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Introduction

South Africa is a pioneer among African jurisdictions employing a consideration of the "public interest" in antitrust merger assessments. Indeed, it was one of the first merger-control regimes to do so, globally. Today, 27 years after its introduction in principle,[1] it has become clear that the application of public interest factors in South Africa's merger law has served to introduce significant uncertainty, not only for foreign investors, but also local financiers, and in some cases to directly and substantially harm even those whom the public interest consideration was designed to assist in the first place. This is particularly so after *Wal-Mart,*[2] the most consequential Competition Appeal Court ("CAC") decision to address public interest issues in 2012, radically altered the legal test applied to these matters. More recently we see the 2019 amendments to the South African Competition Act, 89 of 1998 ("Competition Act"), which resulted in a further and substantial change in the ability of the South African Competition Commission ("SACC") to consider industrial policy priorities in merger investigations, market inquiries, and investigations into agreements and allegations of abuses of dominance. Public interest considerations potentially deter productive and efficient investment and mergers, and more generally economic activity, and can thereby adversely impact economic growth, job creation, poverty alleviation, investment, exports, corporate tax revenue and the growth of SMMEs within the South African economy.

Traditional competition law has historically focused on enhancing consumer welfare primarily through maintaining and promoting effective competition in markets. Indeed, the first chair of the Competition Tribunal, David Lewis warned in 2001 that:

> *"The competition authorities, however well intentioned, are well advised not to pursue their public interest mandate in an over-zealous manner lest they damage precisely those interests that they ostensibly seek to protect."*[3]

Economists too, have called for safeguards against the abuse of these provisions:

> "*Such factors are likely to be drawn on only exceptionally and should be seen within the context of the primary competitive assessment. Only then will competition policy ultimately serve the public interest, as these important provisions are considered and applied throughout Africa.*"[4]

However, as competition policy continues to evolve, so too, does the role of novel non-traditional competition considerations – particularly, public interest factors. Indeed, the integration of public interest provisions within many African jurisdictions' merger control assessments is increasingly commonplace. In this regard, several jurisdictions across the continent consider a wide range of public interest factors as part of their respective merger control regimes, including South Africa, Namibia, Botswana, Mozambique, Zimbabwe and the Common Market for East and Southern Africa ("COMESA").

South Africa has accumulated more than 15 years of increasingly robust exchanges in regard to public interest considerations. Based on an informal survey of practitioners in the southernmost republic of the continent, public interest considerations in South African competition law now commonly overshadow traditional competition concerns, with the agencies prioritizing interventions that claim to pursue broader socio-economic goals, over and above legitimate competition concerns.

Namibia's Competition Act[5] includes public interest factors in its merger reviews, as outlined in Section 47(2). The Namibian Competition Commission assesses how mergers might affect competition, employment, small business opportunities, particularly for historically disadvantaged persons), industrial sectors, and the capacity of national industries to compete internationally. Public benefits, such as increased production, research and development, and technical efficiency, are weighed against potential detriments, particularly regarding dominant position makers.

Botswana's Competition Act[6] similarly incorporates public interest considerations in merger evaluations under Section 52(2). The Botswana Competition and Consumer Authority assesses whether mergers bring a net public benefit, maintain or enhance employment, improve production and distribution, support citizen empowerment and small, citizen-owned enterprises, and boost Botswana's international competitiveness. Considerations also include the potential positive impact on specific industrial sectors or regions.

Mozambique's Competition Act Regulations,[7] that have been operational since 2021, also integrate public interest factors in merger assessments. Article 18(6) of the Regulations directs the Competition Regulatory Authority of Mozambique to evaluate how a merger might impact sectors or regions, employment levels, the competitiveness of small or historically disadvantaged businesses, and the capacity of local industries to compete on an international scale.

Zimbabwe's Competition Act[8], enacted in 1996 and operational since 1998, includes public interest as a consideration in merger assessments, although it lacks detailed provisions. Article 32(1) emphasises promoting competition, protecting consumer interests (including prices, quality, and product variety), and fostering cost reductions, innovation, and market entry for new competitors. Zimbabwe, as a COMESA Member State, also falls under the jurisdiction of the COMESA Competition Commission for transactions that affect the broader region.

