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Building institutions for competition enforcement and regional integration in Southern Africa

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Abstract

This paper examines the competition law enforcement record of authorities in southern Africa in the context of regional industrial development and integration, highlighting both the challenges of doing so with limited capacity in relatively small economies. The review found that firms are playing an important role in the process of economic integration of the region. However, control and abuse of market power in different value chains undermine efforts to develop domestic producers and suppliers capable of integrating into wider value chains. Competition authorities in the region have to implement their enforcement mandate with limited experience and resources, against powerful interests. This paper sheds light on the inter-relationship between competition and industrial policy in regional integration, and the role and capacities of competition authorities in this regard. It argues that the SADC Regional Industrialisation Roadmap should incorporate concrete measures to increase the capacity of competition authorities to deal with anticompetitive conduct.

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1. Introduction

Nine countries in southern Africa are part of a global phenomenon in which countries have established regimes with authorities to enforce competition law. Over the past twenty years, competition authorities have become operational in Botswana, Malawi, Mauritius, Namibia, South Africa, Tanzania, Zambia and Zimbabwe. Increasingly, competition policy is regarded as an important facilitator of economic integration in the context of regional trade and development blocks such as the Southern African Development Community (SADC) (Bakhoum, 2012). The adoption of specific competition policy provisions by regional organisations, such as the Declaration on Regional Cooperation in Competition and Consumer Policies[1] by SADC countries, is indicative of this trend.

This paper examines the competition law enforcement record of authorities in southern Africa in the context of regional industrial development and integration, highlighting both the challenges of doing so with limited capacity and in relatively small economies with low levels of development. It draws on a number of competition research and regional value chain studies undertaken over the past few years by the Centre for Competition Regulation and Economic Development (CCRED). Insights from these studies enabled the authors to map the key competition issues arising from increasing integration of markets in the southern African region and efforts to modernise, upgrade and diversify economies through industrial policy. Publically available data was collected, collated and verified with competition authorities to establish their enforcement record over the period 2014 – 2016. Interviews with senior leaders and managers from competition authorities aided in identifying the state of capacity in competition authorities in the context of their institutional designs and legislative frameworks, with a view to identifying the key constraints they face in enforcing competition law. The review of institutional designs and legislative frameworks involved document analysis of the relevant legislation for each country.

The review of competition research and value chain studies on southern African found that firms are playing an important role in the process of economic integration of the region. In the process, however, there has been examples of firms exporting restrictive business practices such as collusion and raising barriers to entry to ensure that they entrench their market power and protect local markets from competitors. Competition authorities in the region have to implement their enforcement mandate with limited experience and resources, against powerful interests. In 2016, the nine competition authorities had a total staff

[1] See http://www.sadc.int/files/4813/5292/8377/SADC_Declaration_on_Competition_and_Consumer_Policies.pdf

complement of 472 staff members and a combined budget of US$ 38,1 million to exercise their mandate. In addition, the research points to issues in existing legislative frameworks and institutional designs that may also constrain effective competition enforcement. This paper intentionally provides a broad overview of competition enforcement and related capacity rather than drilling down into specific issues. The aim is to identify and select key issues for further study to understand the institutional development needs of competition authorities into the future.

2. Key factors shaping the emergence of competition regimes in Southern Africa

The competition regimes of the nine countries that are the focus of this study are developing in a specific regional context, characterised by specific challenges that influence their evolution. These countries have diverse resource endowments with relatively small economies (Table 1). In thinking about competition policy in southern Africa, we need to be mindful of the particular challenges that each country faces. There are some common concerns across the region, notwithstanding the differences across countries. These include the small size of domestic markets, 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.

