

Competition Commission presentation to the Joint Meeting: Portfolio Committee on Trade, Industry and Competition; and the Standing Committee on Finance

The Regulation of the Banking Sector in Relation to Credit Provision and Competition Matters - Work Programme of the Commission on the Financial Services Sector

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22 November 2024

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Overview

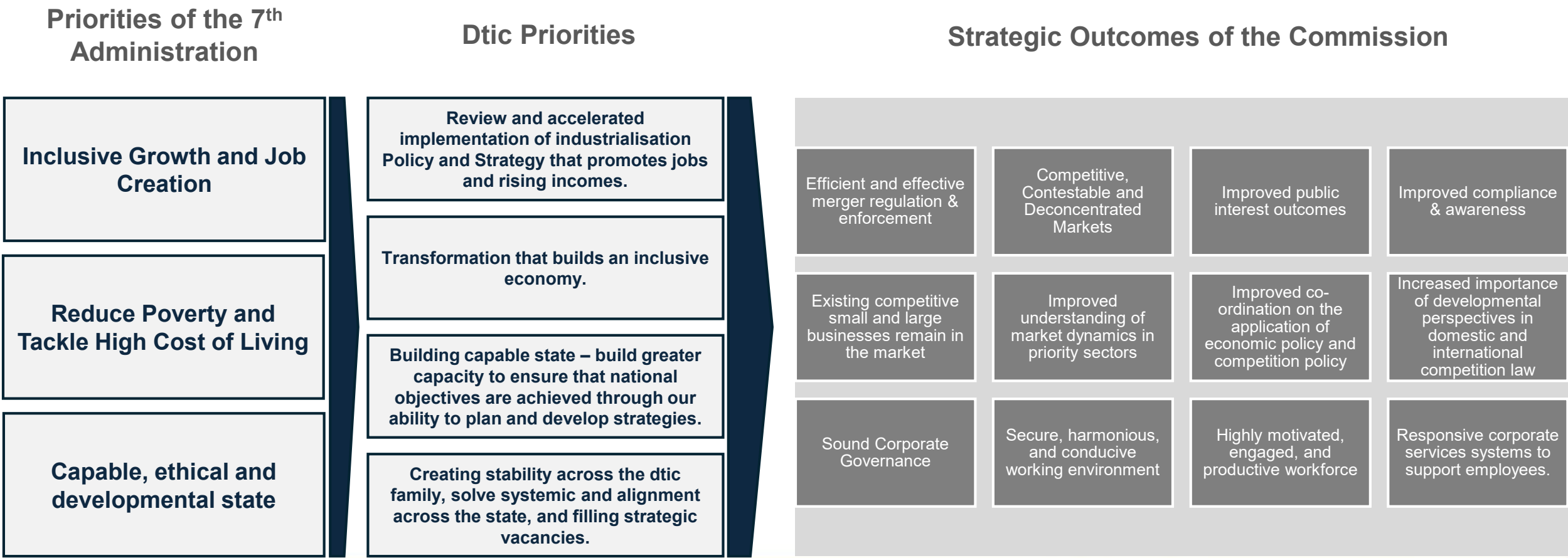


Introduction

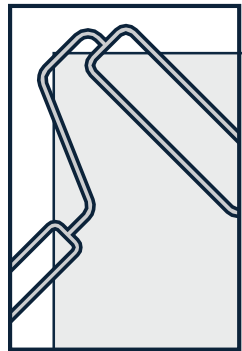
- The purpose of the Competition Act is to;
 - promote an efficient economy with competitive prices for consumers and participation in global markets,
 - promote employment and the economic welfare of all South Africans, in particular SMEs and HDPs that were excluded from the economy.
- The Competition Commission (Commission) is empowered to investigate and evaluate restrictive business practices (amongst other roles) in order to achieve an efficient and competitive economic environment, balancing the interest of workers, owners, and consumers, and focused development for all South Africans.
- This recognises that the economy we inherited is concentrated, which creates both a competition and an exclusion issue.
- Addressing exclusion is not only about addressing inequality, it is also about removing barriers to new businesses that can contribute to growth, employment and a more competitive economy.

