Cross-cutting Competition Issues in Regional Industrial Development

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1 Introduction

In advancing regional integration and industrial development across southern Africa issues of competition and market power are very important. Firms with market power, either through colluding, or unilaterally, earn profits from the exertion of this power rather than through investing in improved productive capabilities. Such firms also have the incentive to entrench this market power including through raising barriers to the entry of local rivals and through protecting local markets from regional competitors by lobbying for trade restrictions. This paper considers insights from recent research on competition issues with the development of regional value chains in southern Africa and examines the role of competition authorities in addressing competition questions. This includes a review of the main sectors where cases have been pursued by authorities as well as the challenges faced by the authorities in terms of legislation and institutional capacity.

In conducting this review of cross-cutting competition issues in southern Africa, we start from the premise that competitive rivalry should be at the heart of market interactions. Competition policy relates to the rules by which markets operate and goes far beyond what is set out in competition law and its enforcement; influencing, for example, who is able to participate in markets. Regarding the narrower issue of competition law enforcement, there are international debates as to whether competition law should focus solely on efficiency and consumer welfare or whether it could play a broader role in distributing economic power and facilitating market access. We proceed from the basis that competition enforcement must be cognisant of the economic reality of particular economies.[1] The focus of the paper is on the practical challenges of competition enforcement in younger jurisdictions in southern Africa that share concerns about high levels of concentration, low levels of economic growth and dynamism, weak transport links, and other barriers to entry that also limit integration. The paper reviews the enforcement record across countries to identify trends in sectors and conduct that emerge as common across jurisdictions. It also critically evaluates the tools available to authorities to support dynamic rivalry and facilitate entry, particularly with a view to developing and enhancing the competitiveness of regional value chains.

After considering issues of competition policy in small markets and the need for a regional approach to enforcement, in section 2, the report reviews recent studies highlighting key themes across countries in competition law enforcement and economic integration in the southern Africa region. Section 3 then assesses enforcement actions across nine southern African states (Botswana, Malawi, Mauritius, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe) over a three-year period (2014-2016) to identify trends in anticompetitive conduct and draw insights on how these cross-cutting competition issues may impede industrial policy objectives such as economic growth and participation by new and smaller firms in the economy. Sections 4 and 5 consider the legal and institutional frameworks and the institutional capacity, while section 6 concludes and draws implications for building the links between competition and regional integration. The study draws from detailed interviews conducted with respective competition authorities.

1.1 Competition policy and the challenge of dominance in small markets

Competition policy is a highly-contested area and, despite appearances, there is considerable divergence between countries and within countries over time. As Gerber (2010) has observed,

[1] For more on this debate, see Fox (2007).

the competition regime can be understood as the ‘economic constitution’ of a country. For example, rapidly industrialising countries such as Japan and South Korea adopted particular approaches to competition in line with their industrial policies and the structure of their economies at certain points in time. The objectives of the South Korean Fair Trade Commission (KFTC) are to encourage free and fair competition, to prevent the concentration of economic power and thereby to promote ‘balanced development’. Given that the early stages of rapid industrialisation were viewed as ‘unbalanced’, an active competition policy was adopted to address the behaviour of dominant firms that had been supported initially (Fox 2003; KFTC, 2011).

In thinking about competition policy in southern Africa, we need to be mindful of the particular challenges that each country faces. These will obviously differ across countries, although there are some common concerns across the region, including the small size of the domestic market, low levels of industrialisation and diversification, high levels of concentration and, in many countries, a history of systematic exclusion of the majority of the population from full and meaningful economic participation. In such conditions, it is important to note that the dominant positions of incumbent firms can be entrenched and, as Geroski and Jacquemin (1984: 22) argue, ‘the inequities they create become institutionalized, creating long-term problems in the performance of the economic system which cry out for policy attention’. Some economies may also be characterised by significant state commercial activity. In this case, the process of instilling competitive discipline and ensuring that state-owned companies operate efficiently may require different policy tools such as a stronger focus on advocacy rather than enforcement.

Dominant firms can further reinforce their market power by lobbying strongly for regulatory provisions to block entrants and protect the positions of the insiders. This is not simply about the political influence such firms may be able to leverage (although this is a consideration), but incumbent firms can also exploit their insider information and ability to mount arguments for their interests such as through the policy research that they commission. The implication is that economies with higher levels of concentration and higher barriers to entry may need stronger policies towards abuse of dominance (Vickers, 2007).

That said, the dominance debate is more nuanced in smaller economies that have to consider the efficiency benefits of concentration which allows firms to exploit economies of scale in smaller markets. Concentrated industries may generate productive efficiencies and lower the unit costs of production, partly explaining why many industries in small economies tend towards monopoly and oligopoly (Gal, 2003). Assessing the effects of concentration and competition policy in smaller economies is thus particularly challenging and requires that we pay close attention to efficiency trade-offs, distribution of gains, and overall consumer benefit. Of course, this does not suggest that single firm dominance is always efficiency-enhancing and, while competition policy in smaller economies must be cognisant of the benefits of scale, it must also consider the incentives that dominant firms have to undermine rivalry.

1.2 Competition policy across borders: the need for a regional approach to competition enforcement

Markets transcend national boundaries and the globalisation of value chains has contributed to greater integration of nations through increased trade in goods, services, and finance. In an increasingly integrated world, business practices (including restrictive practices) can be exported into new markets entered by multinational firms. In some cases, these restrictive practices may even have a cross-border dimension such as an agreement between competitors to allocate national markets in order to limit competition across a region. What appears to be a dominant firm in a single market may thus actually reflect market allocation on a regional scale. Closer scrutiny is required of mergers and acquisitions in countries in the region which may on the surface appear to be efficiency enhancing and unproblematic. Regional markets in key sectors are already concentrated and there is limited potential competition from firms that may operate in adjacent or neighbouring country markets, partly because the same firms are present across countries. It is also necessary to consider closely how related factors such as tariff and non-tariff barriers and poor logistics networks limit the potential for cross-border rivalry.

The multinational nature of firms and cross-border dimemsion of restrictive practices requires cooperative solutions (Fox, 2015). Though these solutions may be mediated through regional regulatory bodies (such as SADC, COMESA and the EAC), the lack of a common enforcement regime in Southern Africa means that these issues require close cooperation between national competition agencies. In recognition of the mutual benefit of cooperation, SADC member states entered into an agreement for cooperation on mergers and cartel investigations in December 2016 (SADC, 2016). The agreement expresses a commitment by member states to share non-confidential information and discuss issues relating assessment of evidence, market definition and remedies in merger cases and encourages firms to notify mergers simultaneously across SADC. The agreement also sets out a commitment to interagency cooperation and staff exchanges to improve cartel investigations and is exploring the possibility of join cartel inventigations. Although the SADC agreement presents a firm commitment to interagency cooperation, it is still some way off from a coherent multilateral framework.

1.3 The establishment of competition authorities in SADC countries

Competition authorities in the region are young. Six jurisdictions have competition authorities that are less than a decade in existence, as shown in Table 1. The discussion of operational capacity and cases to follow reflects the fact that younger authorities face a specific set of challenges.

Table 1: Year competition authority operationalised

Authority	Year
Zambia	1997
Zimbabwe	1998
South Africa	1999
Tanzania	2007
Namibia	2008
Mauritius	2009
Swaziland	2010
Botswana	2011
Malawi	2013

Source: Authors

The stage of development of an authority is also reflected in the nature and types of cases pursued, although certain issues such as investigative capacity appear to affect most of the authorities considered.

2 Competition and industrial development in the region

2.1 Regional industrial development and competition

Regional industrial development understood broadly entails the formation of linkages within and across value chains and industries. Potential gains arise from shared production, transfer of skills and technology, and market development between countries (Fessehaie, Roberts & Takala-Greenish, 2015). In southern Africa, links already exist between countries and these have grown considerably since the early-2000s, although primarily based on goods exported from South Africa to neighbouring countries. The share of South Africa's manufactured exports (excluding basic chemicals and basic metals) to SADC grew from 18% in 2000, to 28% in 2014 (Fessehaie et al., 2015). Growth in exports by South Africa of manufactured goods (by value) to countries in SADC has been led by trade in machinery and equipment followed by food products (Fessehaie et al., 2015). In retail and consumer goods, these flows between countries mainly comprise 'intra-company' shipments of products from distribution centres of retail groups in South Africa to stores located throughout the region (Paelo & Vilakazi, 2017).

The rapid growth of South African supermarket groups in the region points to an important aspect of the regional market in southern Africa – that large firms have established effective value chains and distribution channels that span across political borders. This effectively means that large firms have 'integrated' the region including through establishing mechanisms for circumventing logistical challenges (Paelo & Vilakazi, 2017). By locating stores and distribution outlets in different countries, the presence of South African companies has increased. Given small country markets in the region, South African firms tend to take up lead positions in the markets in which they locate – the retail sector is an important example of this (das Nair & Chisoro, 2015). Large multinational logistics and forwarding firms have also located their operations in different countries across the region to enable smoother transitions and operations between countries (Paelo & Vilakazi, 2017), which makes them very attractive as suppliers for large South African exporters and groups.

In this context, it is important to note that in many cases companies 'export' market conduct and practices across borders as well, including exporting anticompetitive behaviour. For example, Omnia Fertilizer, which was prosecuted for cartel conduct in the trade of fertilizer in South Africa, was subsequently involved in similar conduct in Zambia (Ncube et al., 2016a). South African supermarket groups have also tended to apply practices in other countries relating to exclusive lease agreements in shopping malls and certain trading policies that adversely affect their interaction with local suppliers (das Nair & Chisoro, 2015). This is not only interesting from the perspective of understanding the nature of competition in different countries, but is especially relevant in terms of considering the industrial development of countries across the region. Certain practices employed by multinational firms undermine the prospect for domestic rivals and suppliers to develop and to compete against the large established enterprises (das Nair & Chisoro, 2015). The competitive conduct of large, mostly South African, firms in the region is thus of direct relevance to regional growth in several ways.

Different countries, including South Africa, have focused economic policy towards diversifying production activities from mining-related exports and developing local production capacity for consumer goods. For example, Zambia has focused on growing its non-copper merchandise exports into the region including electrical equipment and machinery, sulfur, animal feed and residues from the food industry since the early 2000s (World Bank, 2014). The country is also focused on growth in food products such as sugar exports (World Bank, 2014). However, the existence of a monopoly producer of household and industrial sugar upstream has raised concerns regarding the high price of sugar as an input to downstream sugar confectionery, beverages, and related products. As such, the development of the downstream industries is constrained despite the fact that Zambia is considered an internationally competitive, low-cost producer of sugar with a level of output that far exceeds domestic demand (Fessehaie et al., 2015; Chisanga and Sitko, 2017). At the heart of this issue is the levels of competition, or lack thereof, in sugar production which has been considered by the competition authorities. Importantly, this example further demonstrates the important link between competition policy and industrial development. Similar findings have been raised around the plastics and chemicals sector in South Africa, wherein import parity pricing and market conduct by Sasol has potentially undermined downstream development of diversified plastic products manufacturing (das Nair, Mondliwa and Roberts, 2012; das Nair and Mondliwa, 2017).

The dimensions of competitive interaction between firms obviously differs somewhat across countries, but there are clearly common themes which emerge in different country markets. Furthermore, there are important aspects of competitive conduct by large firms that cut across borders and impact more than one country. There is ample evidence that various cartels involving notionally South African firms have actually stretched across the Southern African Customs Union (SACU) and other SADC countries (Roberts, Simbanegavi and Vilakazi, 2017). The cement cartel uncovered in South Africa affected all of SACU and specific country markets were allocated to different producers. Similarly, collusive arrangements in scrap metal, construction, concrete pipes and culverts, pilings, steel products and industrial gases all affected at least two countries in southern Africa (Roberts, Simbanegavi and Vilakazi, 2017; Kaira, 2015). More broadly, the fact that country markets in southern Africa are relatively small and the presence of high scale economies in production of certain goods mean that firms organise production and distribution on a regional level. As such, competition enforcement should consider issues at a regional level, as outcomes in one country may in fact be the result of broader anticompetitive arrangements at a regional level. This aspect is not often emphasised in thinking about competition issues in different countries although the countries in this region are relatively closely interlinked.

2.2 Presence of related firms in different country markets

The presence of related firms that are part of multinational groups in different country markets across the region presents obstacles to competition across borders. Other things equal, the presence of ‘independent’ rivals in different countries, particularly where domestic markets are relatively small and geographically interlinked, would be expected to open up opportunities for cross-border rivalry. However, in several industries including sugar, cement and poultry; generally characterised by significant scale economies, firms are both vertically and horizontally present across several southern African countries. This can either be through subsidiary firms in the same industry, or through close partners in different countries supplying similar or competing products or inputs. The value chains of firms therefore stretch across borders. The positive dimensions of this are that production is located across the region and regional value chains can potentially develop further incorporating local suppliers and labour. However, governance of value chains at a regional level also means control of key inputs and facilities, and often the entire regional market and the ability to develop competitive strategies at this level. Entrants therefore find it difficult to compete unless affiliated to a major grouping.

An example of this is Lafarge Cement's presence in several countries in southern and East Africa (Mbongwe et al., 2014). The firm has been investigated for collusive conduct and/or excessive pricing of cement in multiple countries, and has largely 'exported' anticompetitive conduct and practices not only from the South African market where there was a cartel, but from its larger European holding company as well. The ability to control supply of inputs (limestone resources primarily) and supply to different markets means that competition is dampened by the lack of alternative, competing sources of supply, particularly given known difficulties in transporting cement as a finished good. Importantly, dynamism brought about by plurality and diversity in suppliers is reduced. Similarly, large South African producers in poultry and sugar effectively control the regional market, and in both sectors there is a history of close coordination between producers (Chisanga et al., 2016; Bagopi et al., 2016).

2.3 Logistics and distribution

It is now widely acknowledged that road infrastructure on major routes between countries in southern Africa is of adequate quality and is not a primary constraint to reducing cross-border road transport costs (JICA, 2010; Foster & Briceño-Garmendia, 2010). Recent research shows that higher transport costs result from administrative and regulatory constraints to transit between countries, all of which contribute to high trucking costs and lower levels of rivalry across borders. For example, border delays between countries remain a challenge such as between South Africa and Zimbabwe, although there have been improvements on some routes (Paelo & Vilakazi, 2017). An important aspect of this is the extent to which large transport companies are able to extract efficiencies in transport networks across borders although this level of service is typically acquired at high costs to the companies (Paelo & Vilakazi, 2017). This is primarily achieved through large, long-term contracts agreed between the regional supermarket groups, for example, with multinational transport and forwarding companies. Generally, these arrangements exclude smaller transport services providers and rivals. An important question is the extent to which higher levels of efficiency in border administration and regulation can be made accessible to smaller enterprises (importers and exporters) and transport service providers.