Table 1: Country populations, economic output and growth

Country	Population, 2015 (million)	GDP, 2015 (current US$ billion)	Average GDP Growth (2011 – 2015)
Botswana	2,3	14,4	4,7%
Malawi	17,2	6,4	4,1%
Mauritius	1,3	11,7	3,6%
Namibia	2,5	11,5	5,5%
South Africa	55,0	314,6	2,1%
Swaziland	1,3	4,1	2,9%
Tanzania	53,5	45,6	6,8%
Zambia	16,2	21,2	5,2%
Zimbabwe	15,6	14,4	6,3%

Source: World Bank Development Indicators

2.1. The need for a coherent approach to competition enforcement in the context of a small regional markets

In an increasingly integrated world, business practices (including restrictive practices) can be exported into new markets entered by multinational firms. 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.

Dominant firms can further reinforce their market power by lobbying strongly for regulatory provisions to block entrants and protect the positions of the insiders. They 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).

Closer regional integration is regarded as vital for enabling industrialisation, despite the challenges to promoting competition in smaller economies. The SADC Regional Industrialisation Strategy and Roadmap regards industrialisation as a function of diversification and structural transformation (SADC, 2015). This strategy calls on countries to elevate the role of competitiveness as a driver of economic development.

2.2. Competition and regional industrial development

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). 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).

Different countries 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, 2013). Importantly, this example demonstrates the important link between competition policy and industrial development.

The dimensions of competitive interaction between firms are different across countries, but there are common themes which emerge in different country markets. 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.

2.2.1. 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. In several industries including sugar, cement and poultry, which are 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. Governance of value chains at a regional level means control of key inputs and facilities, and often the entire regional market and the ability to develop competitive strategies at this level.

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. 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).

2.2.2. 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. In this context, it is important to note the specific challenges that dominance and extensive vertical integration present within a value chain. 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.

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. 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.

3. Analysis of competition law enforcement and capacity in southern Africa

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. Institutional design is considered in the context of competition law enforcement for the period 2014 – 2016.

3.1. Record of competition law enforcement

Given the range of related competition issues raised above, it is important to assess the actual record (and limitations) in terms of competition enforcement to address these.

3.1.1. Restrictive business enforcement cases

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.[2]

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 the case of cartels) were also concluded through settlement agreements with the respondents.

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

Table 2: Enforcement cases in SADC, 2014 - 2016[3]