The COMESA Competition Commission has been operational since 2013, and considers public interest in merger evaluations, as specified in Article 42 of the COMESA Competition Regulations.[9] The CCC examines competition impact alongside regional consumer interests, product diversity and the facilitation of new market entrants. Pending new Regulations, which seek to significantly expand the CCC's authority to include additional public interest factors such as employment, SME competitiveness, international market capacity, environmental protection and innovation. Approval for these changes is anticipated by the COMESA Council of Ministers by the end of 2024, potentially marking a new phase in regional competition enforcement.

Going further abroad, there is an increasing trend to incorporate at least a notional "public interest" in merger reviews, a phenomenon that does not always align with, and indeed often directly contradicts, efficiency objectives.[10] In a recent digital event, "*New European Commission, New Mission: Modernising Competition Policy – How?*"[11], the notion of public interest within the EU was discussed, where participants mentioned competition authorities should be more responsive to Europe's broader socio-economic goals. Competition enforcers have the potential to protect public interest by fostering a resilient and competitive market structure within the EU, and often in these instances, public interest is linked to sustainability goals, and it is incumbent on the competition authorities to prevent greenwashing while ensuring support for genuine environmental efficiencies.

The reader may already be familiar with the *status quo* described above. However, and perhaps most interestingly, the consideration of public interest factors has emerged from merely being considered in merger-control assessments to filtering through to other spaces, such as abuse of dominance and prohibited practice cases.

This raises a key question as to whether the primary goal of competition policy is one which is driven by market competition and the establishment of conditions that promote the efficiency of businesses to the benefit of consumers as opposed to a primary focus on socio-economic concerns through the adoption of industrial policy conditions.

The author argues that developing, and indeed developed countries should be cautious in simply embracing a plethora of public interest factors to their merger control or competition regimes, without first considering the potential drawbacks of doing so. Rather, these jurisdictions should ensure that their regulatory framework fully appreciates the nuances, risks, trade-offs, and ability to reconcile competing interests so as not to undermine investment, nor compromise the rule of law, including fundamental tenets of constitutionality, due process, and the principles of outcome predictability and clarity-over-vagueness. Public Interest proponents also need to be mindful of the underlying socio-economic issues they seek to address.

The International Competition Network ("ICN") states in its Recommended Practices for Merger Analysis.[12]

> *"The legal framework for competition law merger review should focus exclusively on identifying and preventing or remedying anticompetitive mergers. A merger review law should not be used to pursue other goals."*

While the incorporation of public interest considerations into competition law reflects a broader socio-economic ambition, it is imperative that developing countries balance these interests with traditional, well-established competition principles, which have served antitrust regulators, and the citizens and economies that they exist to protect, well in the past. Policymakers should be vigilant in understanding the complexities and potential trade-offs involved in ensuring the pursuit of public interest goals does not inadvertently stifle competition or hinder long-term economic growth. Developing nations should strive to harmonise public interest objectives with the fundamental tenets of competition law to foster a competitive, fair and dynamic market environment that will ultimately benefit consumers and promote sustainable economic development.

It is almost axiomatic that the increased application of public interest factors in South African merger assessments has introduced significant uncertainty for both local and foreign investors, potentially deterring them from engaging in takeover activities. This uncertainty can lead to reduced foreign investments, adverse impacts on exports, corporate tax revenue, and to the stunted growth of SMMEs. The inherently subjective nature of public interest considerations frustrates the predictability of the merger review process, complicates decision-making processes, risks political influence and third-party interventions. It is crucial to implement a sunset clause on the application of public interest provisions, ensuring more objective and transparent regulatory practices.