The research shows that ensuring competitive outcomes in different sectors is not strictly in the domain of competition authorities, although this is often the perception. The emphasis should instead be placed on regulation *for* competition, and using all available policy tools to enhance rivalry in markets. For example, regulatory changes in road transport in Zambia which began in the early 2000s have led to significant improvements in cross-border road transport competition. Bilateral permit systems with Zimbabwe (and in turn between Zimbabwe and South Africa), and reductions in Zambia's duties for importation of second hand trucks and trucking equipment have meant that there has been entry of new trucking operators. These new operators have emerged from within Zambia and rivals from South Africa and Zimbabwe competing on the North-South corridor (Paelo & Vilakazi, 2017).

However, collusion between multinational transport brokers and agencies could mean that gains are undermined. Collusive arrangements exist between multinational brokers operating in Malawi and Zimbabwe based on publishing guideline rates for industry association members. Although benchmarking rates can help restrain transport tariffs, it can also lead to cartel outcomes whereby rates are set above competitive levels. The impact is therefore complex to understand although importantly this is an area in which authorities have not collaborated previously, even though collusion was uncovered in forwarding and shipping in South Africa in the past.

Transport costs are also significantly affected by imbalances in trade flows between countries. Transporters currently charge around 30% more for outgoing legs from South Africa to SADC countries when there is no guarantee of a return load or backhaul from the destination country (Paelo & Vilakazi, 2017). This speaks to the current constraints that imbalanced industrial development and output between countries has on logistics costs. More diversified production at greater scale in neighbouring countries could lead to a significant reduction in prices charged by truckers to importers and exporters in the region. Similarly, the elimination of border delays, which amount to around $400 per day or $20 per ton per day of delay, could see rates reduced significantly, drastically narrowing the gaps in competitiveness of goods from countries in the region in neighbouring markets (Paelo & Vilakazi, 2017). This may in turn improve the reliance of South Africa, as the largest market in the region, on imports from deep sea sources, particularly for goods such as animal feed and soya which can be produced cost-competitively (bar transport cost differences) in the region. While this is not specifically a competition issue, it highlights a key area for intervention for improving the level of integration in the region, wherein regulatory and administrative changes with the involvement of competition authorities can result in positive, mutually beneficial outcomes for countries beyond narrow static efficiencies. Consideration of these and other non-tariff barriers through harmonized policy measures between countries would be an important step towards enhancing cross-border rivalry between producers in different countries, with the concomitant benefits in terms of productivity, investment and rivalry.

2.4 The interface of competition law enforcement and other policy imperatives

The reality of markets in developing countries is that there are often several conflicting policy priorities that in some cases appear to be at odds with a narrow conception of competition policy. For example, there have been debates in the literature about appropriate competition law frameworks for developing countries in the context of industrial policy, which in some cases entails protection of certain strategic or infant sectors as part of developing them for greater competitiveness in future (Singh, 2006, Fox, 2012). Indeed, the fact that competition law should not be simply transplanted from developed country frameworks for application in developing jurisdictions is now widely accepted in principle, even if not in practice necessarily. Furthermore, investment incentives and exemptions offered to firms to invest and develop their capacity can lead to productivity growth. This is generally emphasised in the examples of late-industrialising countries in Far East Asia, although an important aspect of these successes is high levels of discipline enforced by the state on the activities of firms (Roberts, 2010; Amsden, 1989; Fine & Rustomjee, 1996).

However, conflicts can arise in the interface between policymakers, policies for development, and the goals of opening markets for *optimal* levels of competition. An important example arose in the fertilizer industry in Zambia, wherein the two main importers, Omnia and Nyiombo Investments colluded in supplying fertilizer as part of the government subsidy programme for farmers. The importers allocated geographic territories between them and agreed terms of bidding for tenders (CCPC, 2013). Furthermore, the firms were implicated in corrupt relationships with certain officials involved with the administration of the tenders.[2] In addition, penalties administered by the competition authority were later appealed by the firms, and reduced by around half although the conduct is said to have cost the government approximately $20 million in the period from 2007 to 2011 (CCPC, 2013). Also in Zambia, the government had offered extensive incentives to encourage investment in sugar production in the early-2000s. This led to investments in capacity which was more than double what was required to supply the domestic market, led by Illovo Sugar from South Africa (through its Zambian subsidiary, Zambia Sugar) (Chisanga et al., 2016). However, the firm has subsequently been accused of leveraging these provisions to avoid paying due taxes in Zambia and more recently of excessive pricing of sugar products as the incumbent dominant supplier (Lewis, 2013; Chisanga et al., 2016).

In Malawi, the fertilizer support programme subsidises a very high proportion of the fertilizer price, which effectively creates a price floor for fertilizers (Ncube et al., 2016a). On the other hand in Tanzania, large multinational agri-businesses such as Export Trading Group (ETG), originally a Kenyan company, have benefited from government investment incentives such as those provided by the Tanzania Investment Corporation. This has had positive outcomes in terms of encouraging the growth of ETG as a rival supplier able to challenge incumbent global players such as Yara International and Omnia not only in Tanzania but in Zambia and Kenya as well. (Ncube et al., 2016a).

The competitive outcomes of interventions by governments have thus had mixed results in terms of encouraging investment and/or facilitating rivalry. To the extent that support through various initiatives leads to lower levels of competitive rivalry and contestability of markets, it remains important for competition authorities to intervene. The experiences of Asian countries and various European states in terms of industrial policy and even fostering cooperation between firms to develop their international competitiveness highlights the fact that there are conditions under which competition policy imperatives can support those of industrial policy.

A further observation that can be made is that narrow conceptions of the static gains and constraints to competition, based on notional liberal markets are limiting. From these few examples, it is clear that the political economy dynamics in a country play an important role which can be both positive and restrictive. Institutional frameworks of authorities, and the competition legislation governing them, can, at times, be limiting in terms of framing competition issues narrowly without considering broader public interest concerns. Said differently, the specific provisions in the South African competition legislation which, somewhat uniquely, empowers authorities to pursue broader public interests and transformational objectives within the remit of the law, have been helpful although not necessarily sufficient in allowing the authorities to consider other policy priorities of the country in determining cases.

Markets are imperfect and other national priorities often considered to be ‘problematic’ under orthodox ‘good governance’ frameworks advocated by international financial institutions, are an important part of understanding the nature of competition in developing economies.

[2] See, for example, ‘Government broadens FISP tender process' (18 April 2012), at: http://www.postzambia.com/post-read_article.php?articleId=26958; and ‘Corruption deal backfires’; and http://zambiadailynation.com/2013/12/18/corruption-deal-backfires/; and ‘PAC questions govt over Nyiombo Investments, Omnia’s contracts’ (25 March 2010), at: http://www.postzambia.com/Joomla/post-read_article.php?articleId=7395.

2.5 Competitiveness affects competitive outcomes

Competitive rivalry generally forces firms to increase their competitiveness, through developing their capabilities and productivity to compete. Similarly, low levels of competitiveness can restrict the ability of firms to become effective, as-efficient rivals. For example, in the poultry value chain, it was found that products of soybean producers in Zambia were of a lesser quality when compared to that imported from Argentina (Bagopi et al., 2016). Similarly, firms in the mining and construction value chain in Mozambique and Zambia faced bottlenecks to improving their relative competitiveness vis-à-vis South African counterparts. These constraints relate to firm capabilities, shortage of skills, financial capacity and compliance with international standards (Fessehaie et al., 2015). Smaller original equipment manufacturers (OEMs) from South Africa in the mining value chain also faced challenges in terms of setting up operations in other countries relative to large multinational companies, which undermines their ability to compete effectively in these markets. This points to an important role for policies to develop localised and regional systems of innovation and capacity building, to the extent that these policies will enable greater participation and contestation of markets (typically dominated by large international players) by indigenous and regionally-based firms. Competitive outcomes therefore not only depend on the extent to which strategic barriers to entry are addressed by competition law, but on other policies which enhance the growth of domestic rivals across industries. This observation points to an alignment of the objectives of industrial policy with competition policy.

An additional point to note is that firms, including international competitors, are less likely to invest if they believe they will have to compete with well-established incumbents, particularly where sunk costs are high. This is especially true in markets where incumbent firms exist in collusive relationships and/or control a large share of the market. In such conditions, there is an important role for competition law enforcement in reducing strategic barriers to entry, given that this may in turn realise greater entry, participation and dynamic rivalry. The question here is which comes first, the opening up of markets through competition policy tools, or the upscaling of rivals through industrial policy to compete in concentrated markets. It can be argued that these policy frameworks (and regulation) should and can work simultaneously and hand-in-hand. A useful example here is the Kenyan sugar industry, wherein licensing regulation and the state actively encouraging investments in meeting a national deficit in supply enabled several firms to enter the sector (Chisanga et al., 2016). However, the challenge in this particular case was that this policy approach was not complemented sufficiently by agricultural and investment support to encourage new producers and farmers of sugarcane to develop their capabilities to supply the newly established sugar mills at the requisite levels of cane quality. Therefore, while policy makers set out to encourage competition and higher productivity, a lack of concurrent policy measures to strengthen the ‘quality’ of competition and not just the ‘quantity’ of competition meant the policy objectives were largely not achieved. This points to an important emphasis in the literature on *optimal* rather than *maximum* competition as being desirable for growth in productivity (Singh, 2002). It also supports the view that industrial policy and competition interventions should take a value chain approach to funding and facilitating entry.

2.6 The benefits of rivalry

Cross-country studies have increasingly demonstrated the benefits of dynamic rivalry particularly in important consumer goods and manufacturing input sectors. As noted, increased rivalry between Zimbabwean, Zambian and South African transporters, enabled by pro-competitive regulatory changes, has led to a reduction of transport rates on the major North-South corridor and relative to other routes. Rates over time have come down by around 30% on this route in recent years largely due to increased rivalry between transporters from the different countries, and greater volumes for transporters (Paelo & Vilakazi, 2016). In contrast, transport rates from ports in Mozambique to Malawi, Zambia and Zimbabwe tend to be higher due to low levels of rivalry, concentration, restrictive regulation, informal restrictions such as unofficial road blocks that obstruct foreign transporters in Mozambique, and control of access to loads by politically-connected transporters and administrators at the ports (Paelo & Vilakazi, 2017).

In the South African poultry sector, the exit of Country Bird from restrictions under the previous cartel arrangement and its introduction of a new breed in 2007, contributed to a notable decline and sustained volatility in margins of other large producers from 2007 (Bagopi et al., 2016). In fertilizer trading, the growth of ETG which applied a different business model to international rivals has meant a reduction in fertilizer prices across a number of countries in recent years (Ncube et al., 2016a). The company internalised transportation functions and entered into partnerships with farmers to supply fertilizer at lower cost in exchange for favourable terms for buying and selling output produced by the farmers internationally.

There is therefore an important benefit which accrues, beyond static pricing outcomes, from promoting a diversity of businesses models and plurality of rivals with different competitive strategies.

2.7 Barriers to entry and competition concerns at multiple levels of the value chain

Large multinational firms operating across the region generally enjoy the benefits of being integrated through the value chain and being present in different geographic markets. Achieving efficient transport is an important factor in improving contestability of markets by ‘independent’ rivals across borders. However, it is also important to note the specific challenges that dominance and extensive vertical integration present within a value chain. A critical facet of this is the extent to which barriers to entry are raised for potential rivals, including even established firms, by vertical integration. Notably, vertical integration can be efficiency-enhancing to the extent that it enables firms to rationalise operations and to eliminate double-margins throughout the value chain. However, firms seeking to compete in these (concentrated) markets are generally required to enter at multiple levels of the value chain, and thus at far greater expense. The poultry value chain is an important example of this. Firms may need to enter at breeding, feed production, and broiler production in order to be effective rivals (Bagopi et al., 2016; Ncube et al., 2016b). This is a structural feature of certain markets particularly in agro-processing which cannot easily be addressed. However, research points to the fact that support for entry at multiple levels and sustained support over time rather than short term financial contributions can change this dynamic. Firms such as Country Bird, originally based in Zimbabwe, that have been able to enter and competitive effectively in South Africa have been able to do this largely because the firm was already integrated into multiple levels of the value chain (Ncube et al., 2016b).

These barriers are considered against other factors, some of which are specific to poultry and others more generally applicable, which make entry especially challenging and entrench the market power of existing players. Other barriers include high capital investment costs, poor connectedness of new firms throughout the value chain for key inputs and distribution, and lack of access to *effective* routes to market (Ncube et al., 2016b). Changing these dynamics across countries requires coordinated policies that are sector-specific, in conjunction with competition law enforcement, to reduce strategic and structural barriers. For example, almost all value chain studies across sectors point to the fact that financing for large investments is not readily available even through development finance institutions, particularly financing of a sufficient long-term and risk-taking nature to support meaningful long-term investments.

A further challenge of competing against vertically-integrated incumbents is that they can control access to the main distributors in the value chain. In sugar, Tanzanian producers have close relationships with downstream distributors and this level of the market was also highly concentrated (Chisanga et al., 2016). Millers leveraged high geographic dispersion and access to subsidiaries and/or exclusive contracts with the main distributors to foreclose rivals in the market which was an important contributor to relatively high prices of sugar. Similarly in transportation in Zambia, high bargaining power of major mining companies and their contracted (multinational) logistics agents, has meant that smaller transporters are not able to compete for large volume contracts or are marginalised as subcontracted providers (Paelo & Vilakazi, 2017). The reinforcing effect of this dynamic is that smaller transport companies struggle to grow their businesses and will generally go out of business within five years, although this is also a function of their low investment in maintenance and value-added technology and services required by large clients.

Understanding *who* governs the value chain, and the terms of access to it, is therefore just as important as understanding constraints to greater efficiency such as poor border controls. This is especially true of cases where politicians and politically-connected individuals are also involved as service providers and competitors in markets, as is the case in Malawi's domestic transport industry.

3 Review of cases

Given the range of related competition issues arising in different value chains, it is important to assess the actual record (and limitations) in terms of competition enforcement to address these. As noted above, some of these challenges require links between competition policy with other regulatory frameworks and industrial policies of countries.