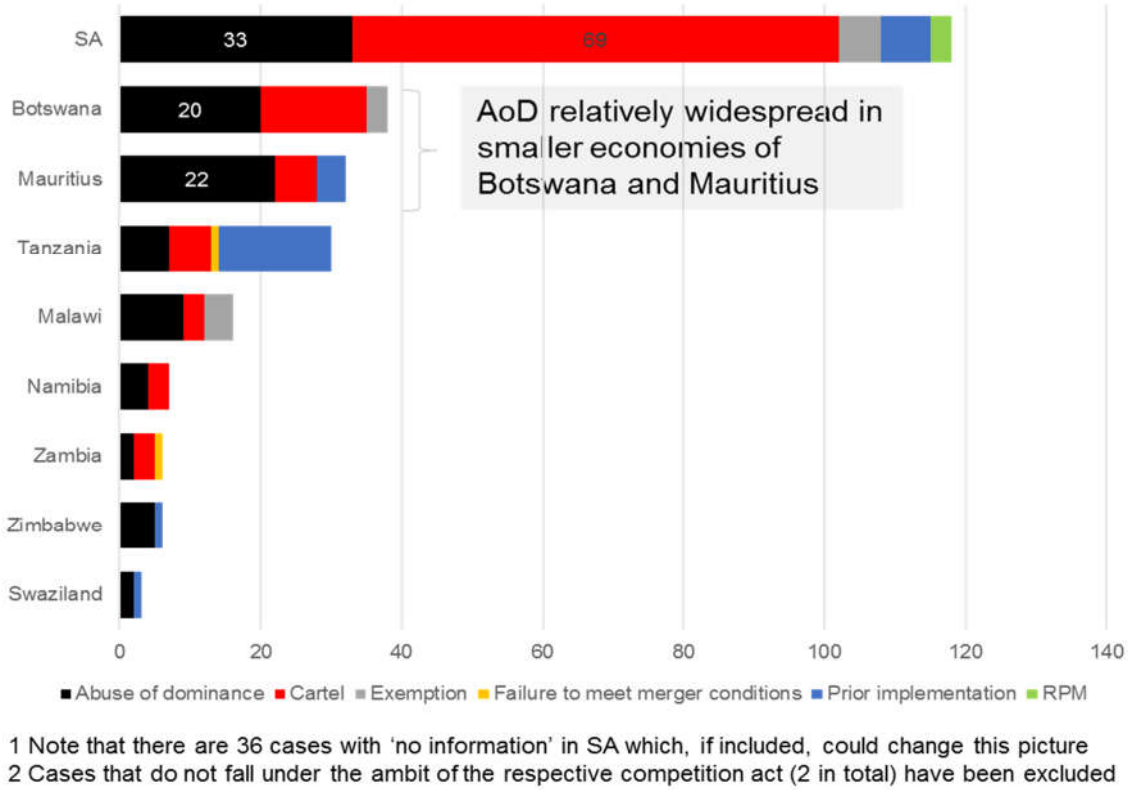
Contravention	Botswana	Malawi	Mauritius	Namibia	South Africa	Swaziland	Tanzania	Zambia	Zimbabwe	**TOTAL**
Abuse of Dominance	20	6	22	4	33	2	7	2	5	**104**
Cartel	15	3	6	3	69		6	3		**105**
Exemption	3	4			6					**13**
Failure to Meet Merger Conditions							1	1		**2**
No Information		1			36					**37**
Not a Competition Issue		1	1							**2**
Prior Implementation			4		7	1	16		1	**29**
Retail Price Maintenance					3					**3**
TOTAL	**38**	**18**	**33**	**7**	**154**	**3**	**30**	**6**	**6**	**295**

