



Competition Commission

Presentation to the Portfolio Committee on Trade, Industry and Competition

Presentation by the Commissioner – Doris Tshepe

24 July 2025

Purpose of this Presentation

The Portfolio Committee has asked the Commission to deal with the following issues:

- 1 Does the Commission assess whether firms follow transparent and inclusive processes when identifying buyers during M&A transactions?
- 2 In cases where public interest conditions are imposed to introduce historically disadvantaged shareholders, what safeguards were implemented to ensure fairness and inclusivity?
- 3 Can the Commission provide a list of M&A transactions over the past five years where such conditions were applied, including details on the beneficiaries and the process followed to select them?
- 4 What proactive measures does the Commission have in place to ensure that sellers engage in fair and non-discriminatory processes when identifying buyers, particularly in domestic transactions?
- 5 Do the Broad-Based Black Economic Empowerment Commission and the National Empowerment Fund play any formal role in vetting or advising on compliance with transformation objectives during the M&A process, especially where public interest concerns are raised?

About the Competition Commission

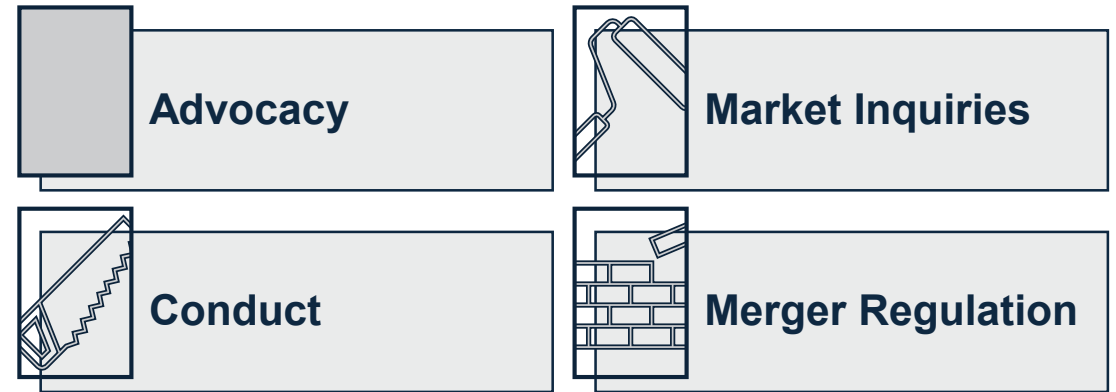
- Established in terms of the Competition Act, 89 of 1998

- Mandate to promote and maintain Competition in South Africa

- With respect to Merger Control:

- The Commission assesses mergers and acquisitions to determine if they will substantially lessen competition in the market and impact of merger on public interest grounds as provided in Section 12(A)3.

- Our Core functions entail:



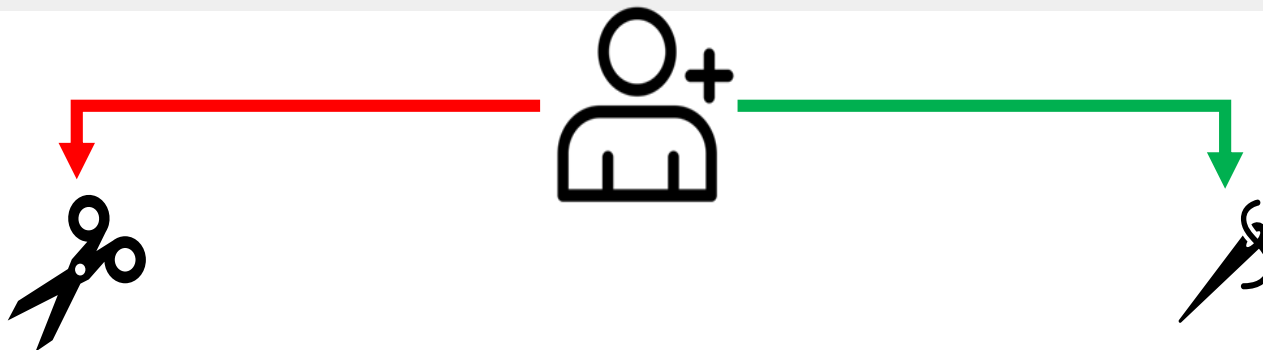
- The Commission's contribution to transformation

- The promotion of participation of Small and Medium Enterprises and firms owned by Historically Disadvantaged Persons is both a competition and transformation issue in South Africa with the work of the Commission outlined in the attached additional information since 2020/21 financial year.

Question 1:

Does the Commission assess whether firms follow transparent and inclusive processes when identifying buyers during M&A transactions?

Two scenarios in which a 'new' buyer would be introduced into a transaction because of merger control



Divestiture

To remedy competition concerns arising from the transaction

Share purchase by HDPs / Workers

In response to public interest requirements / concerns (12A3(e))

In both instances, the selection of the buyers is **left to discretion of the merger parties**, subject to certain **principles** followed in each process

Question 1: Does the Commission assess whether firms follow transparent and inclusive processes when identifying buyers during M&A transactions?

