



***competition commission***  
***south africa***

**Presentation**  
**SAIPPA**  
**20 October 2015**

**Mziwodumo Rubushe**  
**Head of Department**

# Introduction



competitioncommission  
south africa

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL

- Before 1994, high levels of concentration of ownership control in the economy.
- Excessive state intervention with discriminatory laws.
- State sponsored firms, subsidies, tariffs, co-operatives.
- Restrictions on full and free participation.
- Economy was inefficient.
- Fertile ground for cartels and abuse of dominance.
- High levels of unemployment.
- Economic growth for the period 1993-2014.

- **World – as trade barriers fall what is the problem.**
  - **Seen through the eyes of the Developed Countries** – Firms threatened with competition find new ways to protect themselves.
- **Seen through the eyes of the Developing Countries.**
  - Cannot protect themselves against world cartels
  - Powerful firms get more opportunity to harm the weak – endorse transactions without regard to harm in developing world.
  - The developed world writes the rules for the world.



- Regulatory capacity must assist to align market outcomes with developmental goals.
- Competition policy must be strategically aligned to industrial policy objectives.
- Both promote competitive rivalry (Michael Porter).
- South Africa introduced the Competition Act 89/1998.
- Independent organs of state subject to the Constitution/Law.
- Preamble describes an efficient and competitive environment, balancing the rights of workers, owners and consumers.

# Why Competition Policy



competitioncommission  
south africa

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL

- Fairness and Opportunity.
- Prices and Quality
- Consumer choice
- Innovation.
- Economic Growth
- Promoting SMEs



## Section 2: to promote and maintain competition in order to:

- Promote the efficiency and development of the economy.
- Provide consumers with competitive prices and product choices.
- Ensure that South Africans participate in world markets and recognise the role of foreign competition in the Republic.
- Promote employment and socio-economic welfare.
- Ensure SMMEs an equitable opportunity in the economy.
- Promote a greater spread of ownership.

## Section 3: the Act applies:

- All economic activity within or having an effect within the Republic except-
  - (1) Collective bargaining,
  - (2) Collective agreements,
  - (3) Conduct designed to achieve a non-commercial purpose.
- Applies to all enterprises (private and public).

# Merger Control



competitioncommission  
south africa

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL

- Section 12A, two step approach.
- Likely to lessen/prevent competition.
- Justified on public interest grounds:
  - ✓ Effect on a particular sector,
  - ✓ employment,
  - ✓ SME/Historically disadvantaged to become competitive,
  - ✓ Ability of national industries to compete in international markets.
- 2009-2014, employment condition saved about 4900 jobs.
- Agrigroup merger, the Commission facilitated a private agreement between stakeholders, yielding a R90m fund.
- Walmart merger- employment, R240m fund for local suppliers.



- Section 4: horizontal restrictive practices/Cartels
- Section 5, 8 and 9: vertical restrictive practices, abuse of dominance and price discrimination.
- Prioritization principles.
- Corporate leniency policy.
- Powers of the Commission.
- Market inquiries.
- Scoping and screening of markets.

# Enforcement cases



competitioncommission  
south africa

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL

- **Agriculture:** Bread cartel- Pioneer fined R500m but R250m set aside for an agro-processing competitiveness fund.
- **Infrastructure:** Cement cartel- Afrisam & Lafarge penalised R124 & R148m respectively.
- **Construction:** 15 firms fined a total penalty of R1,46b for collusive tendering .
- **Telecommunications:** Telkom abused its dominance, fined R200m but agreed to lower prices to downstream competitors. Savings estimated to be R875m to consumers over 5 years.
- **Chemicals:** Sasol abused its dominance, fined R535m with remedy not to discriminate on pricing.
- **Private Healthcare:** market inquiry to understand the excessive pricing and the various cost drivers.

## Section 10: a firm may apply to be exempted from the application of the Act:

- Maintenance or promotion of exports.
- SME or firms controlled by historically disadvantaged to become competitive.
- Change in the productive capacity necessary to stop decline in an industry.
- Economic stability of an industry designated by the Minister.

Information exchange is allowed **but** avoid discussing:

- Current and future prices
- Decreases or increases in prices
- Standardisation or stabilisation of prices
- Cash discounts
- Credit terms
- Restrictions on supply

# Collusive Tendering/Bid Rigging



competitioncommission  
south africa

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL

- Agreement on who will win the bid
- Agreement on prices
  - Agreement to raise, lower, or maintain prices
  - Agreement not to negotiate on price
  - Agreement to limit discounts / rebates
  - Agreement on price formulas or guidelines
- Agreement on who will bid for certain customers
- Agreement on who will bid in certain geographic areas

- **Cover Bidding**

Submit bids higher than designated winner.