While the scope for error, flexible interpretation, limited transparency and subjectivity in judgment might appear to allow for the nuanced and carefully balanced private judgements in pursuit of many noble aims, in practical fact such subjectivity directly incentivises decisions to be made in bad faith, favouring special interest groups that are closest to the decision maker. Such a lack of transparency, objectivity, and predictability directly deter potential local and foreign investors from engaging in takeover activities, or even investments more generally. Any uncertainty regarding the authority's reaction could directly influence the decisions of these investors.[13] A reduction in such activities could result In an adverse effect on exports, corporate tax revenue and hamper possible spinoff demand for products of SMMEs.[14] In this case, spin off demand refers to the demand generated for new products or services that could have been created or expanded on as a result of the success or growth of SMME firms by the above mentioned factors.

A notable example of unintended consequences can be seen in the *Burger King* decision in South Africa, where the SACC's prohibition of the proposed transaction adversely affected the seller's black shareholders. The transaction was intended to provide dividend payments to these shareholders and additionally assist in settling the firm's debts. However, the SACC argued that if the transaction were approved, the HDP ownership stake would decrease significantly from 68 percent to 0 percent.[15] This approach by the SACC has, in our opinion, had a perverse effect on South Africa's imposition of public interest considerations in merger control resulting in HDP profits being hampered by the prohibition. Further, it presents as the first, precedent setting, case where a merger was prohibited solely on public interest criteria.[16]

Setting policy considerations aside, the manner in which agencies assess, weigh, and uphold public interest factors can lead to various unintended consequences if not applied in an objective and transparent manner. The application of public interest in mergers is inherently subjective and often leads to a complex and contentious decision-making process. It also increases the risk of undue political influence and third-party intervention in what should otherwise remain within the exclusive domain of objective regulatory review and the sole responsibility of independent agency decision-making.

Additionally, even in circumstances where public interest grounds are expressly identified, they can be extremely broad and have far-reaching effects on merging parties. This is particularly puzzling and unpredictable for foreign parties, entirely unfamiliar with some of the more arcane domestic concerns. It is for these reasons that a sunset clause on the application of public interest provisions should be considered, regardless of the socio-economic issues at play.

Shifting Priorities in South African Competition Law

At the outset, it must be recalled that this development is not entirely new or unsurprising. After all, the Preamble of the Act itself clearly states that the country's competition law extends beyond mere *commercial profit* and *economic efficiencies*: its authors expressly highlight the socio-economic policy goals of the Act, seeking to ensure that all South Africans have fair opportunities to participate equally in the country's economy.

Public interest considerations were included into the Competition Act in 1997 as a means to stimulate public debate around competition policy contributing to the restructuring of the South African economy in the post-apartheid era.[17] These public interest considerations have since been considered within South Africa's merger control regime.

The increasing emphasis on public interest considerations in the realm of competition law, when they are prioritised over fundamental competition factors, has led to a significant deviation from the original primary purpose for which the Competition Act was enacted two decades ago, which was to promote and safeguard competition in the market to ensure consumer welfare and economic efficiency.[18]

It now faces multiple challenges, as the national enforcement authorities are giving more weight to public interest concerns (such as employment, environmental protection, and industrial development) in their decision-making processes than ever before. This shift has resulted in a dilution of the Competition Act's core objectives, leading to instances where mergers that are procompetitive are prevented for reasons related solely to the public interest, and where, conversely and perhaps even more damagingly, anticompetitive behaviour is being tolerated or even supported in the name of achieving broader societal goals. The greater emphasis placed on public interest, as compared to purely competitive factors has resulted in both over- and under-enforcement. Consequently, the Competition Act's effectiveness in fostering competition, innovation, and efficiency in markets has been compromised, undermining the very foundation on which it was established.

South Africa's Constitutional Court has, more recently, also supported the so-called 'transformational objectives' of the Competition Act, indicating that these objectives are necessitated because of the country's history of apartheid and economic exclusion. In this regard, the Constitutional Court stated:[19]

> "*Colonialism and neo-colonialism and apartheid orchestrated an institutionalized concentration of ownership and control of all things of consequence in our national economy along racial lines. Unsurprisingly, the commanding heights of the corporate sector are seemingly the exclusive terrain of our white compatriots. It is this indisputable reality and our shared commitment to ensuring that South Africa really does get to belong to all who live in it, that the constitutional imperatives, laid out in the Preamble, to improve the quality of life of all citizens and free the potential of each are realized, that the likes of the Competition Act had to and got to see the light of day.*"

South Africa has pivoted away from a pro-competitive application of competition legislation, seemingly focusing on pure industrial policy through the undue level of consideration given to public interest factors in spite of an antitrust evaluation that would lead to a different result.