3.1 Analysis of enforcement cases

Given the establishment of competition authorities in different SADC countries, this section provides an analysis of all restrictive business practice (RBP) enforcement cases which the authorities initiated and/or completed over the three-year period from 2014 to 2016. The dataset was compiled from publicly available sources. The different competition authorities reviewed their respective case lists and confirmed that the database included all relevant cases from their respective jurisdictions during this period.[3]

A total of 295 enforcement cases were identified over the 3-year period (Table 2). The RBP case load is split evenly between abuse of dominance (104 cases) and cartel cases (105 cases), although authorities have achieved more success in the prosecution of cartel cases than abuse cases during this period. Notably the data includes cases which were initiated against firms (either by third party complainants or the competition authorities) although not all cases were successfully prosecuted or led to a finding against companies, and many (in

[3] Data for Swaziland was not confirmed by the authority although publically available information is used nonetheless. The South African authority only confirmed merger cases.

the case of cartels) were also concluded through settlement agreements with the respondents. Importantly, while the number of cases may appear high, the international literature on cartels in particular suggests that in all jurisdictions, including the US and EU, the probability of detection is low, penalties are not sufficiently deterrent, and only the tip of the iceberg of potential violations has been uncovered (See, for example, Ormosi, 2011; and OECD, 2002).

Table 2: Enforcement cases in SADC, 2014 – 2016[4]

Contravention	**Botswana**	**Malawi**	**Mauritius**	**Namibia**	**SA**	**Swaziland**	**Tanzania**	**Zambia**	**Zimbabwe**	**Total**
Abuse of dominance	20	9	22	4	33	2	7	2	5	104
Cartel	15	3	6	3	69		6	3		105
Exemption	3	4			6					13
Failure to meet merger conditions							1	1		2
No information		1			36					37
Not a competition issue		1	1							2
Prior implementation			4		7	1	16		1	29
RPM					3					3
Total	**38**	**18**	**33**	**7**	**154**	**3**	**30**	**6**	**6**	**295**

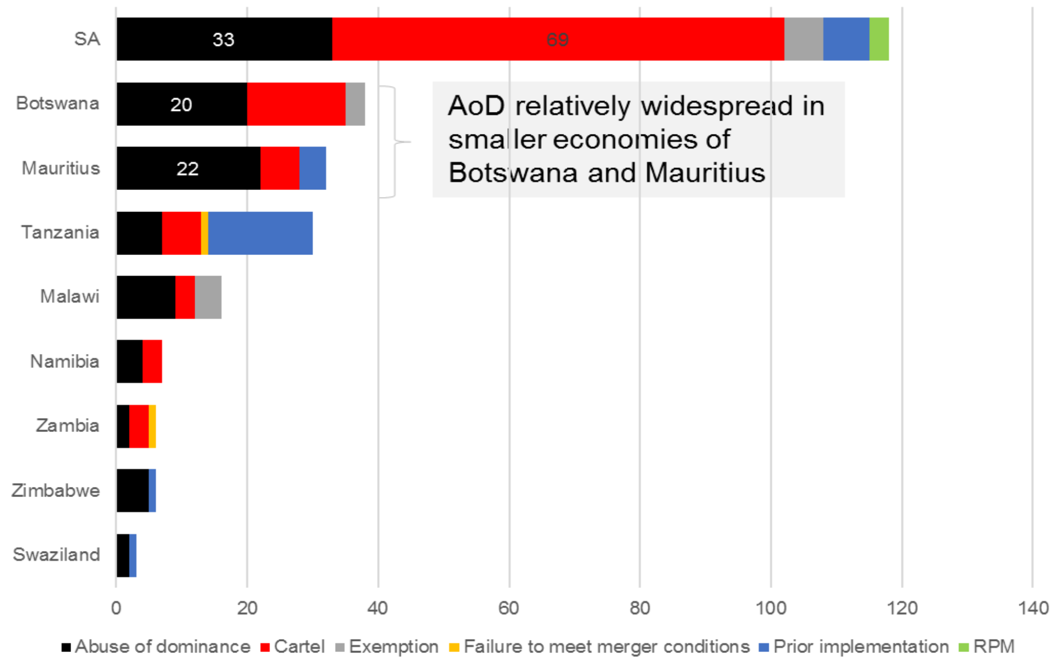
Source: Competition authority data

The record of enforcement activity largely tells a story of South African success, with South Africa accounting for 154 (52.2%) of all enforcement cases over the period. South Africa is followed by Botswana with 38 cases, Mauritius with 33, Tanzania with 30, Malawi with 18 and Namibia, Zambia, Zimbabwe, Swaziland and Tanzania with fewer than 10 cases each.

An evaluation of the case load by type of conduct, however, reveals an interesting trend. Although South Africa accounts for most of the collusion cases (65.7% of all collusion cases), abuse of dominance is more evenly spread between SA (31.7% of abuse cases), Botswana (19.2%) and Mauritius for (21.2%) (Figure 1). The comparatively large number of abuse cases in Botswana and Mauritius relative to South Africa and relative to recorded cartel cases in each country, supports the proposition that concentration and anticompetitive conduct by dominant firms may be more pronounced in smaller economies. The trend could, however, also be explained by a difference in law that sets a lower threshold for dominance in some countries.

[4] 'No information' refers to instances where there is no information available publically to confirm the type of infringement; and 'not a competition issue' refers to instances where the case was actually evaluated by the authority but the authority found it to be outside its jurisdiction.

Figure 1: Composition of case load per country, 2014-2016



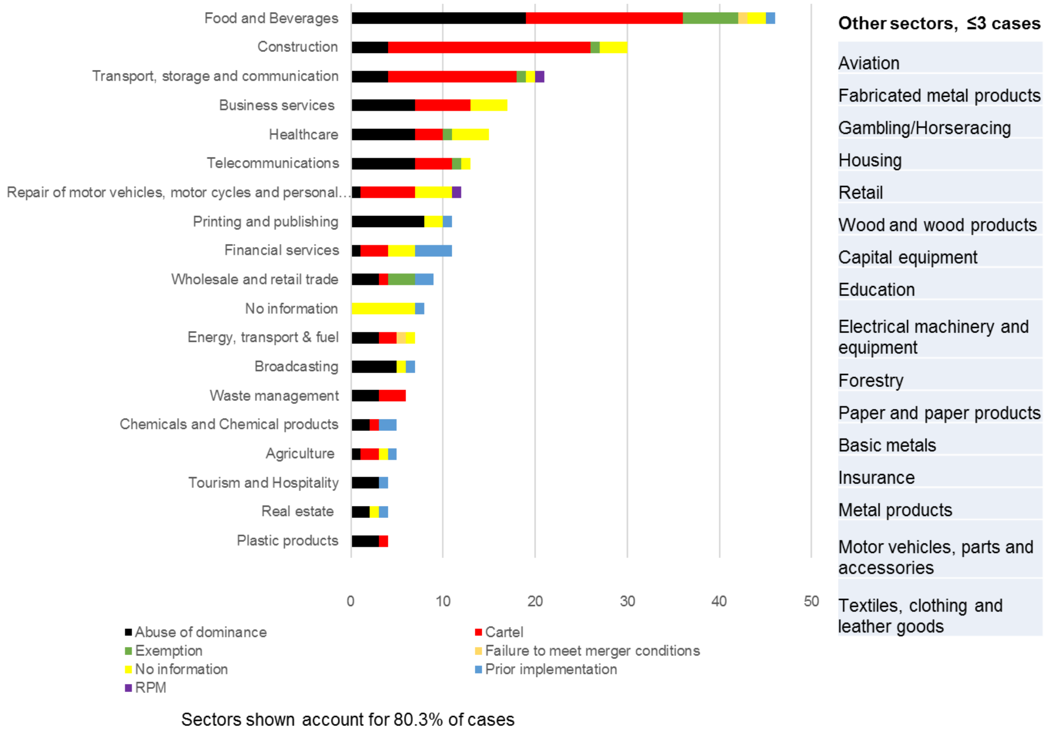
1 Note that there are 36 cases with 'no information' in SA which, if included, could change this picture
2 Cases that do not fall under the ambit of the respective competition act (2 in total) have been excluded

Source: Competition authority data

A breakdown of enforcement cases by sector (Figure 2) shows a large number of enforcement cases in basic goods or services such as food and beverages (the sector with the highest number of cases), healthcare and financial services.[5] In the context of the earlier discussion, it is notable that cases occur largely in different levels of food value chains. This is an issue given consumption growth in the region for processed foods, and concerns around agricultural sustainability and food security. Furthermore, sectors that provide the backbone for economic growth and integration, such as construction, transport, business services, and telecommunications are also characterised by a relatively large number of competition concerns. Wholesale and retail trade, which is a critical route to market for consumer goods, is also amongst the top 10 sectors by number of cases.

[5] Note that the relevant sectors could not be determined for 58 cases. These were excluded from the analysis in Figure 2 and Figure 3.

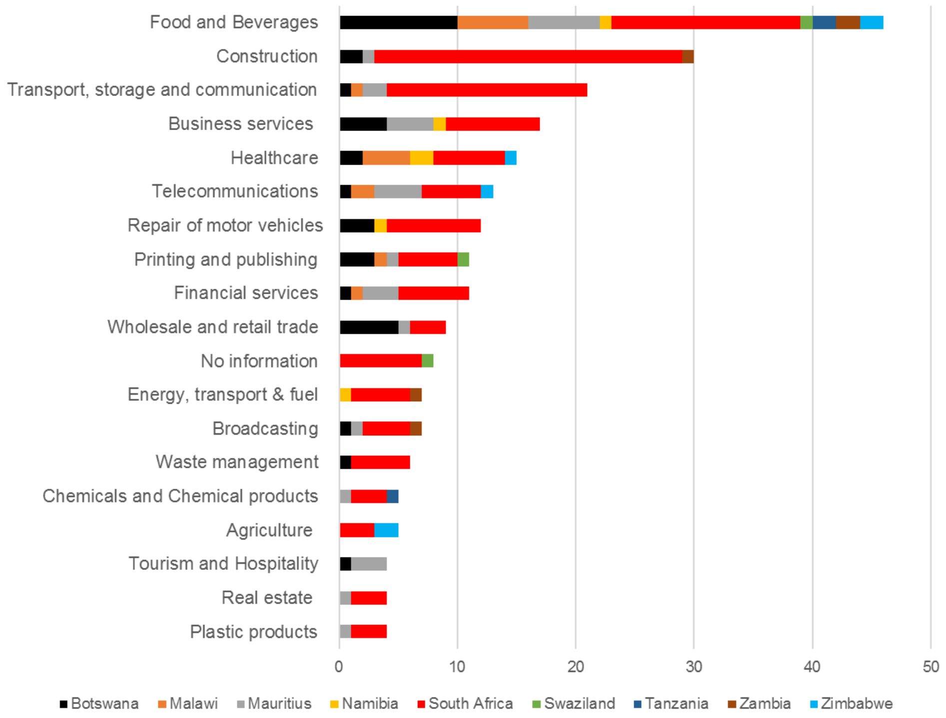
Figure 2: Breakdown of enforcement cases by sector



Source: Competition authority data

It is important to note that because the number of cases is heavily influenced by South Africa (see Figure 3 for a breakdown of each country's contribution to cases in each sector), the sector breakdown is necessarily also influenced by the strategic decision of the South African Commission to prioritise certain sectors. In the 2015/16 financial year, the Competition Commission of South Africa prioritised telecommunications, waste management, broadcasting, transport, healthcare, grocery retail, and food (particularly fresh produce). Figure 3 clearly shows that South Africa accounts for most of the cases in construction and transport, for example. Interestingly, it is only in food and beverages that all countries have recorded enforcement cases, indicating that industrial and competition policy should continue to focus on facilitating entry and lowering barriers to entry in the agro-processing sector. To the extent that cases (particularly cartel infringements) involve South African firms, there may be a role for greater cross-border cooperation between authorities, and follow-on investigations by competition agencies in neighbouring countries once cases have been uncovered in South Africa. As discussed, high concentration and tight governance of value chains in the regional food value chains in particular means that efforts to integrate and increase productivity in this sector in different countries may be significantly undermined.

Figure 3: Country contribution to enforcement cases by sector



Source: Competition authority data

3.2 Analysis of merger cases

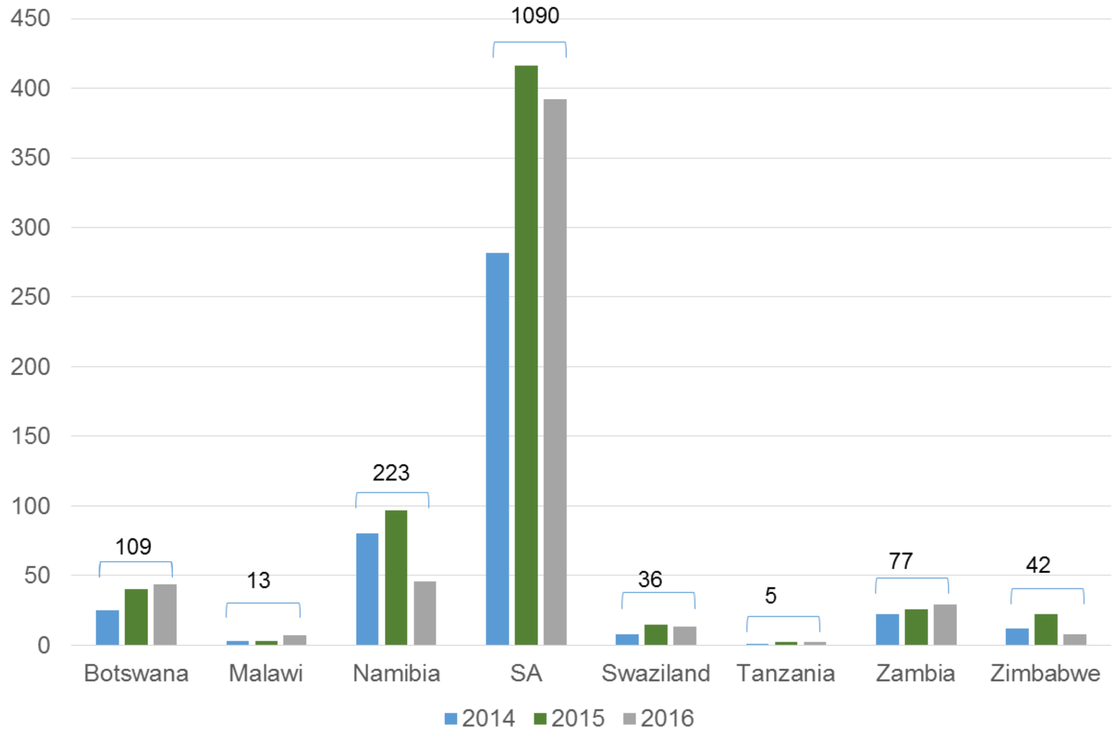
Over the period 2014-2016[6], a total of 1595 merger cases were identified across the 8 jurisdictions in southern Africa evaluated in this study (Figure 4). The merger cases thus amount to more than five times the number of RBP enforcement cases over the period considered. In explaining this large difference in case load, we note that the compulsory notification of mergers in most regimes imposes an obligation on firms to notify merger activity and ensures that cases are brought to authorities proactively.[7]

Similar to the analysis of enforcement cases, finalised merger cases are heavily weighted towards South Africa (Figure 4), which accounted for 1090 (68.3%) of all merger cases over the three years. Though there are some concerns about the completeness of the data reported for other jurisdictions (see footnote 4), the large number of cases in South Africa is consistent with it being the largest economy in the region. Further analysis in section 4 will consider whether there are legislative differences, such as lower notification thresholds for example, that could also explain the differing case load or whether the capacity of competition institutions may affect institutions' ability to assess and finalise mergers.