Source: Competition authority data

South Africa accounts for 154 (52.2%) of all enforcement cases over the period, 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.

[3] '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: Comparison of case load per country, 2014 - 2016



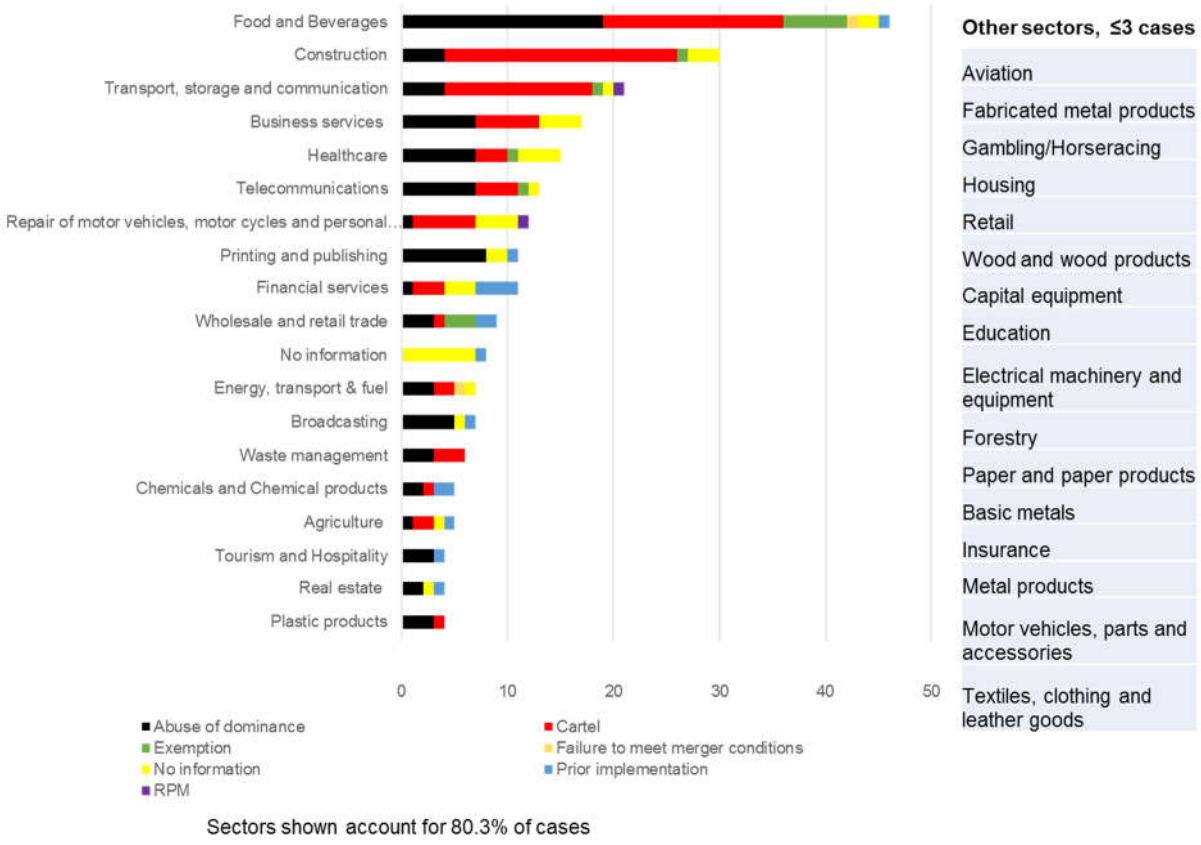
1 Note that there are 36 cases with 'no information' in SA which, if included, could change this picture
2 Cases that do not fall under the ambit of the respective competition act (2 in total) have been excluded