Aligning with the Priorities of the 7th Administration

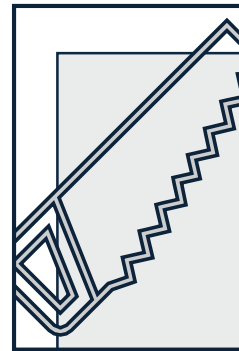
- The Commission is pursuing Strategic Outcomes to respond to the priorities of the 7th Administration and the priorities of the dtic as outlined below:



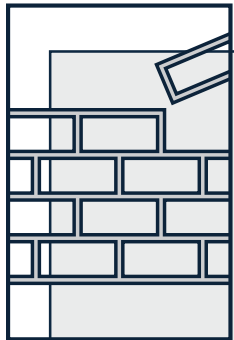
Toolbox of the Commission



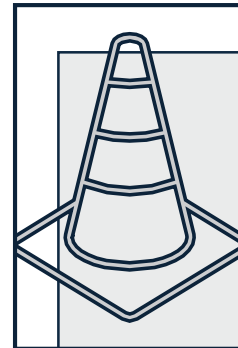
Market Inquiries



Conduct



Merger Regulation



Advocacy

Market Inquiries



Outcomes of the Banking Inquiry

- In 2008, the Commission concluded an inquiry into the banking sector whose recommendations aimed to address the concerns raised by various stakeholders (consumers, merchants, non-bank service providers and small banks amongst others). The summary of the main recommendations of the inquiry include:

Area	Substance of Recommendation	Progress
Debit orders	1. R5 cap on returned debit order fees 2. Increased channel capability for consumers to cancel debit orders	Interventions to improve debit order management implemented.
ATMs	3–6: Implementation of a direct charging model for off-us ATM transactions 7: Consideration of a direct charging model for cash-back and mini-ATM transactions	Banks implemented the required ATM screen message.
Payment cards	8: Regulatory process to consider need for and level of interchange fees for a range of payment streams 9: Removal of restrictions on non-bank acquirers 10: Removal of prohibition of pure cash-back 11. Removal of honours all products rule	The SARB completed its review of the level of interchange fees for payment cards and Card Schemes implemented the proposed rules changes.
EFT / EDO	12-14: Consideration of interchange for these payment streams vis-à-vis possible investigation or submission to process specified in Recommendation 8	The SARB considered the impact of the interchange fee review to the EFT/EDO payment streams.
NPS governance	13-16: Development of access regime for non-banks in clearing and settlement (with associated membership of PASA) 18-19: Chief Executive PASA to decide on membership applications to PASA and new Payments Ombudsman to be created to adjudicate any dispute on application decisions	SARB enabled access to Designated Clearing Participants.

Outcomes of the Banking Inquiry

- Continuation of Recommendations :

Area	Substance of Recommendation	Progress
Product transparency	20-21: Development of minimum disclosure standards and standardised terminology	The Code of Banking Practice has been revised by the banks in order to incorporate the switching code, the minimum transparency standards and the standardised terminology requirement. As part of this revision, the content of the code was modernised in order to benefit consumers as a whole (e.g. inclusion of a consumer bill of rights).
	22: Creation of standard consumer profiles	
	23: Creation of a centralised banking fee calculator	
	24: Proposed consideration of relaxation of comparative advertising	
	25: Proposal to develop basic banking products	
	26: Development of a switching code	
	27: Development of a central FICA repository	
	28: Increase jurisdiction of Ombudsman for Banking Services over matters relating to Recommendations 20 and 26	

Some progress was achieved on commitments that required industry collaboration and regulatory intervention (which accounted for the majority of the Commitments)