[6] Information on mergers in Mauritius could not be verified and is excluded from this analysis. Data for mergers in Tanzania and Malawi was collected from publically available information and is much lower than expected.

[7] This obligation to notify mergers, combined with the fact that firms have an interest in ensuring the approval of a merger, means that merger assessment is frequently a 'learning ground' for young authorities to develop their understanding of markets and competition assessment.

Figure 4: Finalised Merger Cases, 2014 – 2016

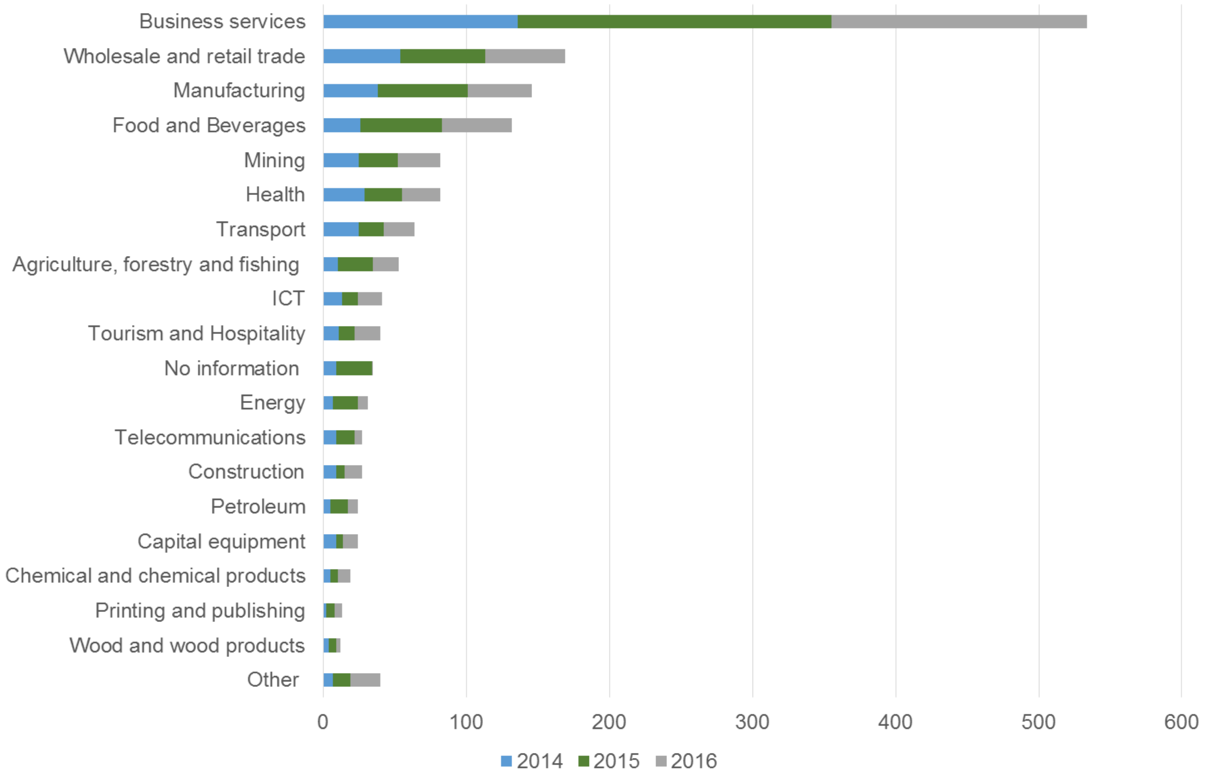


Source: Competition authority data

The aggregate merger activity is broken down by sector to identify whether there are some parts of the economy where merger activity (and associated concentration of industries) is more prevalent (Figure 5).[8] The largest category; *business services, financial intermediation, insurance and real estate*, accounts for approximately 33.4% of mergers over the period. Most of the mergers in this sector are property mergers and many of the acquiring firms in the property mergers are institutional investors such as banks and pension funds. Consolidation in ownership of commercial property (including, in some of the cases reported here, shopping malls, offices and commercial farming land) requires more careful analysis as the decisions of property owners often directly affect routes to market for consumer goods, through shopping malls.

[8] The sector classification is derived from descriptions provided by authorities where available and supplemented with internet searches on the activities of the merging parties.

Figure 5: Finalised mergers by sector, 2014 – 2016



Source: Competition authority data

The second largest category in terms of the absolute number of mergers is *wholesale and retail trade,* followed by *manufacturing*. There were a total of 169 mergers in wholesale and retail trade over the period. Thirty one (31) of these were mergers related to vehicle dealerships. Due to multinational nature of retail firms, a particular retail merger is often notified in a number of jurisdictions in southern Africa. The Edcon takeover by newly formed entity ParentCo in 2016, for example, was notified in Botswana, Namibia, Swaziland, South Africa and Zambia.[9] Similarly Steinhoff's acquisition of Pepkor was notified in South Africa, Namibia and Botswana and its acquisition of Tekkie Town was notified in both South Africa and Namibia. As some of the countries are members of COMESA, a large number of the mergers with cross-border dimensions would be notified to, and considered by, the COMESA Competition Commission (CCC). These cases are considered below.

There are also quite a large number of supermarket mergers in the period, with at least 17 identified across all jurisdictions in the 3 year period. Seven of these mergers involved the Spar Group, potentially signifying a move from standalone/privately branded retailers to a more corporate format. Both of the retail mergers in Namibia were acquisitions by Sefalana Cash & Carry and the data also shows the continued expansion of Choppies, the Botswana-based retailer into South Africa, Tanzania and Zambia. The merger data thus confirms the increasing importance of formal, corporatized supermarkets as a route to market across the region. The merger activity in retail, and particularly by large conglomerates like Steinhoff and global private equity firms like The Actis Group, may also indicate a positive bet on economic growth and consumer spending in southern Africa.

[9] We note that although Edcon has operations in Zimbabwe, there is no record of a merger in this jurisdiction. A follow up request for clarity has been submitted to the CTC.

The mergers in the manufacturing sector cover a broad range of subsectors, including packaging material (17 of 146 manufacturing mergers), chemical products (13 of 146 manufacturing mergers), and automotive components (8 of 146 manufacturing mergers). An area for further research is the seemingly large number of mergers in the packaging sector and its effect on the bargaining power of small and new entrants in the fast-moving consumer goods sector (including processed food and cosmetics).

Mergers in the agricultural sector also show interesting trends worth noting for further evaluation. For example, there are six seed mergers out of a total of 53 mergers in the agricultural sector over the period. Surprisingly, 5 of these mergers took place in one jurisdiction: Zimbabwe (4 in 2015 and 1 in 2014). Further analysis may be required to evaluate the impact of increased concentration in the seed market in Zimbabwe, noting also that a large seed merger between Pioneer and Pannar was approved in South Africa in 2013 (leaving only two major participants), and that various large international mergers between chemical and seed companies (including that of Bayer and Monsanto which was recently approved in South Africa) are currently being considered.

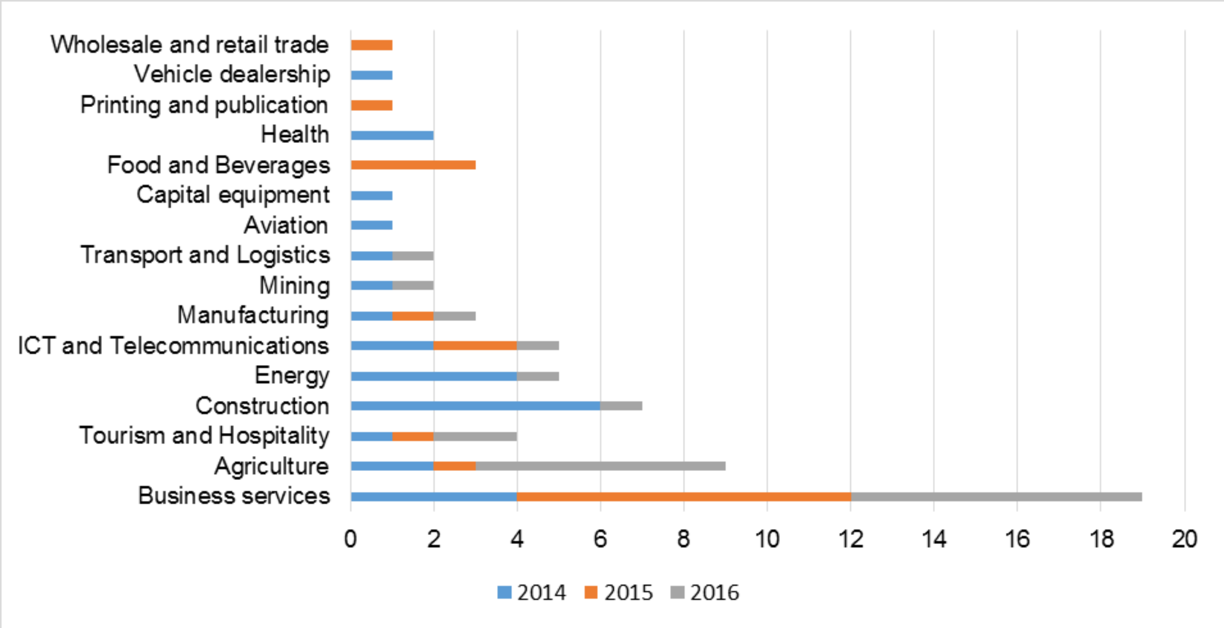
3.3 COMESA Competition Commission merger activity

Malawi, Mauritius, Swaziland, Zambia and Zimbabwe are members of COMESA. It is therefore important to consider developments with competition enforcement at the CCC. The CCC became operational in 2013 and it has jurisdiction to investigate competition concerns that affect two or more of its member states. In the case of mergers, that arrangement means any mergers and acquisitions that affect two or more COMESA member states are notified to the regional authority. Mergers of this nature are therefore not reflected in national competition authorities' database of cases. Although South Africa is not a member of COMESA, South African firms are affected by the COMESA regulations to the extent that there are large acquisitions by South African firms of firms in the region, with cross-border dimensions.

From 2014 up to 2016, CCC finalized a total of 66[10] mergers and acquisition cases. Figure 6 below shows the merger activity by sector. The main sector in terms of merger activity during the period was in the *business services, financial intermediation, insurance and real estate* sector. There is therefore significant overlap in terms of the sectors assessed by individual competition authorities in domestic cases, and those assessed by CCC. This sector accounts for 28.8% of the total cases finalised by the Commission in the review period. Further disaggregation of the cases assessed in this sector shows that the majority of the mergers are in the insurance and banking subsectors, suggesting that there is significant consolidation and concentration taking place in financial services in the region. It is also worth noting that a number of cases in fact involve South African companies acquiring firms in the region, including through subsidiaries listed in Mauritius in particular. While this trend is positive from the perspective of integrating regional financial services markets and building a broader asset base for lending to enterprises in particular, it may be problematic to the extent that consolidation means a reduction in the alternatives available to consumers in different countries.

[10] The number is for cases that have been finalized with a decision having been made from January 2014 up to December 2016. This excludes cases still under assessment and comfort letters granted during this period.

Figure 6: COMESA finalised Merger cases 2014-2016



Source: CCC data

The second largest number of cases was in the *agriculture* sector with a total of 9 cases having been finalized. The cases in this category involved consolidation in agro inputs mainly fertilizers and agro chemicals. Consolidation in this sector was mainly as a result of international players merging operations. For instance E.I. du Pont de Nemours acquired Dow Chemical and China National Agrochemical Corporation acquired Syngenta AG in the period under review. Yara International (Nederlands) also acquired Greenbelt Fertilizers which was a regionally based firm that had grown in Zambia and Mozambique, in particular, to challenge incumbent multinational suppliers of fertilizer and other inputs. International fertilizer markets as well as those in the region have a history of collusion and are characterised by high levels of concentration as discussed earlier, and as such further consolidation may lead to continued competition concerns.

The third largest category was the *construction* sector. A total of 7 mergers where finalized in this sector mainly involving inputs such as cement and other construction related equipment. Other sectors with significant merger activity in the COMESA region are the energy, ICT and telecommunications sectors with 5 finalized transactions in each over the review period.

Almost all cases handled by the CCC have been approved. In the period assessed here, the CCC conditionally approved two merger cases that were referred to Mauritius and Zimbabwe for consideration. The Mauritius case pertained to the acquisition of Lafarge by Holcim in the cement sector; while the case referred to Zimbabwe involved firms operating in the insurance sector in terms of the acquisition of Masawara Investments by Sanlam Emerging (Pty) Limited.

The lack of prohibited cases may be reflective of various important factors. A number of transactions have involved acquisition of relatively smaller regional companies by larger multinational groups. This is problematic from the perspective of industrial development where those smaller rivals may have grown to become effective rivals at a regional level. This was the case with the acquisition of Greenbelt in fertilizer. Greenbelt had made significant investments, including in port facilities at Beira port in Mozambique, to grow its capacity to supply into regional markets. The company was especially strong in Zambia, where Yara was not, and the stated rationale for the merger was to expand Yara's footprint in this region. Similarly, a number of transactions in financial services have involved the acquisition of smaller domestic banks by larger groups.

In some of the cases, where the acquisitions involve firms where there is not obvious competitive overlap in a particular country, it is expected that individual authorities and the CCC are likely to approve the transaction. However, the current framework for assessment may miss an important point around 'potential competitors' where a firm is acquired that may have been able to challenge incumbent operators in another country in future. This is especially true if there are high transport costs and non-tariff constraints for trade in that particular product between countries, or if the acquired firm could have expanded to establish operations in another country. In these key economic sectors as noted above, a continued trend of consolidation particularly through the acquisition of potential challenger firms may mean markets which are even more concentrated in future, with few strong regional rivals emerging. This presents an important challenge for regional industrial development strategies.