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.[4] 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.

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

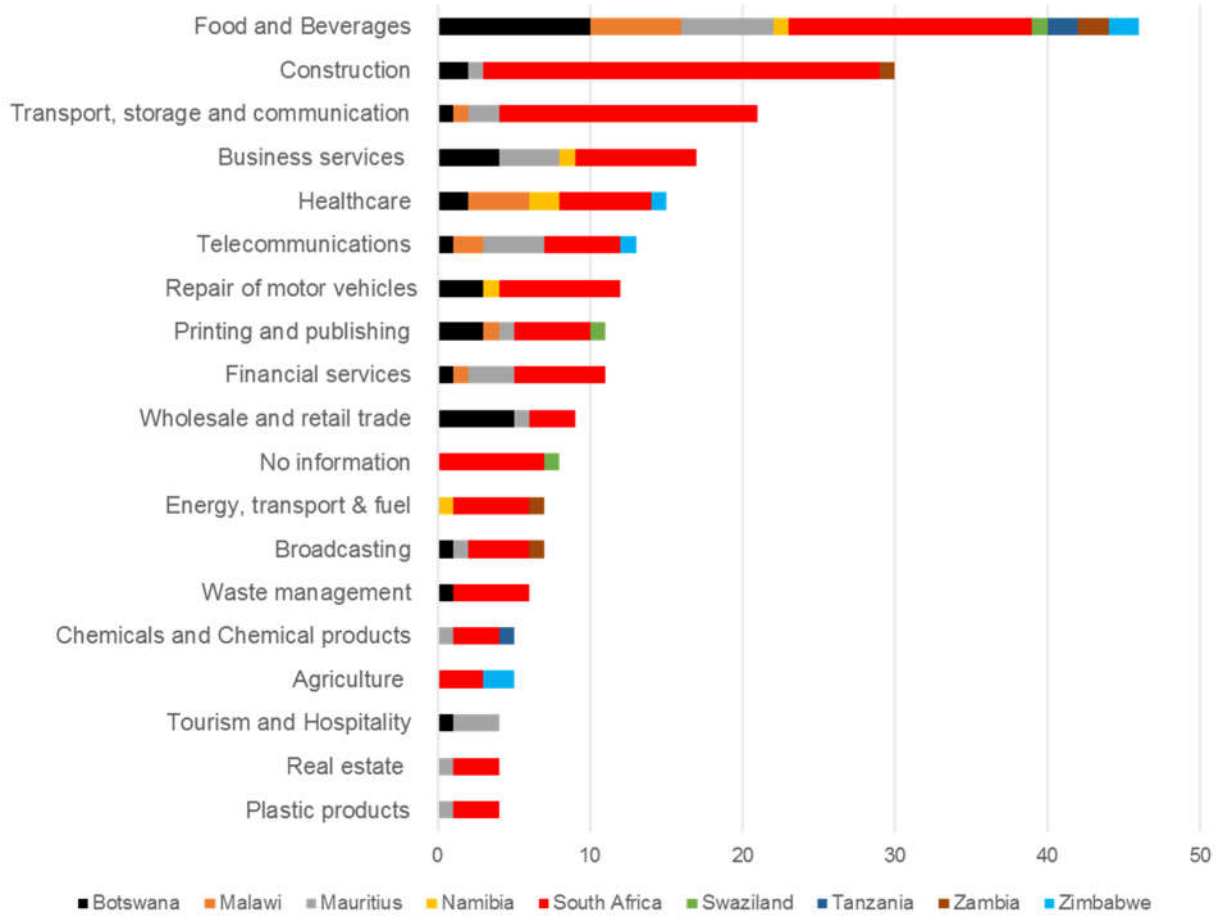
Figure 2: Breakdown of enforcement cases by sector