A recent study at the NWU School of Economic Sciences, delves into "Policy Uncertainty, Mergers, and Acquisitions in the South African Business Environment" and in the conclusion states:

> "*Inevitably, this now heightens the 'cost of waiting' for some investors who may be subject to the Commission's merger and acquisition interrogations that are unnecessarily delayed. Therefore, the risk of discourage, thwarted, or abandoned potential investment transactions is higher, unless the Commission decisions are reasonably rapidly forthcoming.*"[20]

The clearest shift in the legal assessment of mergers, that effectively extinguished legal certainty in the merger control, was the CAC decision in *Wal-Mart*, in 2012. In this decision, Judge Denis Davis, first introduced a positive obligation on merging parties to make the world a better place, and with that the question of "how much better is enough?" has never been answered, nor is answerable. The case concerned the acquisition of a local South African retailer, Massmart, by the U.S. behemoth, Wal-Mart. Behemoth or not, Wal-Mart simply had no operations on the African continent, and accordingly there was no competition concern. Even regarding the relevantly cited public interest factors, the Court concluded that the merger would be overwhelmingly positive, reaching the conclusion that the merger would undoubtedly, and substantially benefit the relevant public interest factors.

> *"[119] […] "even on appellant's version, there was insufficient evidence to refuse the merger. […]. the effect of a 5% reduction in prices resulting from the merger, […] such a reduction and the concomitant saving on the part of particularly relatively poor consumers,*

> *could result in an increase of 20 000 jobs. In other words, when both sides of the transaction were measured, there was no clear evidential basis by which the probabilities could be configured to disturb the Tribunal's primary findings.*
>
> *[120] In summary, the evidence, as made available to the Tribunal and which forms the record placed before this court, cannot justify the conclusion that the public interest considerations raised by the appellant would so trump the benefits which, it is common cause, will flow to consumers, to sustain a decision that the merger should be prohibited."*

And yet, this most troubling judgement went on to impose a positive and bottomless obligation on all merging parties since then to do even more good, proceeding in the very next paragraph as follows:

> "*This conclusion does not necessarily result in a finding that no conditions should be imposed, insofar as this transaction is concerned*."[21]

The Judgment was jet fuel to the previous head of the Department of Trade, Industry, and Competition, Minister Patel, who employed public interest considerations as an affirmative means to be seen to achieve some anecdotal progress in regard to economic and social objectives of South Africa's government.[22] The Commission, too, has a renewed enthusiasm to demand public interest 'commitments' where no harm is likely or even possible. Even more troubling, if a well-educated and experienced Judge in the *Wal-Mart* case could not resist the urge to meddle in a merger that he himself and concluded was profoundly beneficial to the public interest, then how much worse would the incentives be for any bad actors within a competition agency that were now given the power to demand unlimited commitments from merging parties facing practical real-world constraints such as financing and time pressure. Such decision makers are hugely incentivised to favour special interest groups that are closest to, or most valuable to, the decision maker.

The Democratic Alliance, the main opposition party in South Africa, has repeatedly warned that public interest considerations that are not related to competition considerations currently have the ability to influence merger decisions, which increases uncertainty and leads to inefficiencies.[23]

This uncertainty surrounding the application and interpretation of public interest factors has led foreign direct investors to consider avoiding transacting within South Africa, resulting in a decline in business confidence as a result of needing to comply with stringent regulatory requirements.[24] The mobility of capital between countries that already compete for the same foreign direct investments ("FDI") further illustrates this point, as merging parties involved in international transactions may adopt commercial strategies to carve South African elements out of their proposed transactions. Additionally, with ongoing corruption continuing to deter many investors, the result is a decrease in certainty and predictability that only adds to the growing list of reasons to avoid FDI into South Africa.