Conduct Cases



Highlights on some of the complaints we non-referred

- The Commission received complaints applications to serve on conveyancer panels of some of the banks. The Commission then published a Practice Note on The Promotion Of Competition And Inclusion In Supplier Panels Of Banks And Insurers On Banks issued by the Commission in 2022. The Commission continues to engage with some of the banks on participation of Small and Medium Enterprises and firms owned/controlled by Historically Disadvantaged Persons in their panels of service providers.
- The Commission engaged the South African Reserve Bank (“SARB”), National Treasury and the Financial Sector Conduct Authority (“FSCA”) which all raised risks similar to those raised by Capitec. In addition, the SARB submitted that it, in conjunction with the Payments Association of South Africa and the FSCA were in the process of developing screen scrapping regulations and would engage the Commission in future to ensure compliance with competition regulations and policy. The Commission will continue to work with SARB on developing the guidelines on screen scrapping given its importance in the market.
- The Commission also received complaints related to failure to implement the recommendations of the 9 June 2008 Report of the Banking Market Inquiry, with allegations of being charged excessive amounts on each rejected debit order. These complaints were investigated as a possible contravention of section 8(1)(a) of the Competition Act of 1998 as amended (“the Competition Act”). The Commission decided to refer the matter to the Financial Sector Conduct Authority for consideration with the intent of collaborating on interventions against the conduct of imposing excessive penalty fees by banks for rejected debit orders.

Cartel Investigations in the Sector

The Competition Commission is investigating the following cases in the banking sectors:

- Mortgage Rates
- Lending / Prime Rate
- Sekunjalo and Dr Surve

The Commission has referred the following case to the Tribunal for prosecution:

- Forex cartel



McLoughlin v Major Commercial Banks

(Nedbank, Standard Bank, FNB, ABSA)

- This is a third-party complaint lodged by Mr. Michael McLoughlin (“the Complainant”) in April 2020.
- The Complainant alleges that the major commercial banks set the prime rate at 3.5% above the Reserve Bank’s repo rate through a collusive agreement.
- The complaint is under investigated under section 4(1)(b)(i) of the Act.
- The case is under investigation.

Mortgage Rates: Complaint against Mortgage Lenders

(Nedbank, Standard Bank, FNB, ABSA, Capitec Bank and SA Home Loans)

- This is a complaint against the mortgage lenders which was initiated by the Commissioner in January 2021.
- The allegations against the respondent banks is that they may have entered into an agreement to fix mortgage rates.
- It is specifically alleged that whenever the South African Reserve Bank increases the lending rate, the respondent banks would increase the mortgage rate at the same time with the same percentage point.
- Further, the mortgage spread charged by the respondent banks is the same.
- If the allegations are correct, this conduct would contravene section 4(1)(b)(i) of the Act.
- The case is under investigation.

Sekunjalo Group and Dr Mohammed Iqbal Surve & Others v Nedbank and 8 Other Banks

- The Commission received a complaint from Sekunjalo Group and Dr Surve in December 2021 alleging that banks have colluded to close their bank accounts and to refuse open new bank accounts.
- The complaint is against 9 respondents banks (ABSA, FNB, Nedbank, Std Bank, Sasfin, Access Bank, Mercantile Bank, Investec Bank and Bidvest Bank which are alleged to have either terminated or refused to open bank accounts for Sekunjalo Group and Dr Surve.
- The complaint is investigated under section 4(1)(a), 4(1)(b) and section 8.
- The complainant had also approached the Tribunal for interim relief which was granted in September 2022. The interim relief was extended with 6 months.
- Standard Bank, Mercantile Bank and Access Bank successfully appealed the interim relief in July 2023 at the CAC.
- Sekunjalo Group unsuccessfully sought leave to appeal the CAC judgment at the Constitutional Court.
- The investigation on the complaint is ongoing.