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 Competition Commission South African (CCSA) to prioritise certain sectors. In the 2015/16 financial year, the CCSA 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.

Figure 3: Country contribution to enforcement cases by sector



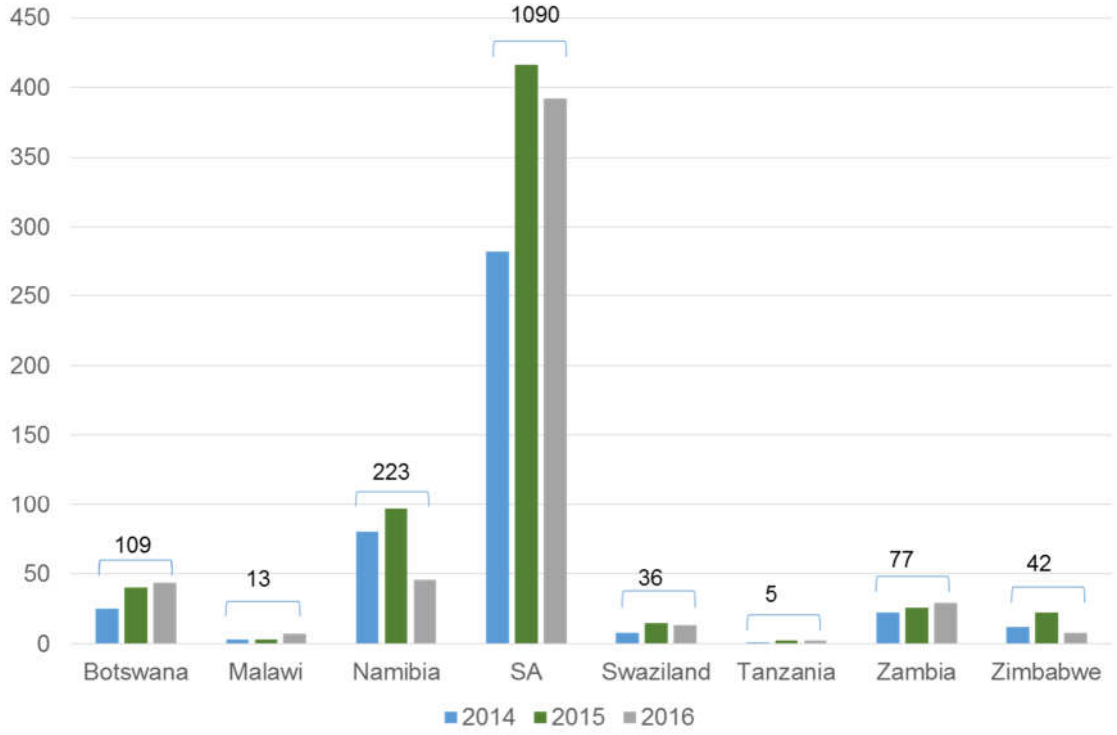
Source: Competition authority data

3.1.2. Merger cases

Over the period 2014-2016[5], a total of 1595 merger cases were identified across the 8 jurisdictions in southern Africa evaluated in this study (Figure 4). 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.[6] Finalised merger cases are also 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 3), the large number of cases in South Africa is consistent with it being the largest economy in the region.

[5] 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.
[6]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

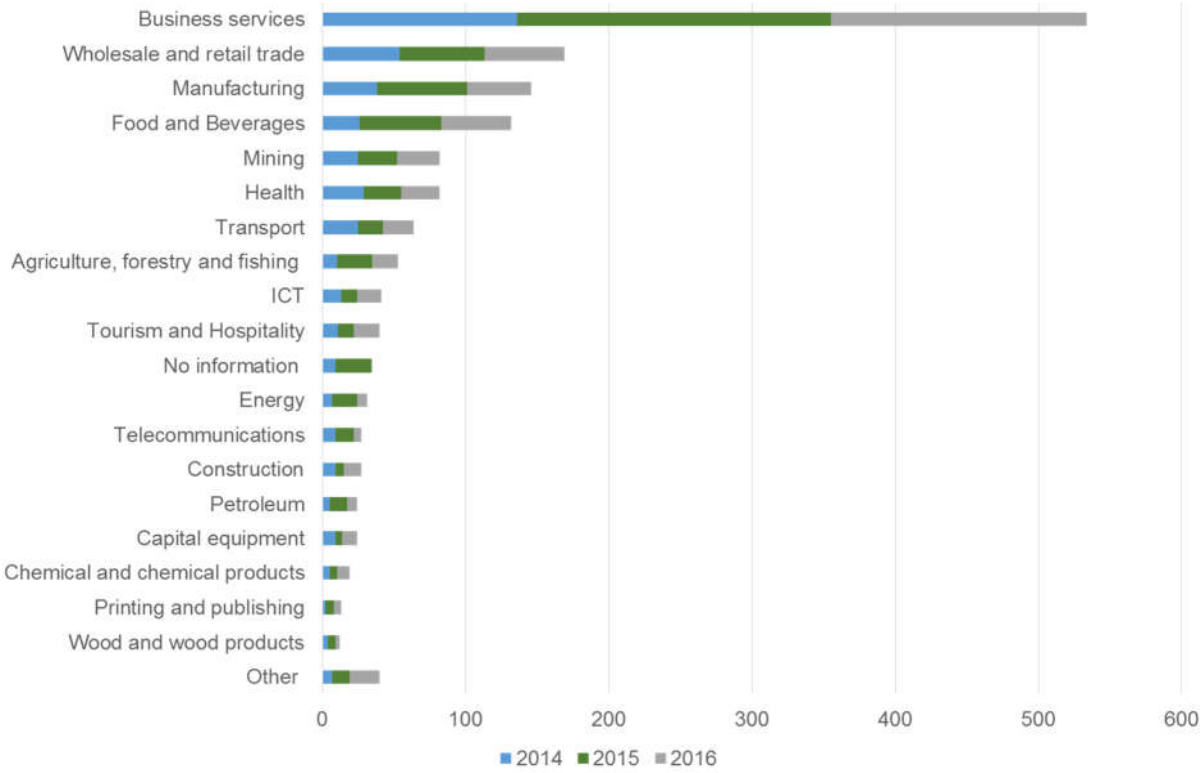


Source: Competition authority data

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).[7] 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.