The adverse effects on investment, economic growth and poverty alleviation are so obvious, that they have even prompted perhaps an ironic, and long overdue epiphany from the Judge in *Wal-Mart,* Judge Denis Davis, who has recently articulated the over-bearing approach of the policymakers in an article, stating:

> "*The commission thus no longer seeks to engage with a holistic approach to assessing the impact of a merger on the public interest. All too often rent-seeking, rather than the promotion of an inclusive economy, has been a consequence of the application of this approach.*" [25]

There is a need in South Africa to increase investments within the country, from both a national and foreign investment perspective, to uplift the economy. For example:

> "*If SA is to attract the kind of investment it so desperately needs, we must rethink how we approach competition regulations. This isn't about dismantling the commission or gutting its powers. It's about striking a balance to ensure the goal of promoting public interest does not come at the expense of economic growth and business confidence.*"[26]

The Case for a Sunset Clause

Competition policies that skew towards the adoption of industrial policy objectives tend to disincentivise many investors, particularly foreign, from pursuing transactions. Creating uncertainty around the merger filing process and the resulting outcome, including the likelihood and extent of any concessions to be made by the parties, ultimately resulting in reduced transaction activity within the country. Implementing a sunset clause over public interest considerations within merger reviews could potentially address these issues by providing a time-bound framework that aligns with current socio-economic conditions.

A sunset clause is a regulatory provision that will lapse upon a fixed date, or after a set period of time, ultimately defining the period of time through which the regulation can be imposed, and/or relied upon.[27] An example of this exists in the SACC's recently published Block Exemption Regulations for Small, Micro and Medium-Sized Businesses[28] whereby the Regulations come into effect on the date of publication and last for a period of 10 years.

Given the current level of intervention within South Africa's merger control regime, the competition agency needs to decide whether to focus more on competition considerations or public interest considerations. The risks associated with this are particularly evident in the timing involved in completing a transaction. Competition agencies possess substantial negotiating power regarding public interest considerations, as parties to the transaction are often more amenable to such conditions to reach a deal's conclusion.

In summary, while a sunset clause might offer a solution to the uncertainties and disincentives created by current policies in South Africa, it's implementation would need to be carefully balanced against the need for a stable and predictable regulatory environment to maintain investor confidence. A nuanced approach that respects the unique historical and socio-economic contexts of each country within the African continent is essential to fostering both investor confidence and socio-economic progress.

The Wholesale Adoption of Public Interest Considerations

We submit that the implementation of public interest policies and considerations within merger control regimes, and enforcement is necessary in those countries experiencing some level of growth but also plagued with high levels of unemployment.

Across Africa, there has been a widespread adoption or push to adopt public interest criteria. Approximately 30% of countries across the African continent have an active national merger control regime, whereas others have both a national competition law regime and are members to regional competition regimes, including: COMESA, the East African Community ("EAC"), the Economic Community of West African States("ECOWAS"), and the Economic and Monetary Community of Central Africa ("CEMAC").[29]

Machine (2014) writes:

> *"It is argued that the basic inclusion for public interest provisions in a competition policy is to help make the markets work for the good of the people. It is an inevitable reality that the development of a country affects its goal, and consequently competition policies of countries differ as they are tailored to meet the unique needs of each country. The definition of competition is aligned to each country's objectives and therefore to call for a single model which would apply to all jurisdictions will be a problem."*[30]

The use of competition law as a means to provide previously marginalised individuals with economic opportunities highlights the attempt to use of competition regulation to achieve an equitable outcome. Such provisions are specific to South Africa's and Namibia's competition law, given the injustices of the apartheid system. Not all developing countries share an unemployment rate anywhere near that of South Africa, 33.5% (Q2 of 2024)[31] and therefore should exercise caution when incorporating public interest factors that mirror those in South Africa into their own merger regimes or applying uniform policies to address specific public welfare concerns. For example, Nigeria has a growth rate of 3.3 percent[32] and an unemployment rate of 3.8 percent.[33] Botswana has a growth rate of 5.8 percent in 2022 that is expected to slow down to 3.3 percent in 2023[34] and an unemployment rate of 23.6 percent.[35] Kenya has a growth rate of 4.8 percent[36] and an unemployment rate of 5.6 percent.[37]