(cont.)



Divestiture

A **competitive bidding process** is typically required to ensure open and inclusive buyer selection.

The Commission monitors whether the divestiture was **widely publicised** (e.g., on websites, press releases, trade media).

Merger parties must submit **regular reports** on:

- Buyer identification processes, and
- Maintenance of asset value.

Reporting timelines vary but are guided by the merger conditions.

- Divestitures must be **implemented promptly** typically within 6–12 months (up to 2 years max).

A **Divestiture Trustee** may be appointed to:

- Oversee asset upkeep and sale, and
- Finalise buyer selection and fair/ reasonable price for the asset.

Share purchase by HDPs / Workers



HDP transactions **introduce a black partner into an existing business**, potentially shaping long-term success

Merger conditions **only require** that the partner qualifies as a **Historically Disadvantaged Person (HDP)** under the Competition Act.

The **choice of partner, deal terms, and structure** are left to the merger parties.

The Commission's role is limited to **Verifying HDP status** of the proposed partner(s) before implementation.

In both instances **The Commission does not identify or select parties for consideration**

If it receives queries from interested firms, it simply directs them to the merger parties.

Question 2:

In cases where public interest conditions were imposed to introduce historically disadvantaged shareholders, what safeguards were implemented to ensure fairness and inclusivity?



- The Commission requires **documentary proof** that:
 - the shareholders are HDPs; and
 - the terms of the transaction accord with that which was imposed as a condition.



- The conditions are not prescriptive on how HDPs are identified or the terms of the deal agreed to between these business partners.



- In the interest of a **smooth ongoing relationship**, the **identification of HDPs** and the **terms of the deal** agreed to between business partners is **left to the discretion of the parties**.

Question 3:

Provide a list of M&A transactions over the past five years where such conditions were applied, including details on the beneficiaries and the process followed to select them?



DIVESTITURES:

- **Divestitures** were imposed as conditions in **seven** implemented mergers over the period 2020/21 – 2025/26 YTD (Q1)

- The Commission **played no role in identifying** the purchasers of the divested assets and **only reviewed that the proposed purchasers accord** with the prescripts of the conditions prior to the transactions being implemented.
- As indicated earlier, if conditions specify that the purchaser must be an HDP, **the Commission will verify whether the firm / person is indeed an HDP prior to consenting** to the implementation of the proposed transaction.

Question 3:

Provide a list of M&A transactions over the past five years where such conditions were applied, including details on the beneficiaries and the process followed to select them?

Below is the list of divestiture transactions that the Commission has been done over the last five years:

	Year	Case Number	Acquiring Firm	Target Firm	Sector	Divestiture Assets	Purchaser
1	2020	LM001Apr20	Senwes Limited	Suidwes Holdings	Agriculture	Three Concrete Silos and a Grain Mill	Afgri
2	2020	LM144JAN20	Thabang Coal	South32 SA Coal Holdings	Mining (of coal)	Prospecting right(s) and/or mining right(s) associated with the Leandra Project	Three Junior Miners (Names Confidential)
3	2020	2020Feb0002	Elanc Animal Health Inc	Bayer A.G Animal Health Business	Animal Health	Elanco's anticoccidial product, Vecoxan, and associated assets for use in calves and lambs (and other ruminants)	Merck & Co (Global Divestiture)
4	2021	2021MAR0009	ECP Africa Fund	Burger King SA Pty Ltd	Food	Grand Foods Meat Plant	Cavalier Group of Companies
5	2022	LM136Dec21	Heineken	Distell Group Holdings Limited	Alcoholic beverages	Strongbow brand to a license	Signal Hill Products
6	2022	2022APR0042	GIL International Holdings V Ltd	John Menzies PLC	Transportation and storage	Overlapping airport baggage handling business	Pre-merger HDP shareholders
7	2023	2023Jul0011	Afrimat Ltd	Lafarge South Africa Holdings	Transportation and storage	Five aggregates quarries and four ready-mix operations	A majority HDP-owned Consortium with mining capabilities

Question 3: (cont.)

Provide a list of M&A transactions over the past five years where such conditions were applied, including details on the beneficiaries and the process followed to select them?



HDP TRANSACTIONS:

- **64** cases were approved subject to the implementation of HDP transaction over the period 2020/21 – 2025/26 YTD (Q1)

- In **a further 11 cases**, the merger parties could elect to implement either an HDP transaction, or an ESOP (which decision would need be notified to the Commission)
- The Commission does not play any role in identifying the beneficiaries in any of these cases. This is left solely to the parties.
- Below is a selection of HDP Transactions (percentage confidential), the full list is attached:

Question 3: (cont.)

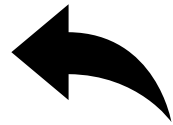
Provide a list of M&A transactions over the past five years where such conditions were applied, including details on the beneficiaries and the process followed to select them?

