Building institutions for competition enforcement and regional integration in Southern Africa

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Key factors shaping the emergence of competition regimes in southern Africa

- Context of each country is unique, but there are common themes such as:
  - Small domestic markets
  - Low levels of industrialisation and diversification
  - High levels of concentration, and
  - History of systemic exclusion of the majority of the population from meaningful participation in the economy

- Firms, market power and competitiveness in industrial development
  - Same firms are present across countries and may operate in adjacent or neighbouring country markets
  - Dominant firms can re-inforce market power by lobbying for favourable regulation, exploit insider information or mount arguments to preserve their interests
  - SADC Regional Industrial Strategy and Roadmap calls on countries to elevate the role of competitiveness as a driver of economic development and industrialisation

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Need for a coherent approach to competition enforcement in southern Africa

- Links between countries have grown considerably since early-2000
- Evidence of cartels involving SA firms stretching across southern Africa – eg., cement cartel
- Small markets and high-scale economies mean that firms organise production on a regional level
- Firms are both vertically and horizontally present across several countries – value chains stretch across borders
- Firms can raise strategic barriers or benefit from structural barriers such as high capital investments costs, routes to market, etc.
- Critically important that competition issues be considered at the regional level

Links between competition policy and industrial development

Countries have oriented economic policy towards diversifying production. For example, Zambia aims to grow non-minerals merchandise export, but monopoly producer of household and industrial sugar upstream have raised concerns regarding the high price of sugar as input to downstream sugar confectionary, beverages and related products – the downstream industries are constrained despite Zambia being internationally competitive, low-cost producer of sugar that exceeds domestic demand

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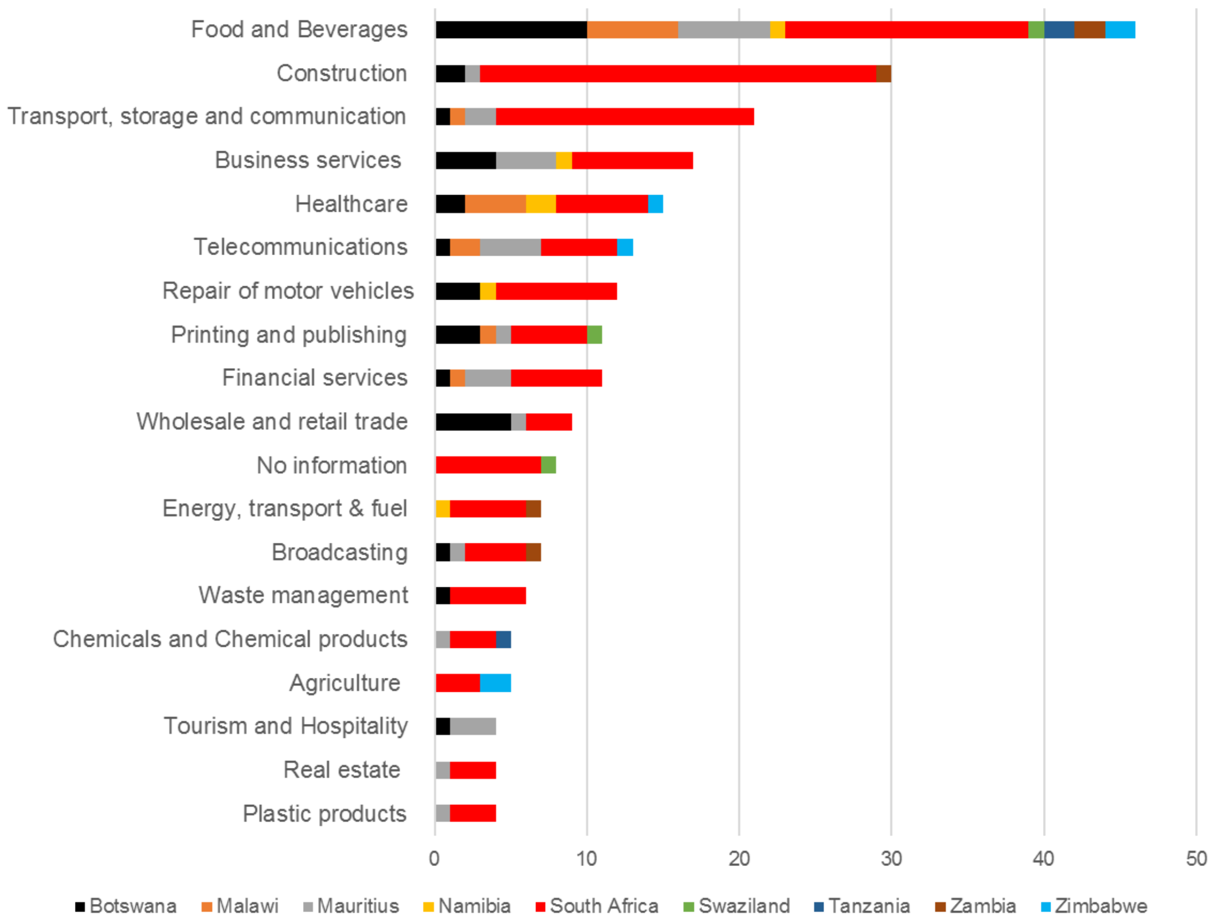
Analysis of competition law enforcement, 2014 - 2016