4 Review of legislation and enforcement outcomes

The design of legislation can affect the number and type of cases that are taken on by authorities, along with patterns of growth in the economy. In some cases the specific wording and structure of the legislation can constrain the ability to take on and successfully prosecute certain abuse of dominance cases, for example. This has been a challenge in South Africa such that although there are a relatively large number of abuse of dominance cases, the authority has historically not been successful in enforcing a finding against firms in the majority of these cases. This section does not aim to provide a detailed review of all aspects of legislation, but rather highlights key issues in the merger and restrictive business practices legislation as they relate to industrial development, as well aspects which vary or are common between countries.

4.1 Key issues in merger control legislation

Most countries define a merger notification threshold based on the combined assets or turnover of the companies although there are exceptions. Malawi and Swaziland are the only countries that do not have a monetary merger notification threshold thus requiring that all mergers be notified to the authority. Malawi relies on detecting mergers that take place through intelligence gathered and monitoring of the market. This can sometimes lead to problems where parties approached to notify a merger may contest the role of the authority to intervene or the need to notify.[11] Mauritius does not have a monetary threshold but uses a market share threshold which is potentially challenging to enforce as firms can make arguments regarding the definition of economic markets.

Importantly, in small economies where the markets are even more likely to be highly concentrated, there may be a strong rationale for requiring that all mergers be brought forward for assessment. A challenge in this regard is that the number of non-problematic cases brought to the authorities may be high as a result. However, this is mitigated by the fact that the economies of most of these countries are relatively small which reduces the number of cases. The case tables above demonstrate a low number of mergers in these countries. In Mauritius, the application of a different approach in terms of merger thresholds, and the receipt of a limited number of merger notifications, also appears to align with the authority's approach

[11] Interview with Competition and Fair Trade Commission of Malawi.

and priorities. Specifically, it does not necessarily want to have its investigation team, which is relatively small albeit experience, unduly burdened with processing multiple, non-problematic merger transactions whereas the focus should be on the high number of RBP cases, as confirmed in the data reviewed above.[12] Although there is not a formal prioritisation framework as yet, the authority's focus is increasingly on RBP cases in banking, insurance, distribution and telecommunications which are believed to have high economic impact.

Businesses sometimes argue that the time taken to assess mergers is long despite legal limits in all the countries in terms of the maximum time that can be taken for different types of cases. Firms and their legal representatives place significant pressure on the authorities to complete merger investigations expeditiously, although this is not always possible. Although most authorities have the option to extend for a certain period depending on the complexity of the transaction, some delays in the process can arise due to internal issues – for example, where there are delays in convening a meeting of the board to decide on a case as stated in some interviews, or for convening stakeholder conferences regarding a merger, as is the practice in Namibia (which has the high review period limit of 150 days as a result). Delays can also result from parties and market participants delaying in providing information to inform the investigation, for example.

The issue here from the perspective of the economy as a whole is that procedural challenges may mean that mergers that are otherwise efficiency-enhancing may be delayed or that firms and legal representatives may develop an aversion to entering into transactions involving particular jurisdictions due to the costs and time taken for different approval processes, although the latter is less likely. Indications from interviews conducted are that authorities are regularly adapting their approach to merger evaluation to improve the efficiency in the process and as the need arises internally. The South African authority reviewed its service standards in 2015 due to growing volumes in the number of notifiable mergers and the increasing complexity of investigations, thus basically allowing more time for large mergers whilst maintaining a fast-tracking system (phase categorisation) for non-problematic cases. Similarly, Zambia issued merger guidelines which clarify a two phase process of assessing merger applications starting with phase one which is conducted by the Commission's management in the first 35 calendar days after notification and through which non-problematic cases are fast-tracked for approval by the Commission's full board. The second phase is for mergers that raise competition concerns and require more time for investigation. In Botswana the Competition Authority introduced a 'fast-track system' in 2014, in which they conduct a preliminary assessment of merger applications to determine whether they raise competition concerns. Applications that do not raise clear competition concerns (for example, where horizontal mergers do not result in a combined market share exceeding 10%) are fast-tracked and completed within 14 days. Fast-tracking of merger decisions in this way is done in almost all of the authorities to free up resources for the assessment of more complex merger applications.

Almost all authorities consider in some form various public interest factors in assessing mergers, although these factors may not be explicitly stated in a separate public interest clause. In most cases, authorities are required to bear in mind (along with competition tests) whether a merger is likely to have an effect on employment (losses). In Zimbabwe the competition act takes a broader view of public interest, as it recognises that any prohibited

[12] Interview with Competition Commission of Mauritius.

conduct that is to the detriment of free competition is regarded as being contrary to public interest.

The considerations under public interest clauses are relevant in that they enable authorities to assess transactions in the context of broader socio-economic issues in the country. In most cases, these aspects relate to the protection of an infant industry or small producers in a sector, protection against employment losses and, in South Africa, the protection of the interests of businesses of previously disadvantaged groups. While specificity in public interest clauses as in South Africa is important to make the investigation process more transparent, it presents its own difficulties in terms of interpretation and enforcement. Only few countries have in fact approved otherwise problematic mergers on the basis of public interest grounds, such as Malawi where public interest factors such as sustaining exports or employment are considered as mitigating factors in the evaluation of a case.

4.2 Key issues in restrictive business practice legislation

The framing of abuse of dominance clauses in particular has important implications. For example, in South Africa where there is a requirement to show a substantial effect of certain conduct by dominant firms, the authority has found it difficult to demonstrate these effects and thus successfully prosecute these cases. Alternative approaches emphasise harm to the competition process or form-based identification and prosecution of conduct whereby the evidence of the very existence of a type of conduct is important. Importantly, in developing countries where industries are highly concentrated or controlled by dominant companies and have been so for some time, it is less likely that an authority can demonstrate economic effects of the conduct easily. For example, where there is long-standing dominance it may be that prices are already at or near monopoly levels such that there would be no evidence of price increases or changes to assess the effects. Furthermore, the existence of a dominant undertaking in an industry for a significant period of time also means entry is less likely, even though prices are set above competitive levels, because of other entry deterring strategies employed by the incumbent firm including investments in excess capacity, or developing a reputation for aggressive actions to undermine rivals. This is an ‘effect’ of the dominance although it cannot necessarily be demonstrated (as in some cases entry was never attempted in the first place).

These challenges are compounded where authorities have to prove that a firm has market power in the first instance which involves assessing market shares and other aspects of the market similar to those considered in mergers such as whether barriers to entry are high. Botswana, Namibia, Tanzania, South Africa and Zambia all use market shares to define a dominant position. For instance in South Africa and Namibia a firm is dominant if it has a market share above 45%. However, both of these countries also have an intermediary threshold of between 35% and 45% market share, wherein the firm has to demonstrate that it does not have market power, and below 35% where it can be shown that the firm has market power. In Zambia there is a single threshold percentage which is relatively less difficult to implement or prove.

Malawi, Swaziland and Zimbabwe do not have specific thresholds for a dominant position in the legislation. The implication of not having a market threshold can be assessed in the case of Swaziland and Zimbabwe where it is possible that a firm with a low market share of, say, 10% can be prosecuted if the competition authorities can prove that it has market power. In Zimbabwe this relates to the ability of an enterprise to profitably raise (or lower) or maintain prices above a competitive level for a product or service for a sustained period of time. This increases the burden of proof for the authority to some degree in terms of showing the existence of market power. However, it is effectively not different from the approach in South Africa and Namibia where in any event there would have to be evidence led to demonstrate significant market power if the firm has a low market share. The absence of a clear threshold does mean that this exercise would have to be conducted for *all* cases of potential abuse of dominance even where a firm clearly has very high market shares.

Tanzania is slightly different from the other countries since a firm has to meet two conditions to be considered dominant, that is, it has to have market power and it has to have a market share in excess of 35%. This implies that a firm with market power and a market share of, say, 30% (considered dominant in Zambia) is not considered to be dominant in Tanzania. A firm with a market share of 60% without market power being demonstrated is also not considered dominant in Tanzania although it would be in most other countries. Botswana, Mauritius and Zambia are the only countries that have a definition that includes collective dominance in their acts where three or more firms control sales or market share above a threshold of around 60% or more.

Agencies in many countries in the region use primarily effects-based approaches that focus on the economic impact that conduct has on consumers and competition to determine whether dominant firms are harming competition. It is expected that developing countries would apply form-based tests given a low industrial base, more entrenched quasi monopolies, high barriers to entry, implying that abuse of dominance is more widespread and damaging (Roberts 2012).

While there may be limitations in terms of the framing of legislation in different countries, there are also other issues which may affect the types of cases received and ability to prosecute these successfully. For example, the Malawi authority noted that the majority of abuse of dominance complaints are brought by smaller firms and in most cases the authority has not been able to demonstrate the substantial effect necessary to prove that an infringement has taken place.[13] This was also the case in Botswana where the public perception in early years was that the law was designed to protect small firms, and several small family-owned businesses felt adversely affected by the entry of large South African firms in particular.[14] In some cases, such as retail, large South African supermarket groups had entered the market and displaced local chains which led to a sector study on RBPs in retail. In fact, the majority of RBP cases in Botswana have involved South African firms located in Botswana.

This is an interesting observation as the expectation is that competition law frameworks as part of governance institutions of countries should be able to provide an avenue for small or larger complainants to address concerns relating to abuse of market power. In South Africa for example, where similar concerns have been raised about the challenges of prosecuting abuse of dominance cases, the legislation in its preamble explicitly makes reference to the need to protect the interests of small businesses and previously marginalised groups, in particular. This suggests that the framing of legislation, or its enforcement in different countries may not be responsive to this important objective. Although of course many complaints filed may be frivolous, this also speaks to issues relating to burden of proof and challenges that authorities have identified in terms of requesting and actually receiving information and data from respondents and market participants. The strength of complex abuse of dominance

[13] Interview with Competition and Fair Trade Commission of Malawi.
[14] Interview with Botswana Competition Authority.

cases depends on the level and quality of evidence that is available for assessing the case. For instance, to demonstrate economic effects of conduct, both respondents and the complainant who is allegedly harmed by the conduct should provide verifiable data to strengthen the investigation. In some cases, smaller complainants may not have this information, which means the competition authority needs to exercise its powers and have the capacity to analyse the information it can collect. If the complainant is a small firm, excluding it may not necessarily lead to a 'substantial' anticompetitive effect. In other words, excluding small competitors may not be viewed as competitively significant.

An additional challenge for competition agencies is the possibility that cases can be taken on review or appeal. While this practice is consistent with the legislation and within the rights of the parties to raise concerns, it can influence the ability of authorities to build a reputation for successful enforcement, deterrence, and public awareness of the effectiveness of competition law. However, the extent of the impact on the authority's reputation and deterrence depends on whether the authority has in fact made mistakes in its consideration of a matter, and whether the authority and appellate bodies have correctly applied the legal tests.

In Tanzania, around five cases have been appealed to the Tribunal. This issue has been confounded by delays in finalising the appointment of commissioners in 2014/5 which meant several abuse of dominance cases were not decided on, and a high number of cases are still running.[15] In Zambia, a cartel finding in 2013 was taken on appeal by the two firms involved and the fines levied were substantially reduced.

In Botswana the challenge for the authority has been slightly different. The authority stated that the challenge in terms of inability to complete abuse of dominance cases has not resulted from issues relating to burden of proof, evidence or the framing of legislation. Instead key issues have been the fact that cases have expired given the authority only has twelve months to assess an abuse of dominance case.[16] The authority is currently adapting its approach to consider cases that are not likely to be completed in this period by means of advocacy interventions.

The limited number of abuse of dominance cases handled by Zimbabwe's authority, for which there are no financial penalties, have involved exclusive supply agreements, in particular. Economic challenges in the country have meant a significant degree of imports, and generally there is a very small number of firms that are present as exclusive suppliers of certain goods within the country. The firms involved in the RBP cases have all been domestic firms, and the authority has also dealt with one COMESA matter relating to Parmalat.

Cartels and corporate leniency

The prosecution of cartel cases is important because the arrangements can affect consumer welfare, productivity, entry and innovation in markets. As such, tight control of industries by organised cartelists can potentially undermine efforts through policy to increase participation in a particular industry that is actually cartelised, or mean that downstream industries receive input prices which are above competitive levels due to cartel mark-ups.

Corporate leniency programmes or policies (CLPs) for collusion are being applied by five of the nine countries, namely, Botswana, Mauritius, South Africa, Swaziland and Zambia.

[15] Interview with Fair Competition Commission of Tanzania.
[16] Interview with Botswana Competition Authority.

However, the implementation of the programmes has occurred only recently in Botswana, Mauritius, Swaziland and Zambia. South Africa, which has a relatively established leniency programme introduced in 2004, has had major successes in terms of increases in the initiation and prosecution of cartel cases through firms coming forward to admit to cartel violations in exchange for leniency (Muzata, Roberts and Vilakazi, 2012). Namibia and Tanzania are currently drafting leniency programmes, while Malawi and Zimbabwe are the only countries without leniency programmes. The Zimbabwe authority noted that a key factor that it would consider in introducing a CLP is whether the level of fines for cartels, which are exceptionally low in Zimbabwe, could be increased which would increase the effectiveness of a CLP. This is because firms are more likely to face an incentive to come forward to settle matters if they consider that the probability of getting caught is high, and if fines from not settling cases are perceived to be high.

There are some ‘cultural’ or socio-economic issues that appear to have bearing on the successful implementation of a leniency programme. For example, Mauritius has a CLP in place although the number of firms that have come forward to admit conduct has been limited. One aspect of this is that the size of the business community is ‘small’, with significant personal and informal, and formal contacts between companies. As such, the view of the authority is that companies and individuals are less likely to come forward to reveal conduct which involves peers or closely linked companies. This is despite an amnesty regime being in place which also allows firms to receive amnesty within six months of the start of a cartel, and although the authority has reasons to believe that cartel conduct is extensive in Mauritius for much of the same reasons firms do not come forward. There has however been some progress most recently with two cases in the pipeline linked to the CLP and others recently finalised.

Botswana has a CLP in place but have not had firms come forward to admit conduct as yet. There is a challenge in terms of the public understanding of self-reporting and the process involved. Furthermore, the view of the authority is that firms are reluctant to come forward at the risk of losing business and links in the market.[17] This may be a function of the relatively small size of the economy.

Most jurisdictions (Botswana, Mauritius, Namibia, Tanzania, South Africa, and Zambia) apply a cap on penalties of up to 10% of the turnover of the enterprise. Malawi and Zimbabwe have very low caps on financial penalties of $689 and $5000, respectively. In Malawi, Swaziland and Zimbabwe fines may be accompanied by personal criminal liability up to a maximum of 5 years imprisonment in Malawi, although in practice this has not occurred. Overall however, the international literature suggests that penalties are not nearly high enough across most jurisdictions to effectively deter cartel conduct.