Forex complaint against local and international banks

- The Commission investigated and referred 28 local and international banks to the Tribunal for prosecution for allegedly fixing of prices of bids; offers; bid-offer spreads; the spot exchange rate; and the exchange rate at the FIX.
- It is further alleged that the 28 banks divided markets by allocating customers in terms of which one trader withholds or pulls his/her existing bid or offer from the market to allow the other trader to execute and complete his/her trade.
- The conduct is alleged to have taken place between 2007 and 2013.
- If the allegations are correct, the conduct would contravene section 4(1)(b)(i) and (ii) of the Competition Act (the Act).

Forex complaint against local and international banks (Cont.)

- The Commission referred the complaint to the Tribunal in 2015.
- The banks decided to challenge the jurisdiction of the Competition authorities to prosecute them.
- In March 2023, the Tribunal found that the Commission established jurisdiction and ordered all the banks to answer to the complaint referral.
- The banks filed appeals and reviews of the Tribunal decision with the Competition Appeal Court (CAC).
- On 8 January 2024, the CAC dismissed the Commission's case against 17 banks and ordered 4 respondents to file their answering affidavits
- The Commission appealed the CAC decision on the 17 banks to the Constitutional Court (CC) and 2 of the 4 respondents ordered to file also appealed the CAC decision to CC.
- The matter is currently before the CC and the CC has issued directives to the parties and will issue dates for hearing in soon.

Mergers Evaluated



Banking mergers evaluated by the Commission over the last 4 years



In July 2024, the Commission recommended that the Tribunal approve African Bank Limited's acquisition of (1) the commercial property finance (CPF) and (2) the capital equipment finance (CEF) businesses of Sasfin Bank Limited unconditionally. The CPF business provides finance to small to medium-sized developers of commercial/residential properties and the CEF business provides asset-backed finance. The Commission found that African Bank would be a small player in these markets and the transaction raised no public interest concerns



In Sept 2022, the Commission recommended that the Tribunal approve African Bank Limited's acquisition of Grindrod Bank without conditions. Both merger parties provided banking services, but both African Bank and Grindrod were (and are) small players in the relevant market. The transaction raised no public interest concerns.



In October 2020, the Commission conditionally approved Access Bank's acquisition of Grobank. This transaction represented Access Bank's entry into South Africa and raised no competition concerns. In terms of public interest, Access Bank agreed to introduce HDP ownership into the bank in response to the imperative to promote a greater spread of ownership in firms in the market, in response to the public interest provisions of the Act.

Advocacy Work



Advocacy Work in the Banking Sector

- We are a member of the following working groups related to Fintech, which also comprise regulators (members) including South African Reserve Bank, National Treasury, Financial Sector Conduct Authority, Prudential Authority, National Credit Regulator, National Consumer Commission and South African Revenue Services:
 - The Intergovernmental Fintech Open Finance Working Group (OPI WG): The Commission is completing a paper on 'Regulating for a competitive and inclusive Open Finance regime,' by February 2025, which unpacks the competition aspects of open finance. It will be consolidated in a report for publication by the IFWG and submission to National Treasury by March 2025, supporting the policy direction for open finance.
 - The Crypto Assets Regulatory Working Group (CAR WG): which is in the process of approving for publication by 26 November 2024, position papers on (i) Crypto Assets recommendations and (ii) Stablecoins. These put in place a framework for regulating crypto asset service providers in South Africa.
- In addition to this, The Commission has concluded an MoUs with Financial Sector Conduct Authority (FSCA).
- The Commission has also been engaged in advocacy around the payment system.
- The Commission has also intervened in panels within the banking to open opportunities for Small and Medium Enterprises and firms owned by Historically Disadvantaged Persons.

Conclusion



Conclusion

- Banking is one of the priority sectors of the Commission in the current strategy cycle ending on 31 March 2025.
- The above summarises some of our highlights on the work we are doing in the Banking Sector more specially since our Banking Inquiry in 2008.

Thank you