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**

- SA accounts for 52,2% of cases, and 67% collusion cases, but abuse of dominance cases more evenly spread in relatively smaller economies of Botswana and Mauritius

Analysis of competition law enforcement

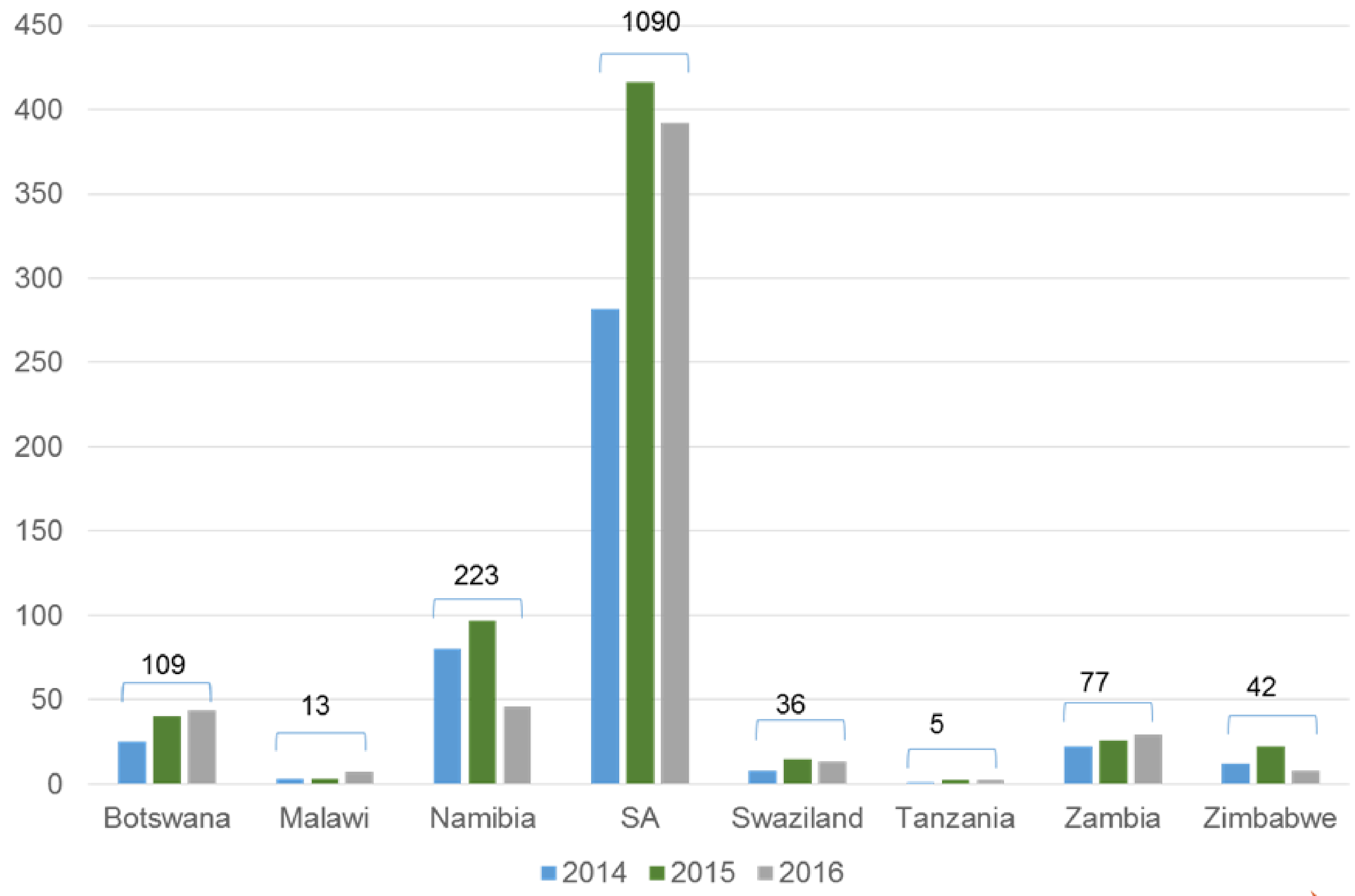
Country contribution to enforcement by sector