A number of cartel cases prosecuted by the authority in Malawi involve industry associations and industry level agreements on prices, such as in the minibus taxi industry, and most recently issues to do with logistics service providers following a market inquiry in transport conducted by the authority.[18]

[17] Interview with Botswana Competition Authority.
[18] Interview with Competition and Fair Trade Commission of Malawi.

4.3 Cases with international firms and the prominence of South African firms

The majority of authorities interviewed pointed to the fact that a large proportion of merger cases which they deal with have to do with South African companies or acquirers. In Malawi, the predominance of cases involves firms from South Africa, followed by Mauritius-registered companies and those from Kenya.[19] However, the Malawi authority noted that most recently the number of these cases has been limited as cases involving international companies are handled more by the COMESA authority, with the local authority only contributing an assessment of the domestic market impact of the transactions.

Botswana on the other hand is not part of COMESA, however the country has also experienced a high number of mergers involving South African firms. Around 75% of merger cases overall involve foreign firms, including some acquiring firms from Mauritius. Some of the 'Mauritian' entities are in fact South African companies with subsidiaries registered there. The number of cases handled by the authority has been high in recent years, which the authority believes is due to economic downturn in Botswana following a decrease in diamond prices, and economic challenges which have led firms to recapitalise through mergers or exit the market.[20] The majority of cases have been approved, with potential competition issues being addressed by means of remedies in many instances.

In Swaziland, around half of cases involve acquisitions by foreign firms, although many firms present in Swaziland are in any case present in South Africa.[21] Similarly, the Zimbabwe authority has dealt with acquisitions by foreign firms, primarily from South Africa and some from Mauritius, as firms increasingly invest strategically in the country.[22]

Unlike other continental SADC countries, the influence of South African firms is not as significant in Mauritius. There is an increasing trend of cases involving international firms although the country of origin in merger cases is not primarily South Africa, and there is limited involvement of South African firms in RBP cases. As a country which offers significant tax benefits to firms registered in Mauritius, the number of cases with international firms and dimensions has also risen. RBP cases with international dimensions include those recent cases involving Western Union, for example. The authority has also dealt with a significant number of merger cases that were notified to the COMESA authority, the majority of which have not been problematic given that in most cases only one of the parties has a significant presence in Mauritius, which as noted is a relatively small economy. The exception in this regard was the Lafarge/Holcim merger in which parties had a presence in Mauritius with potential anticompetitive outcomes from the merger.

Similarly for Tanzania, while there is still a significant proportion of acquiring firms that originate from South Africa, there is in fact a large portion of mergers that involve firms from Mauritius and neighbouring Kenya. A large number of cases relate to financial services and insurance, which includes acquisitions by large financial services companies registered in Mauritius.

5 Institutional challenges to enforcement

[19] Interview with Competition and Fair Trade Commission of Malawi.
[20] Interview with Botswana Competition Authority and Thula Kaira, former CEO of the Botswana Competition Authority.
[21] Interview with Swaziland Competition Commission.
[22] Interview with Zimbabwe Competition and Tariff Commission.

The institutional capacity of competition jurisdictions is described and analysed in terms of institutional designs, organisational capacity and emerging strategic practices. Many of the insights on the experiences of different competition authorities draw from the detailed interviews conducted with authority representatives.

Kovacic (2013) argues that competition policy cannot be implemented effectively unless it is grounded in effective institutions. The influence of institutional design on effective competition law enforcement is often underestimated (Ottow, 2015). This review takes as a starting point the critical importance of institutional capacity for effective competition law enforcement, as highlighted by international scholars.

5.1 Institutional design

Institutional design encompasses a range of dimensions, including the goals of competition law, enforcement models, powers, structures and instruments (Jenny, 2016). There is significant variation in the institutional designs in the countries under review, notwithstanding a number of dominant features that emerge from the analysis. This section draws attention to the enforcement models adopted, mandates, and leadership structures of the competition authorities in the nine countries.

Table 3: Key dimensions of institutional design

Jurisdictions	Enforcement model	Mandates	Leadership Structure
Botswana	Integrated Agency	Competition	Multimember Board
Malawi	Integrated Agency	Competition & Consumer Protection	Multimember Board
Mauritius	Integrated Agency	Competition	Multimember Board
Namibia	Integrated Agency	Competition	Multimember Board
South Africa	Bifurcated Agency	Competition	Unitary Executive
Swaziland	Integrated Agency	Competition & Consumer Protection	Multimember Board
Tanzania	Bifurcated Agency	Competition & Consumer Protection	Multimember Board
Zambia	Bifurcated Agency	Competition & Consumer Protection	Multimember Board
Zimbabwe	Integrated Agency	Competition & Consumer Protection	Multimember Board

Source: Authors

Enforcement Models[23]

There are two main enforcement models that underpin the design of competition policy implementation in the region, each with its specific strengths and weaknesses. In the Integrated Agency Model the competition authority investigates and adjudicates cases, whereas in the Bifurcated Agency Model the competition authority conducts the investigation and brings it before a specialised competition adjudication institution for adjudication.

It is argued that the main advantage of the Integrated Agency Model is administrative efficiency and the level of competition expertise in decision-making (Jenny, 2016; Trebilcock

[23] The enforcement models reflected in Table 3 show the dominant models exhibited by competition authorities. In some cases, a competition authority may display characteristics of both models. For example, the Competition and Consumer Protection Commission of Zambia has authority to issue directives to an undertaking for the implementation of remedial measures relating to distortion, prevention or restriction of competition to be taken, without reference to the Competition and Consumer Protection Tribunal. Another example is the Competition Commission South Africa, which may approve small and intermediate mergers without confirmation by the Competition Tribunal.

& Iacobucci, 2010). Since Integrated Agencies tend to be headed by multimember boards there is a perception that such agencies have higher levels of accountability and greater consistency and continuity of decision-making (Trebilcock & Iacobucci, 2010). A key weakness of this approach is the lack of separation between investigation and adjudication, which raises concerns about due process.

There are also a few risks associated with this model that relate to the relationship between the board that takes decisions and the investigatory arm that undertakes the investigation. Decision-makers who have not participated in the investigation may not fully know or understand the results and implications of the investigation, compared to investigators who spend considerable time investigating the matter. Furthermore, significant differences between the approach and vision of the board and that of the investigatory arm towards enforcement can limit the nature and quality of feedback from the board to the investigatory arm and this can lead to an ineffective process or use of resources (Jenny, 2016).

The Integrated Agency Model has been adopted by six of the nine countries in this review. A number of concerns, in four themes, have been raised by competition authorities in regard to this model. First, competition authorities interviewed have expressed concerns about the risk to due process inherent in the conflation of the investigative and adjudication functions. To this extent, three jurisdictions are considering changing the Integrated Agency Model. The establishment of a Competition Review Panel is under consideration as part of the review of the Competition Act in Namibia that would have the effect of separating the adjudication from the investigation function. Proposals for the establishment of Competition Tribunals in Botswana and Swaziland have been made as part of the review of their respective competition legislation.

Box 1: Challenging the Integrated Agency Model
In the collusion case by the Botswana Competition Authority brought against Car World Auto Craft Shop (Pty) Ltd and Auto Tronics (Pty) Ltd, the authority was accused of violating the principle of natural justice. The respondents challenged the legality of the Commission presiding over the case on the basis that the same Commission members were the board members of the Authority. The case against the respondents was withdrawn on other procedural grounds (the respondents were not served with notices to inform them that they were being investigated), and the matter was settled out of court.
Botswana Competition Authority. (2015). Annual Report 2014/15.

Secondly, the “Chinese wall’ separating corporate governance and adjudication is too thin – in one instance the Commission oversees corporate governance in regard to priorities, budgets, and capacity issues and in another it has to perform an adjudication role.”[24] The conflation of the governance and adjudication functions in the board of the competition authority has the potential to impact the adjudicative function of the institution. Tensions arising from differences in positions and opinions on the governance of the competition authority risk spilling over into the execution of the adjudicative function, notwithstanding efforts to adhere to the highest standards of professional conduct by board members.

[24] Interview with Thula Kaira, former CEO of the Botswana Competition Authority. The authority’s role also includes acting as the first appellate body.

Thirdly, the Integrated Agency Model works well when the requisite competition expertise is available to exercise the adjudication function. The same could be said of the need for expertise in Birfurcated Models with a Tribunal structure. In jurisdictions with a relatively short history of competition enforcement such expertise is likely to be in short supply. Therefore, appointees to the boards of competition authorities may not always have the specialised skills required for deciding cases involving complex economic analysis and legal argument.

The fourth concern is of a practical nature and results from board members serving in a part-time capacity. Board members tend to serve on a part-time basis, and have to juggle schedules and priorities of full-time professional responsibilities with their part-time obligations as board members of competition authorities. In some instances, jurisdictions have had to resort to the establishment of sub-committees and other alternative arrangements to expedite decision-making (including round-robin decision-making), especially in merger cases in which decisions are time-bound by law.

In jurisdictions such as South Africa, Tanzania and Zambia the Bifurcated Agency Model has been adopted. The main motivation for the adoption of this model, in which the prosecutorial and adjudicative functions are separated, is the perception that impartiality in proceedings is better protected. Furthermore, the separation is better able to avoid the confirmation bias whereby a competition authority which acts as investigator and adjudicator may be tempted to confirm and justify as an adjudicator its decisions to prosecute (Jenny, 2016). In the case of South Africa advantages of this model include respect for due process, and rigour and independence in decision-making. The drawback of employing this model is the time it takes to complete, hear and decide cases and the costs of running two institutions (Jenny, 2016). In this regard, the CCSA has noted with concern the “challenge of cases taking too long to be heard on the merits as more and more parties resort to technical challenges as a delaying tactic or in an endeavour to squash cases” (Competition Commission, 2015: 12).

Mandates

Competition authorities in five out of the nine jurisdictions are obliged to execute multiple mandates. That is, competition authorities in Malawi, Swaziland, Tanzania, Zambia and Zimbabwe have consumer protection as an additional mandate, whereas Botswana, Mauritius, Namibia, and South Africa have a single, competition mandate.

In exploring the key themes relevant to the integration of competition and consumer protection, Fels and Ergan (2014) point to the complementarities of competition enforcement and consumer protection. They argue that competition policy aims to protect and where appropriate, extend the range of choices for consumers, while consumer policy seeks to enhance the quality of that choice through the fairness and integrity of market processes. They highlight several potential benefits that can be realised by integrating competition and consumer policy, including developing and sharing expertise across these two areas and the gains from seeing competition and consumer policy instruments as part of a common portfolio of tools tailored to the specific needs of markets. They caution, however, that consumer policy may find it difficult to attract the necessary attention when integrated into an agency responsible for competition policy.

In resource constrained environments, the pursuit of multiple mandates places an onerous burden on young competition authorities. For instance, it has taken the Swaziland Competition Commission about five years to operationalise its consumer protection mandate with the appointment of staff to take forward this function in 2017. In the case of the Zimbabwe Competition and Tariff Commission, the authority only dealt with 10 consumer protection cases in the first decade of its existence, and despite having the statutory powers to fix prices in the market, has not exercised this authority (UNCTAD, 2012). Zimbabwe is now in the process of establishing a separate Consumer Protection Commission in terms of the draft Consumer Protection Bill, published in 2014.

Leadership Structure

With the exception of South Africa, all jurisdictions have multimember boards responsible for the governance and oversight of the competition authority. Other authorities with a Bifurcated Agency Model, such as Tanzania and Zambia, also have boards.

Multimember boards have members from different backgrounds with diverse expertise, are considered less likely to be captured by specific interests, and are more likely to withstand abrupt policy shifts in the wake of a change in power (Jenny, 2016; Kovacic & Mariniello, 2016). Leaders of competition authorities interviewed acknowledge that diverse expertise is an advantage, but note that competition expertise is even more important given the short supply of such expertise in jurisdictions with relatively new competition regimes. Moreover, the executive directors who communicate the vision and priorities of the board and who, at the same time, have to make sure that the secretariat performs in line with expectations, play a critical coordinating function. They have to be adept at managing downwards by ensuring that the performance of the secretariat meets the expected standards of the board, and managing upwards by translating the resource needs of the secretariat to the board.

5.2 Organisational Capacity

Kovacic and Lopez-Galdos (2016) argue that the first decade of existence for a competition authority should primarily focus on laying the institutional foundations and agency capability, and secondly on the exercise of law enforcement or rulemaking powers. The institutional foundations they refer to include defining goals, selecting a strategy to achieve objectives, selecting projects and testing evidence while investing in knowledge and routine evaluation. Contrary to this approach, we argue that recently established competition authorities need to focus simultaneously on both. Competition law enforcement cannot be regarded as a secondary focus. Indeed, early success in enforcing the law is critically important for establishing the reputations of young institutions and mobilising stakeholder buy-in and support. Policy-makers and implementers and the public in general will be more inclined to consider request for more resources to build institutions if young competition authorities are able to demonstrate early success.

In total, the competition authorities in the nine countries under review had a staff compliment of 472 in 2016 of which nearly a third of the total staff are economists and a fifth are lawyers (Table 4). Competition authorities identify staff capacity limitations both in terms of overall staff and the relevant expertise and experience as a key constraint to their effectiveness. This is consistent with the findings of the recent study on competition policy and enforcement by the World Bank (2016), in collaboration with the African Competition Forum.

Table 4: Staff and revenue, 2016

Jurisdictions	Total Staff	Economists		Lawyers		Revenue (USD million)
		No.	%	No.	%	
Botswana	33	5	15%	4	12%	2.2
Malawi	19	7	37%	2	11%	0.8
Mauritius	20	6	30%	6	30%	1.0
Namibia	35	8	23%	7	20%	2.7
South Africa	197	64	32%	60	30%	21.7
Swaziland	17	4	24%	5	29%	0.7
Tanzania	57	8	14%	7	12%	3.1
Zambia	67	33	49%	4	6%	3.3
Zimbabwe	27	12	44%	3	11%	2.6
	472	**147**	**31%**	**98**	**21%**	**38.1**

Source: Competition Authorities and Annual Reports

In some jurisdictions vacancy rates are very high. The Swaziland Competition Commission currently has a total staff establishment of 39 of which 22 positions are vacant due to a shortage of funding. Other jurisdictions with high vacancy rates are Zambia (67%) and Zimbabwe (48%). It is worth pointing out that all of these jurisdictions also have responsibility for consumer protection. It is unlikely that the relevant expertise will be available to fill such high numbers of vacant positions which points to the need for strategies whereby competition authorities develop and grow their own human resource capabilities.