Below is the list of some of the HDP Transactions divestiture transactions that the Commission has been done over the last five years (full list attached):

	Year	Case Number	Acquiring Firm	Target Firm	Sector
1	2020/21	2020Aug0006	Carlmac Steel (Pty) Ltd	The Alrode Business of Aveng Duraset	Manufacturing
2	2020/21	2021Jan0038	4 Racing (Pty) Ltd	Phumelela Gaming and Leisure Limited (in business rescue)	Gambling
3	2021/22	2021Jul0054	K2021544474 (South Africa) (Pty) Ltd	Kwatani Global (Pty) Ltd	Mining and Quarrying
4	2021/22	2020Oct0003	Trade Retail HoldCo and Agrifin	Trade Retail fuel and financial services business of BKB and VKB	Agriculture (services)
5	2021/22	2021Feb0016	Seche Holdings SA (Pty) Ltd	Spill Tech Holdings (Pty) Ltd	Waste management
6	2021/22	2021JUL0045	AIH	Kwikspace Modular Buildings (Pty) Ltd	Real estate
7	2021/22	2021AUG0033	Sun Valley Estates (Pty) Ltd	Ascendis Vet (Pty) Ltd & Others	Animal Health Care
8	2021/22	2021JUL0046	Volaris Group Inc.	Adapt IT Holdings Limited	ICT
9	2021/22	2021OCT0010	Atlantica Sustainable Infrastructure plc	Employees of Abengoa South Africa (Pty) Ltd and the assets of Kaxu CSP O&M Company (Pty) Ltd	Electric power generation, transmission, and distribution
10	2021/22	2021OCT0033	Orkila South Africa (Pty) Ltd	Umongo Petroleum (Pty) Ltd	Petroleum Products (Retail)
11	2021/22	2021SEP0030	SMG Western Cape (Pty) Ltd & the McCarthy Family Trading Holdco (Pty) Ltd	Auric Auto (Pty) Ltd	Retail (of Motor Vehicles)

Question 4:

What proactive measures does the Commission have in place to ensure that sellers engage in fair and non-discriminatory processes when identifying buyers, particularly in domestic transactions?



As indicated in question 1 response:

- The selection of the buyers is **left to discretion of the merger parties, subject to certain principles** followed in each process
- The process is generally coded into the conditions.

Question 5:

Do the B-BBEE Commission and the NEF play any formal role in vetting or advising on compliance with transformation objectives during the M&A process, especially where public interest concerns are raised?



- The Commission is **not involved** in the identification/selection of beneficiaries or deal structuring.



- The Commission **has not played a role** in facilitating engagements between proposed beneficiaries and development finance institutions.



- The **publication of divestiture conditions in public forums** (either on the Tribunal website, or in press releases) sensitises DFIs to possible approaches for funding. The Commission has had engagements with some of the DFIs in some of the transactions and in other work like Market Inquiries. This area is likely to improve over time.



- The Commission is **sensitive to the funding challenges facing**, particularly, small and black-owned businesses and agrees that DFIs can be proactively informed of divestiture conditions to ensure that they are prepared for possible funding applications within the truncated divestiture timelines.

Question 5: (cont.)

Do the B-BBEE Commission and the NEF play any formal role in vetting or advising on compliance with transformation objectives during the M&A process, especially where public interest concerns are raised?

The **definition of HDP in the Competition Act** is as follows:

For all purposes of this Act, a person is a historically disadvantaged person if that person-

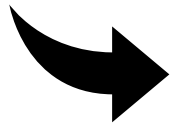
- a) is one of a category of individuals who, before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), came into operation, were disadvantageded by unfair discrimination on the basis of race;*
- b) is an association, a majority of whose members are individuals referred to in paragraph (a);*
- c) is a juristic person other than an association, and individuals referred to in paragraph (a) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes; or*
- d) is a juristic person or association, and persons referred to in paragraph (a), (b) or (c) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes.*

- The definition of HDP in the Competition Act differs from **the provisions of the BEE Act**, in that it recognises only majority black-owned owned firms and black persons (amongst others) as HDPs and not, for example, prior black shareholding, enterprise spend, or other corporate/social investment initiatives.
- The Commission **must ensure that beneficiaries align with the prescripts of the Competition Act.**
- The Commission regularly engages with the BEE Commission on the interpretation of black ownership derived from BEE Certificates.



Question 6:

relevant statistical data and any other supporting information as part of the presentation



- Please **see the attached information** to this presentation

Conclusion

- The Commission remains focused on its mandate of promoting and maintaining competition in South Africa whilst ensuring markets are open and accessible to all, especially small and medium-sized businesses & Historically Disadvantaged Persons and that consumers benefit from competitive prices and a wider range of choices.
- As indicated in the Introduction the following are worth emphasizing:



- In regulating Mergers and Acquisitions, the Commission assesses mergers and acquisitions to determine if they will substantially lessen competition in the market and impact of merger on public interest grounds as provided in Section 12(A)3.



- The promotion of participation of Small and Medium Enterprises and firms owned by Historically Disadvantaged Persons is both a competition and transformation issue in South Africa with the work of the Commission outlined in the attached additional information since 2020/21 financial year.

- The Commission would like to express its appreciation for the opportunity to engage with the Portfolio Committee on the important issues that the Committee invited us to address and remains committed to doing so in the future.

Thank You