- Food and beverages, construction, transport storage and communications business services, health care & telecommunications

Analysis of competition law enforcement

Finalised merger cases, 2014 - 2016



- 1595 merger cases, with SA accounting for 68,3% relative to the size of its economy

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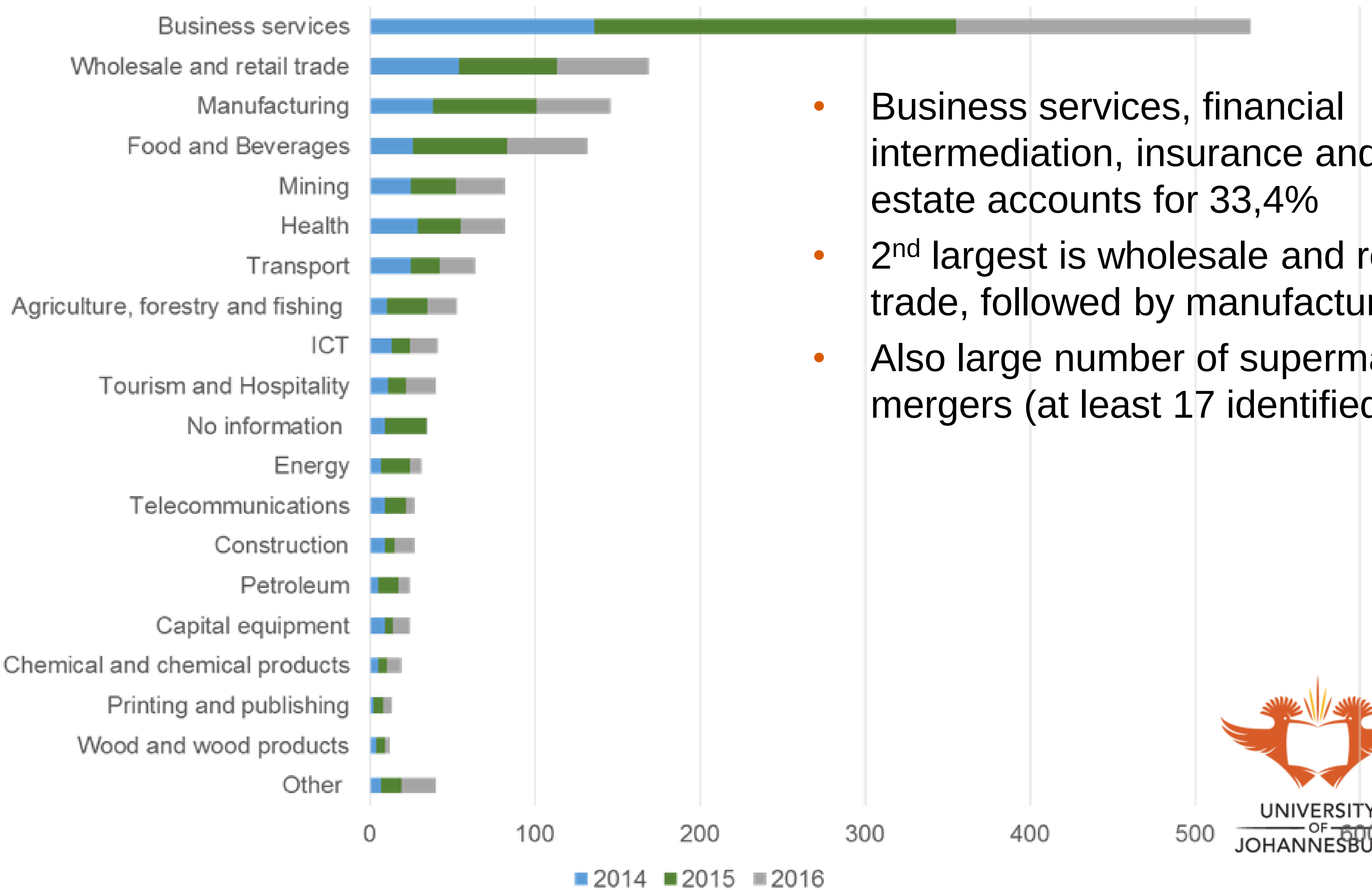
Analysis of competition law enforcement