The other key observation made by competition authorities is the need for developing economic analysis and investigative capacity of staff. Competition authorities expressed the need to expose their staff to learning opportunities to enhance their technical and economic analysis, especially in regard to merger and market analysis. Furthermore, their staff need to strengthen investigative capacity with a specific focus on detecting infringements, managing investigations, and handling evidence. Competition authorities have to train their staff in the economic analysis and investigative competencies required to support effective enforcement. One respondent noted that, '[T]he capacity situation is aggravated by the fact that competition is not considered a substantive subject in the country's universities. Therefore, the officers recruited are hardly equipped analytically to deal with competition law enforcement. The Commission, therefore, depends on on-the-job training."[25]

The total revenue of competition authorities amounted to US$ 38.1 million in 2016 for the nine countries. The Competition Commission of South Africa accounts for 56% of the total revenue. Malawi and Swaziland have revenues of less than US$ 1 million. All other countries have revenue of less than US$ 3.5 million, except South Africa. Deeper analysis of costs and allocation of funds is required to understand how efficiently competition authorities utilize their funds, however there are indications from the interviews that some authorities are severely under-resourced in this regard.

[25] Interview with Competition and Fair Trade Commission of Malawi.

5.3 Strategic organisational practices

Strategy practices in organisations are those coherent clusters of activities that reflect a specific strategic disposition (Rasche & Chia, 2009), and include activities involved in direction setting, resource allocation and monitoring and control (Jarzabkowski, 2003). This section focuses on strategic planning, prioritisation and cross-border collaboration as key strategic organisational practices.

Strategic Planning

Strategic planning in competition authorities has been identified as a critical ingredient for achieving effectiveness. Effectiveness refers to the ability of an authority to achieve its objectives by the appropriate use of its resources, and is influenced by good planning and prioritisation (both strategic and operational); efficiency in use of resources and project management; evaluation of activity in order to assess its impact; and good communication (International Competition Network, 2009). Setting a strategy and developing a plan to implement it must enable an agency's limited resources to be focused on high-impact cases and markets with great significance in terms of direct economic impact on the market in question or by virtue of deterrence value or value in setting precedent or policy (International Competition Network, 2009). Setting strategy has been identified as one of the main characteristics of good competition agencies and, perhaps, the most important responsibility of agency leadership (Kovacic, 2013).

Strategic planning is a widely established practice in the competition authorities under review. All the competition authorities, except Mauritius, have formal strategic plans that set out priorities over a planning horizon of between three to five years and annual plans in which the longer term goals are translated into short-term objectives. The authority in Mauritius plans to adopt a more formal strategic planning process with a longer term planning horizon to deal with the process of transitioning towards greater levels of prioritisation and specialisation.[26]

A noticeable trend in the selection of goals and objectives is that competition authorities tend to become more externally-oriented as their strategies evolve. The first strategic plans tend to be focused on internal priorities such as increasing staff morale, aligning organisational structure and work processes, and developing IT and data management systems. The second generation plans focus on the external environment towards effective enforcement and improving competition outcomes in the economy. Interviews with leaders of competition authorities indicate that acting against collusion in the form of cartels and bid-rigging, strengthening enforcement in RBP cases, especially abuse of dominance, and targeting high-impact sectors are some of the key goals and priorities of competition authorities.

A further observation is that competition authorities tend to link their priorities more explicitly to national goals and outcomes as the strategies mature over time. For example, the Namibian Competition Commission aims to make a contribution to the achievement of competitive markets in line with the country's Vision 2030. The Competition Commission of South Africa seeks to make a contribution to a growing and inclusive economy in support of South Africa's National Development Plan.

[26] Interview with Competition Commission of Mauritius.

Table 5: Examples of strategy evolution in competition authorities

1st Generation Strategy	2nd Generation Strategy
Namibian Competition Commission, 2011 - 2015	**Namibian Competition Commission, 2015 - 2019**
• Operationalise compliance • Research and development • Stakeholder partnering and relationships • Building and developing organisational capacity and capability to realise mandate	• Ensure effective enforcement of the Competition Act as a contribution to creating competitive markets in line with Vision 2030 • To expand the scope of competition regulation and strengthen the quality thereof • To enhance competition advocacy towards the fulfilment of sound competition principles and practices • To conduct action oriented research on competition in support of evidence-based competition regulation and policy • To develop the Commission as a centre of operational excellence in competition regulation
Competition Commission South Africa, 2006 - 2009	**Competition Commission South Africa, 2009 - 2014**
• Increase staff morale and motivation • Align organisational structure and work processes to the Strategy • Defining and clarifying the Commission's approach and methodology • Establish the Commission as a centre of information, knowledge and expertise • Ensure effective advocacy and communication	• Achieve demonstrable competitive outcomes in the economy • Improve competitive environment for economic activity • Realise a high-performance competition regulatory agency

Source: Namibian Competition Commission, 2015; Competition Commission South Africa, 2015

Prioritisation

Prioritisation is "a process of deciding what type of activities, enforcement actions, advocacy initiatives, or in general competition policy measures a competition agency might pursue in a given period of time" (UNCTAD, 2013: 4). Prioritisation is predicated on competition agencies being able to make choices about what they regard as strategically important or not in respect of achieving the desired competition policy goals. There are a number of well-recognised motivations and criteria for prioritisation (Wils, 2011; Jenny, 2013; Mkwananzi et al., 2012):

- the limited resources available to a competition agency may not allow it to investigate and pursue all infringements;
- the competition authority needs to use its resources to focus on possible contraventions which are more egregious such as cartel conduct, and establish precedents for their deterrence impact;

- the costs of pursuing a case should be considered against the benefits of doing so, such as the effects on the economy of the conduct (for example, increasing the costs of infrastructure investment or the input costs of farmers, or where there is significant impact on low income consumers such as cases in staple foods);
- there may be grounds to prioritise more vulnerable groups such as low-income consumers;
- rules that set out anticompetitive conduct may be over-inclusive so that it is necessary for competition agencies to have discretion as to which cases they pursue; and,
- other enforcers of the law may be better placed to deal with a particular matter.

Notably, only the Competition Commission of South Africa has adopted a formal prioritisation framework. The prioritisation framework of the authority has its origins in the first strategic planning process of 2006 (Competition Commission South Africa, 2006). The CCSA decided to adopt a more pro-active approach to competition enforcement and to develop a methodology that would enable it to prioritise sectors and cases. The first iteration of the CCSA's prioritisation framework involved undertaking an assessment of the relationship between competition policy and government's broader national policy objectives; explaining how prioritising of certain sectors or complaints will improve the effectiveness of the organisation; reviewing experience of other jurisdictions regarding prioritisation; and recommending sectors based on identified prioritisation criteria. The approach set out in the discussion document was formalised in a *Framework for Prioritising Sectors and Cases* (Competition Commission South Africa, 2007).

The priority sectors were financial services, infrastructure and construction, food, agro-processing and forestry, telecommunications, and intermediate industrial products. These sectors were identified following the application of the following criteria: competition concerns and the degree of concentration (including barriers to entry; price unrelated to cost of demand factors, irregular price differences; low rate of price switching) and the most harmful anticompetitive practices including hard-core cartels and abuse of dominance; alignment of the sector to government economic policy and sector priorities by considering its importance to economic policy; importance to South Africa's competitiveness and the effective working of the economy; extent to which sectors provide essential inputs to other economic sectors; and the extent to which the sector is able to contribute to empowerment, new entry and growth of small, medium and micro enterprises (SMMEs). Since then the prioritisation framework has evolved and is characterised by an increasing level of sophistication in the approaches adopted, criteria used and the recommended instruments for intervention.

This is not to say that other competition authorities in the region do not prioritise. Competition authorities have developed informal prioritisation practices. For instance, CCM has informally identified the banking, insurance, distribution (retail), construction, and food sectors as priority sectors, given their impact in society generally and the economy specifically, while the Swaziland Competition Commission has identified the liquid petroleum gas, bread, fast moving consumer goods, and the forestry sectors as a focus.

Some jurisdictions have specifically prioritised cartel conduct. The Competition and Fair Trading Commission of Malawi has identified cartel conduct as a priority, while the competition authorities in Botswana, Tanzania and Zambia have identified bid-rigging as a key priority.

Furthermore, many authorities have a form of prioritisation whereby mergers and complaints without competition concerns are fast-tracked so that resources are prioritised for deployment towards those that do present competition concerns.

In South Africa, formal prioritisation of sectors has had significant benefits. Prioritisation has contributed to the development of sector expertise in the organisation. Staff have developed specific sector expertise by collecting information and researching specific sectors over time, thus developing knowledge and understanding of the dynamics of specific markets, competitors and competition issues. In addition, the ability to prioritise is of benefit as the organisation develops the capacity to make choices about competing demands within the organisation's prioritisation framework (Burke, 2016).

Cross-border collaboration

Cross-border collaboration activities can be categorised as multi-lateral and bi-lateral and form part of the ways in which authorities can leverage the experiences and expertise of others. Multi-lateral cooperation is structured under Memoranda of Understanding (MoU) with SADC and COMESA. Bi-lateral cooperation between competition authorities is both informal and formal, with formal relationships also governed by MoUs.

Cooperation in SADC takes place under the auspices of the Declaration on Regional Cooperation in Competition and Consumer Policies signed by member states in September 2009.[27] The declaration provided for the establishment of a standing Competition and Consumer Policy and Law Committee (CCOPOLC) to implement the system of cooperation. Collaboration in SADC has been given a major boost, at least in terms of setting up the framework under which collaboration can take place, following the signing of an agreement amongst competition authorities on cooperation in the field of competition policy, law and enforcement in May 2016.[28] This agreement committed authorities to the establishment of a Joint Working Committee that will be responsible for developing an annual work plan of activities. This paved the way for the adoption by authorities of cooperation frameworks on mergers and cartel investigations. A Mergers Working Group and a Cartels Working Group was established in December 2016 at an Extraordinary Meeting of the SADC CCOPOLC held in Swaziland. The Mergers Working Group, chaired by Botswana, will take forward existing cooperation in merger regulation taking place between competition authorities including information sharing and investigative processes. The Cartels Working Group is chaired jointly by Zambia and South Africa, and focuses on promoting effective cartel investigations with consistent outcomes in the context of national laws.[29]

Competition authorities from Malawi, Mauritius, Swaziland, Zambia and Zimbabwe are subject to the rules of the COMESA Competition Regulations.[30] Article 6 of the regulations established the CCC to promote competition within the Common Market through monitoring and investigating anticompetitive practices of undertakings and mediating disputes between

[27] See http://www.sadc.int/files/4813/5292/8377/SADC_Declaration_on_Competition_and_Consumer_Policies.pdf
[28] See http://www.nacc.com.na/cms_documents/cad_sadc_mou_26may16_gaborone.pdf and http://www.competition.org.za/review/2016/6/7/editors-note-sadc-competition-authorities-sign-mou-for-cooperation-on-competition-issues; see also Vilakazi, T. (2016). Editor's Note. CCRED Quarterly Review. Retrieved May 06, 2017 from http://www.competition.org.za/review/2016/6/7/editors-note-sadc-competition-authorities-sign-mou-for-cooperation-on-competition-issues
[29] See http://www.compcom.co.za/wp-content/uploads/2016/01/SADC-Competition-Committee-media-statement-final-14-dec-2016.pdf
[30] http://www.comesa.int/competition/wp-content/uploads/2014/06/2012_Gazette_Vol_17_Annex_12-COMESA-Competition-Regulations-as-at-December-2004.pdf

Member States concerning anticompetitive conduct. The commencement of the enforcement of the Regulations created a regional legal framework for regulating competition that applies to cross-border transactions that are beyond the jurisdictional scope of national competition laws. The CCC has entered into MoUs with several national competition authorities to facilitate and promote the harmonization of competition laws to promote effective enforcement. MoUs cover cooperation on investigations and capacity building.

At the bi-lateral level, competition authorities have entered into MoUs to promote and strengthen cooperation. For instance, the Malawi authority has entered into formal MoUs with those in Zambia and Tanzania. The multi-lateral and bi-lateral activities have bolstered cross-border collaboration between competition authorities which the authorities describe as very supportive. However, representatives of competition authorities interviewed note that they are keen to strengthen cooperation, especially in follow-on cases where an infringement has been found in one country in the case of firms with a regional presence. An additional dimension of this would be coordination at a regional level of major investigations and investigation strategies, such as for dawn raids at the premises of large multinational companies.

6 Conclusion and policy implications

The paper has focused on the challenges of competition enforcement in younger jurisdictions in southern Africa that share concerns about high levels of concentration, low levels of economic growth and dynamism, weak transport links, and other barriers to entry that also limit integration. Recent studies on value chains in the region suggest a range of common issues which restrict the ability to create more competitive regional value chains. A specific focus is on competition and the role of competition law enforcement in ‘unlocking’ markets through dealing with strategic barriers to entry in particular. Anticompetitive conduct restricts entry and participation in value chains. These compound issues relating to high logistics costs and non-tariff barriers, for example, which increase costs and market access significantly. In essence, an agenda for enhancing regional economic integration cannot be considered without addressing these related issues and including effective competition enforcement as part of the main considerations.

Large firms, often with operations across the region, can leverage control of access to inputs and integration along the value chain to undermine competition in regional markets. Understanding *who* governs the value chain, and the terms of access to it, is therefore just as important as understanding constraints to greater efficiency such as inefficient border controls. With that being said, efficient logistics is critical for broadening geographic markets to which firms can feasibly sell and produce (beyond political borders) and enabling contestation of concentrated country markets by other regional producers. This should be a central outcome of any strategy for enhancing regional integration and industrial development.

Drawing from the analysis, an important first recommendation is that policies to integrate and invest in regional industrial development, including the recent SADC Regional Industrialisation Roadmap, should incorporate more concrete measures to increase the capacity of competition authorities to deal with anticompetitive conduct. This includes a focus on conduct which has cross-border dimensions. The indications from the various interviews conducted as part of this study are that the level of cooperation between authorities has increased significantly in recent years from a low base. Whereas many authorities were constrained in their early years of existence by the challenges of developing and capacitating a new enforcement agency, several of them have started to develop enforcement track records albeit largely constrained in terms of staff and financial resources. Some of this growth has come from being able to compare and contrast their respective activities with those of other authorities in the region, and to share insights.

Country markets in southern Africa are relatively small and, given high scale economies in production, firms will organise production and distribution on a regional level. As such, competition enforcement should consider issues at a regional level, as outcomes in one country may in fact be the result of broader anticompetitive arrangements at a regional level. This is well demonstrated in the example of the cement industry cartel in southern Africa, and similar arrangements involving the joint coordination of regional sales have existed in the fertilizer and sugar industries as well.