- **Bid suppression**

One or more companies agree to refrain from bidding or to withdraw a previously submitted bid.

- **Bid rotation**

Conspiring firms continue to bid, but they agree to take turns being the winning (i.e., lowest qualifying) bidder.

- **Market allocation**

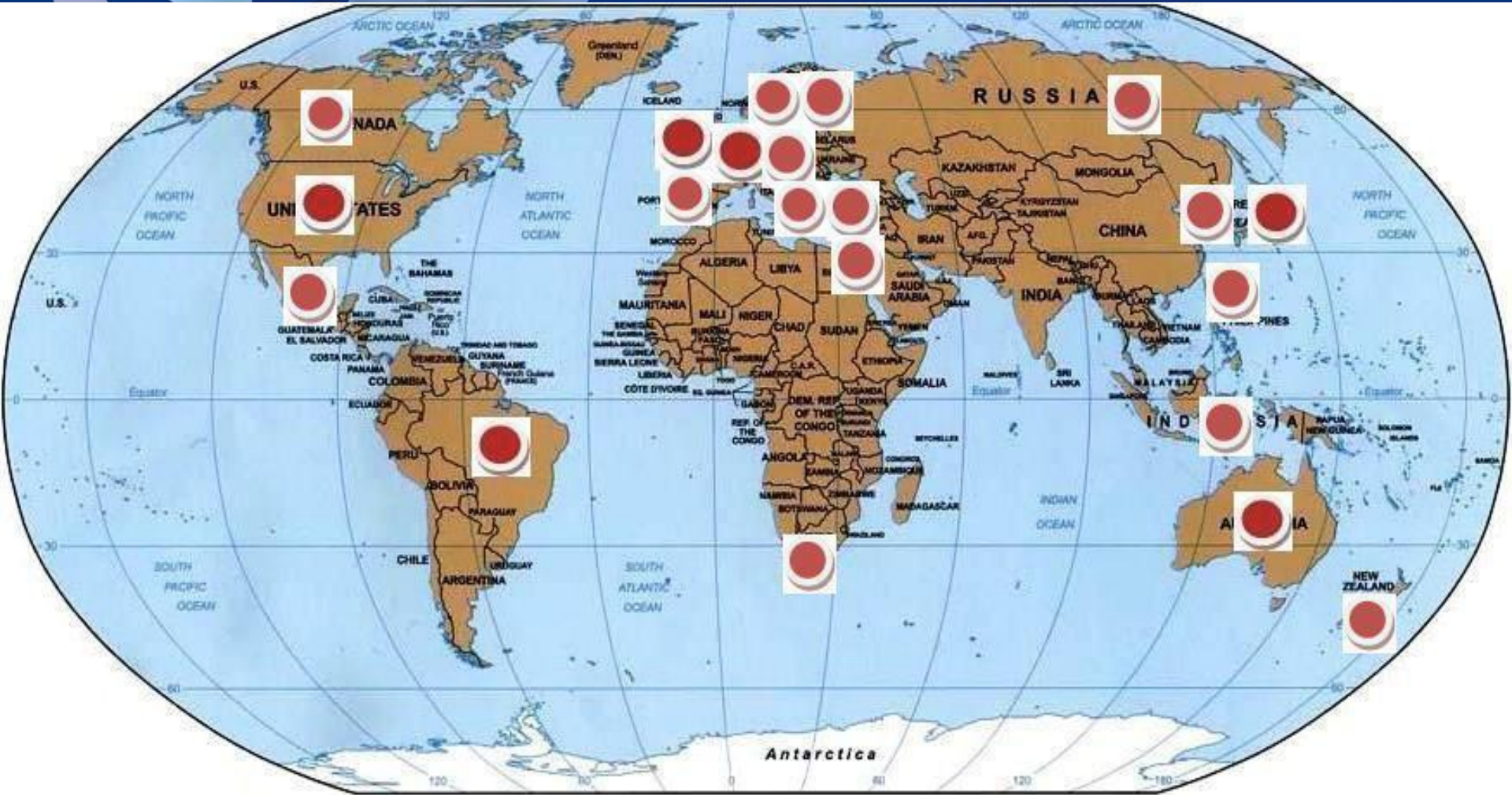
Competitors carve up the market and agree not to compete for certain customers or in certain geographic areas.



# competition commission



competition commission  
south africa



TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL



*competitioncommission*  
*south africa*

*TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL*

# Thank you