Finalised mergers by sector, 2014 - 2016



- Business services, financial intermediation, insurance and real estate accounts for 33,4%
- 2nd largest is wholesale and retail trade, followed by manufacturing
- Also large number of supermarket mergers (at least 17 identified)

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Record of competition law enforcement

- Restrictive business practice legislation issues:
  - Effect-based approach requires showing substantial effect of prohibited conduct – not easy to demonstrate
  - Alternative is form-based approach in which existence of the prohibited conduct must be proved
  - Market power thresholds (Botswana, Namibia, Tanzania, South Africa and Zambia)
- Corporate leniency policies/ programmes
  - Botswana, Mauritius, South Africa, Swaziland and Zambia have CLPs
  - Namibia and Tanzania currently drafting CLPs
- Cases with international firms and prominence of South African firms
  - Influence of South African firms are significant in the region
  - Also firms registered in Mauritius
- Merger legislation
  - Malawi and Swaziland only countries without merger notification thresholds
  - Continuous adaptation of approaches
  - Some form of public interest factors

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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

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Institutional design

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**

Strategic organisational practices

- Strategic planning
  - Well-established, with formal strategic plans
  - Over time, goals and objectives become more outward-oriented taking into account national policy priorities and impact on the economy
- Prioritisation
  - Only CCSA has adopted formal prioritisation framework - has become more sophisticated over time with significant benefits, including:
    - Sector-specific expertise
    - Knowledge of specific markets
    - Developed the ability to prioritise – making choices about competing demands
- Cross-border collaboration
  - Given boost with Declaration on Regional Cooperation in Competition and Consumer Policies and Competition and Consumer Policy and Law Committee (CCOPOLC)
  - Mergers and Cartels Working Groups
  - COMESA provides regional framework for regulating cross-border transactions
  - Bi-lateral cooperation through MoUs

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Building effective institutions for competition enforcement and regional integration

- Large firms with operations across the region can control value chains (or parts thereof) and entrench their positions in ways that exclude and undermine rivals
- An agenda for enhancing regional economic integration cannot be considered without including effective competition enforcement and developing the framework for authorities to cooperate
- Competition authorities are young, inexperienced and require the development of the appropriate capability to deal with cross-border competition issues
- 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

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