The competitive outcomes of interventions by governments have had mixed results in that some strategies have increased investment and productivity, as in Zambia's sugar industry, although the same set of policies has also lead to the entrenchment of a dominant position for lead firms. There is therefore an important role for competition agencies to intervene through ex post enforcement and pre-emptively to influence policies that have the potential to limit rivalry in markets. In this particular example, the development of downstream sugar confectionary and beverage production has been stifled by high prices for sugar from Zambia Sugar (das Nair et al., 2017). The above discussion on the relationship between competition and competitiveness also points to a need to align the objectives of industrial policy with competition policy. A key question is whether the 'opening up' of markets through competition policy tools should necessarily precede the upscaling of domestic rivals through industrial policy to compete in concentrated markets.

The record of enforcement in South Africa has been strong relative to other countries. The number of cases in South Africa of course also reflects the larger size of the economy compared to neighbouring countries. Botswana, Mauritius and Tanzania have also been relatively strong in the period from 2014 to 2016. The comparatively large number of abuse of dominance cases in Botswana and Mauritius relative to recorded cartel cases in each country, supports the proposition that concentration and anticompetitive conduct by dominant firms may be more pronounced in smaller economies. Importantly, a large number of violations are in basic goods or services such as food and beverages, healthcare and financial services. Notably, consolidation in food and beverages and financial services is also increasing and the largest number of mergers occur in these two areas. There have also been many cases in sectors that are critical for economic growth and integration, such as construction, transport, business services, and telecommunications. To the extent that cases in different countries involve South African multinationals, there is a role for greater cooperation between agencies. Furthermore, issues relating to competition violations outside of the home country of a company need to be considered as part of the strategies envisaged through regional industrial development policies between countries. As described through various examples in earlier sections, control and abuse of market power in different value chains undermines efforts to develop domestic producers and suppliers capable of integrating into wider value chains.

Even as authorities increase cooperation between them, there are important institutional constraints and challenges on their ability to successfully prosecute cases. Information gathered through the interviews with the authorities and using publically available information help to identify issues that relate to the institutional design of competition agencies, and also practical challenges in enforcing the laws as they are. There are challenges in terms of the following:

- The conflation of governance, investigative and adjudication functions at different levels which many of the countries are seeking to address through legislative amendments.
- The presence of diverse boards of authorities is an advantage in terms of bringing diverse experiences of people from different sectors in the economy, although this makes it especially difficult to coordinate meetings of the board for decision-making on cases and the boards may lack a technical understanding of competition matters.
- Authorities face a challenge in terms of limited budgets, and have all identified a need to continue efforts to train staff to improve the quality of economic analysis, investigation and information gathering. Existing capacity can be bolstered by means of the establishment of a regional facility through which expertise in economic analysis and competition law can be made available to competition authorities on a case by case basis.

The region has authorities at different stages with some that have been established for around 20 years, and those that are younger and in intermediary phases. These differences are also reflected in the number of investigations taken on and in the evolution of authorities' strategic objectives over time. As authorities reach a certain level of 'maturity' it appears that organizational strategic goals are increasingly focused outward, in aligning the work of the authority with national economic policies and strategies (while the early years involve objectives to build capacity and organizational systems internally with some external advocacy). However, almost all agencies apply some form of formal strategic planning, and a formal prioritisation framework (even if only for fast-tracking less problematic cases) although there is significant variance in the issues prioritized. The assessment of institutional capabilities and prioritisation by authorities points to the importance of authorities aligning their objectives with those of national and intra-regional industrial development strategies, particularly as cases increasingly occur in sectors that are critical to economic development and key industrial growth sectors.

7 References

Amsden, A. (1989). *Asia's Next Giant: South Korea and Late Industrialization.* New York: Oxford University Press.

Bagopi, E., Chokwe, E., Halse, P., Hausiku, J., Kalapula, W., Humavindu, M. and Roberts, S. (2016). 'Competition, agro-processing and regional development: the case of the poultry sector in South Africa, Botswana, Namibia and Zambia', in Roberts, S. ed. *Competition in Africa*, HSRC Press.

Burke, M. (2016). *Strategy Implementation Insights from the Competition Commission South Africa*. Unpublished MA Research Report. Graduate School of Governance. University of the Witwatersrand, Johannesburg, South Africa.

Chisanga, B., Gathiaka, J., Nguruse, G., Onyancha, S. and Vilakazi, T. (2016). 'Agricultural development, competition and investment: the case of sugar in Kenya, South Africa, Tanzania and Zambia', in Roberts, S. ed. *Competition in Africa*, HSRC Press, pp. 41-65.

Chisanga, B. and Sitko, N. (2013). 'The National consumption requirement study for edible oils in Zambia. Paper for Zambia National Farmers' Union prepared by Indaba Agricultural Policy Research Institute (IAPRI). Available: http://www.znfu.org.zm/download/file/fid/588.

CCPC (Competition and Consumer Protection Commission of Zambia). (2013). *Competition and Consumer Protection* News, April-June 2013, Issue No. 6.

Competition Commission of South Africa. (2006a). Strategy, 2006 – 2009. Unpublished Report. Competition Commission South Africa: Pretoria.

Competition Commission of South Africa. (2007a). Framework for Prioritising Sectors and Cases. Unpublished Report. Competition Commission South Africa: Pretoria.

Competition Commission South Africa. (2015). Strategic Plan, 2015 – 2020. Available: http://www.compcom.co.za/wp-content/uploads/2015/03/Strategic-Plan-2015-2020_Signed.pdf.

das Nair, R., Mondliwa, P. and Roberts, S. (2012). Economic Expert Report: Assessment of alleged charging of an excessive price for propylene and polypropylene by Sasol Chemical Industries. Available: http://www.comptrib.co.za/publications/case-documents/competition-commission-and-sasol-chemical-industries/

das Nair, R. and Mondliwa, P. (2017). 'Chapter 5: Excessive pricing under the spotlight: What is a competitive price?'; in J. Klaaren, S. Roberts and I. Valodia (eds) (forthcoming 2017), *Towards the Development of Competition and Regulation in Southern Africa*; WITS University Press: Johannesburg.

das Nair, R. and Chisoro, S. (2015). 'The expansion of regional supermarket chains: Changing models of retailing and the implications for local supplier capabilities in South Africa, Botswana, Zambia, and Zimbabwe'. UNU-WIDER Working Paper No. 2015/114.

das Nair, R., Nkhonjera, M. and Ziba, F. (2017). 'Growth and development in the sugar to confectionary value chain'. CCRED Working Paper, forthcoming.

Fels, A., and Ergas, H. (2014). Institutional Design of Competition Authorities. OECD Competition Committee, 17-18 December 2014, Doc DAF/COMP/WD(2014)85. Available: http://www.oecd.org/daf/competition/changes-in-competition-institutional-design.htm

Fessehaie, J., Roberts, S. and Takala-Greenish, L. (2015). 'Key findings from case studies of mining capital equipment, infrastructure inputs and soy agro-processing in Southern Africa and implications for regional industrial development agenda'. TIPS and CCRED research report submitted to the Department of Trade and Industry.

Fessehaie, J., das Nair, R., Ncube, P. and Roberts, S. (2015) 'Growth promotion through industrial strategies – a study of Zambia'. International Growth Centre Working Paper, May 2015.

Fine, B. and Rustomjee, Z. (1996). *South Africa's political economy: From Minerals-Energy Complex to industrialisation.* Johannesburg: Wits University Press.

Foster, V. and Briceño-Garmendia, C. (2010). 'Africa's infrastructure: A time for transformation'. Africa Development Forum. Washington: The World Bank.

Fox, E. M. (2007). 'Economic development, poverty, and antitrust: The other path'. *Southwestern Journal of Law and Trade in the Americas*, Vol. 13, pp. 101-125.

Fox, E. M. (2012). 'Competition, development and regional integration: In search of a competition law fit for developing countries'. New York: New York University School of Law, Law & Economics Research Paper Series, Working Paper No. 11-04.

Gerber, D. (2010). *Global Competition: law, markets and globalisation*. Oxford: Oxford University Press.

International Competition Network (2009). *Seminar on Competition Agency Effectiveness. Summary Report*. Competition Policy Implementation Working Group. Brussels. Retrieved March 01, 2015 from http://ec.europa.eu/competition/information/icn_seminar_2009/report_final_version.pdf.

Jarzabkowski, P. (2003). Strategic Practices: An Activity Theory Perspective on Continuity and Change, *Journal of Management Studies*, 40(1), 23 – 55.

Jenny, F. (2013). Priority Setting and Discretionary Powers of Competition Authorities. Presentation to Roundtable on "Priority Setting and Resource Allocation as Tool for Agency Effectives", UNCTAD, Geneva, 9 July 2013.

Jenny, F. (2016). The Institutional Design of Competition Authorities. In Jenny, F., & Katsoulacos, Y. (Eds.). Competition Law Enforcement in BRICS and in Developing Countries. Springer International: AG Switzerland.

Japan International Cooperation Agency (JICA). (2010). 'Preparatory Survey for Southern Africa Integrated Regional Transport Program'. Final Report.

Kaira, T. (2015). 'A cartel in South Africa is a cartel in a neighbouring country: Why has the successful cartel leniency policy in South Africa not resulted into automatic cartel confessions in economically interdependent neighbouring countries?' Paper presented at the Annual Competition and Economic Regulation Week 2015, Victoria Falls, Zimbabwe.

Kovacic, W. (2013). Distinguished Essay: Good Agency Practice and the Implementation of Competition Law. In Herman, C., Krajewski, M. & Terhechte, J. (Eds.). *European Yearbook of International Economic Law* (EYEIL), Vol 4. (2013). Springer: Heidelberg, Berlin.

Kovacic, W. E. and Hyman, D. A. (2012). Competition Agency Design: What's on the Menu? *GW Law Faculty Publications & Other Works*. Paper 628. Available: http://scholarship.law.gwu.edu/faculty_publications/628.

Kovacic, W., & Lopez-Galdos, M. (2016). Lifecycles of Competition Systems: Explaining Variation in the Implementation of New Regimes, Law and Contemporary Problems, 79, 85-122.

Kovacic, W., & Marinniello, M. (2016). *Competition Agency Design in Globalised Markets*. E15 Expert Group on Competition Policy and the Trade System. International Centre for Trade and Sustainable Development. Available: http://e15initiative.org/wp-content/uploads/2015/09/E15-Competition-Kovacic-and-Mariniello-FINAL.pdf

Lewis, M. (2013). 'Sweet nothings. The human cost of a British sugar giant avoiding taxes in Southern Africa'. ActionAid.

Mbongwe, T., Nyagol, B. O., Amunkete, T., Khumalo, J., Humavindu, M., Nguruse, G., and Chokwe, E. (2014). 'Understanding competition at the regional level: An assessment of competitive dynamics in the cement industry across Botswana, Kenya, Namibia, South Africa, Tanzania and Zambia'. African Competition Forum.

Mkwananzi, W., Makhaya, G. and Roberts, S. (2012). 'How should young institutions approach enforcement? Reflections on South Africa's experience'. *South African Journal of International Affairs*, 19(1), 43-64.

Mondliwa, P. and Roberts, S. (2014). 'Excessive pricing and industrial development: The recent Competition Tribunal finding against Sasol Chemical Industries'. Available: http://pmg-assets.s3-website-eu-west-1.amazonaws.com/140826pcti.pdf

Muzata, T., Roberts, S. and Vilakazi, T. (2017, forthcoming). 'Chapter 1: Penalties and settlements for South African cartels: An economic review'; in J. Klaaren, S. Roberts and I. Valodia (eds) (forthcoming 2017), *Towards the Development of Competition and Regulation in Southern Africa*; WITS University Press: Johannesburg.

Namibian Competition Commission. (2015). To Safeguard and Promote Competition in the Namibian Market: Strategic Plan 2015 – 2020. Available: http://www.nacc.com.na/cms_documents/af9_strategic_plan.pdf

Ncube, P., S. Roberts and Vilakazi, T. (2016a). 'Regulation and rivalry in transport and supply of fertilizer industry in Malawi, Tanzania and Zambia', in Roberts, S. (ed) *Competition in Africa – Insights from key industries.* Cape Town: HSRC Press.

Ncube, P., Nkhonjera, M., Paremoer, T. and Zengeni, T. (2016b). 'Competition, barriers to entry and inclusive growth: Agro-processing'. Centre for Competition, Regulation and Economic Development Working Paper No. 2016/3.

Organisation for Economic Co-operation and Development (OECD). (2002). Report on the nature and impact of hard core cartels and sanctions against cartels under national competition laws. OECD Report No. DAFFE/COMP(2002)7.

Ormosi, P. L. (2011). 'How big is a tip of the iceberg? A parsimonious way to estimate cartel detection rate'. Available: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1851309

Ottow, A. (2015). *Market and Competition Authorities: Good Agency Principles*. Oxford University Press: Oxford.

Paelo, A. and Vilakazi, T. (forthcoming). 'Competition in road transportation between Malawi, Mozambique, South Africa, Zambia, and Zimbabwe'. UNU-WIDER Working Paper.

Rasche, A., & Chia, R. (2009). Researching Strategy Practices: A Genealogical Social Theory Perspective. *Organisation Studies*, 30(7), 713–734.

Roberts, S. (2010). 'Competition policy, competitive rivalry and a developmental state in South Africa'; in O. Edigheji, ed. *Constructing a democratic developmental state in South Africa: Potentials and challenges.* Pretoria: HSRC Press, pp. 222-237.

Roberts, S., Simbanegavi, W. and Vilakazi, T. 'Chapter 11: Competition, Regional Integration and Inclusive Growth in Africa: A Research Agenda'; in J. Klaaren, S. Roberts and I. Valodia (eds) (forthcoming 2017), *Towards the Development of Competition and Regulation in Southern Africa*; WITS University Press: Johannesburg.

Singh, A. (2002). 'Competition and competition policy in emerging markets: International and developmental dimensions'. G-24 Discussion Paper Series, Issue 18.

Trebilcock, M., & Iacobucci, E. (2010). Designing Competition Law Institutions: Values, Structures, and Mandates. *Loyola University Chicago Law Journal*, 41(3), 455 – 71.

UNCTAD. (2013). *Prioritization and resource allocation as a tool for agency effectiveness*. Intergovernmental Group of Experts on Competition Law and Policy Thirteenth Session. Geneva, 8–12 July 2013. Available: http://unctad.org/meetings/en/SessionalDocuments/ciclpd20_en.pdf.

Wils, W. (2011). ‘Discretion and Prioritisation in Public Antitrust Enforcement, in Particular EU Antitrust Enforcement’. *World Competition Law and Economics Review*, 34, 353 – 382.

World Bank. (2014). ‘Promoting trade and competitiveness: What can Zambia do?’ Zambia Economic Brief.

World Bank. (2016). ‘Breaking Down Barriers: Unlocking Africa's Potential through Vigorous Competition Policy’. Washington, DC: World Bank Group.