[7] 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.

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 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.

3.2. 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 section does not aim to provide a detailed review of all aspects of legislation, but rather highlights key issues in the restrictive business practices and merger legislation, as well aspects which vary or are common between countries.

3.2.1. 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.

Authorities 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).

3.2.1.1. Cartels and corporate leniency

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. 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.

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.[8]

3.2.1.2. 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.[9] Botswana 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. 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.[10] 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.[11]

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. 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.

3.2.2. Merger regulation

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

[8] Interview with Competition and Fair Trade Commission of Malawi.
[9] Interview with Competition and Fair Trade Commission of Malawi.
[10] Interview with Swaziland Competition Commission.
[11] Interview with Zimbabwe Competition and Tariff Commission.

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.[12] 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.

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

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

3.3. 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

3.3.1. Enforcement models

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 & 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.

Source: 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."[13] The conflation of the governance and adjudication functions in the board of the competition

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

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. 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).

3.3.2. 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 Ergas (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.

3.3.3. 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.

3.3.4. Organisational capacity

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	Year Operationalised	Total Staff	Economists		Lawyers		Revenue (US$ million)
			No.	%	No.	%	
Botswana	2011	33	5	15%	4	12%	2.2
Malawi	2013	19	7	37%	2	11%	0.8
Mauritius	2009	20	6	30%	6	30%	1.0
Namibia	2008	35	8	23%	7	20%	2.7
South Africa	1999	197	64	32%	60	30%	21.7
Swaziland	2010	17	4	24%	5	29%	0.7
Tanzania	2007	57	8	14%	7	12%	3.1
Zambia	1997	67	33	49%	4	6%	3.3
Zimbabwe	1998	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."[14]

The Competition Commission of South Africa accounts for 56% of the total revenue of US$ 38.1 million in 2016. 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.

3.4. 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.

3.4.1. Strategic planning

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.[15]

[14] Interview with Competition and Fair Trade Commission of Malawi.
[15] Interview with Competition Commission of Mauritius.

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.

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

3.4.2. 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, including the limited resources available to authorities, the need to focus on contraventions that are more egregious, and the need to prioritise infringements that impact more vulnerable groups such as low-income consumers. (Wils, 2011; Jenny, 2013; Mkwananzi et al., 2012):

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).

This is not to say that other competition authorities in the region do not prioritise. Competition authorities have developed informal prioritisation practices. For instance, Competition Commission of Mauritius (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.

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).

3.4.3. Cross-border collaboration

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.[16] 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.[17] 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

[16] See http://www.sadc.int/files/4813/5292/8377/SADC_Declaration_on_Competition_and_Consumer_Policies.pdf

[17] 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

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.[18]

Competition authorities from Malawi, Mauritius, Swaziland, Zambia and Zimbabwe are subject to the rules of the COMESA Competition Regulations.[19] Article 6 of the regulations established the COMESA Competition Commission (CCC) to promote competition within the Common Market through monitoring and investigating anticompetitive practices of undertakings and mediating disputes between 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.

[18] See http://www.compcom.co.za/wp-content/uploads/2016/01/SADC-Competition-Committee-media-statement-final-14-dec-2016.pdf
[19] http://www.comesa.int/competition/wp-content/uploads/2014/06/2012_Gazette_Vol_17_Annex_12-COMESA-Competition-Regulations-as-at-December-2004.pdf

4. Towards building effective institutions for competition enforcement and regional integration in southern Africa

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 important to understand. 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.

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, Nkhonjera and Ziba, 2017).

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.

The record of enforcement in South Africa has been strong relative to other countries also reflecting 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 undermine 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 prioritisation (even if only for fast-tracking less problematic cases) although there is significant variance in the issues prioritised. Further research is necessary to gain a deeper understanding of the inter-relationship between competition and industrial policy in practice, and the role and capacities of competition authorities to contribute to effective competition enforcement such that it supports economic development of the region.

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