of Information

Interrogation of market players


$2
$2.20
$1.50
$2
$2.20
$1.50
?
$10
$10
$10
!!
Price-fixing is against the Competition Act

THANK YOU

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