Despite these principal objectives, several African jurisdictions have implemented public interest considerations within their competition regimes, most notably, Nigeria, Botswana, and Kenya, as well as the COMESA region. We submit that other African jurisdictions should not simply implement public interest policy objectives mimicking those in South Africa, as this risks an unreasonable and impractical approach to resolve unrelated considerations.

While Judge Dennis Davis warns against the over-reaching enforcement of public interests, he concludes a recent article, stating:

"Much has been achieved in the past 25 years. In many ways, as indicated, SA has been a pioneer. It has been far more loyal to the legitimate use of law to curb market excess than most jurisdictions. It needs to remain so while ensuring the objectives of the act are not undermined by a belief that the ravages of our economic history can be solved through competition policy alone." [38]

The author submits that other African jurisdictions should not simply implement public interest policy objectives mimicking those in South Africa, as this risks an unreasonable and impractical approach to resolving unrelated socio-economic concerns, if these exist at all.

Conclusion

As competition policy evolves globally, the integration of public interest considerations into traditional competition law, particularly in developing nations, reflects a significant shift towards addressing broader socio-economic goals. While such integration is commendable for addressing historical inequalities and promoting inclusive growth, it necessitates a careful balance with the core principles of competition law.

In this regard, the statutory need to assess public interest factors in Southern and Eastern Africa often appears to be conducted merely for its own sake, without a clear purpose or framework, nor a clear and objective definition of what and whose interest is being advanced, and how so. To enhance the effectiveness and relevance of public interest considerations, it is essential to implement a time-bound clause. As mentioned above, a sunset clause, for example, would ensure that public interest considerations are not only timely but also aligned with the current socio-economic conditions faced by the individual country, thereby fostering a more dynamic and responsive regulatory environment.

While accepting some public interest into competition-review consideration mandates, it is also necessary to acknowledge that simply pursuing broader socio-economic concerns in an ad hoc and unbalanced manner is no longer rational. Policymakers must remain vigilant to ensure these broader ambitions are well defined, limited to achieving their actual purpose, and do not inadvertently stifle market competition or hinder long-term economic development.

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[1] See the OECD Global Forum on Competition Peer Review: Paris, 11 February 2003. *Competition Law and Policy in South Africa*. Available here: https://www.comptrib.co.za/Content/Documents/Info%20Library/Reports/oecd-peer-review-report-paris-11-february-2003-competition-law-and-policy-in-south-africa.pdf.

[2] Minister of Economic Development and Others v. Competition Tribunal and Others, South African Commercial, Catering and Allied Workers Union (SACCAWU) v. Wal-Mart Stores Inc and Another (110/CAC/Jul11, 111/CAC/Jun11) [2012] ZACAC 2; [2012] 1 CPLR 6 (CAC) (9 March 2012).

[3] Shell South Africa (Pty) Ltd and Tepco Petroleum (Pty) Ltd (66/LM/Oct01) [2002] ZACT 13 (22 February 2002), paragraph 58.

[4] Smith, P. & Swan, A. (2014). *Public Interest Factors in African Competition Policy*. The African and Middle Eastern Antitrust Review.

[5] Competition Act 2 of 2003. Available here: https://www.nacc.com.na/technical_overview/competition_act_rules.php.

[6] Competition Act, 2018. Available here: https://www.competitionauthority.co.bw/competition-act-2018.

[7] Mozambique's Competition Legislative Package can be found here: https://www.arc.gov.mz/pacote-legislativo/.

[8] Competition Act Chapter 14:28. Available here: https://www.competition.co.zw/download/the-competition-act/.

[9] COMESA Competition Regulations, as at December 2004. Available here: https://comesacompetition.org/wp-content/uploads/2023/01/Gazette-Vol-17-No.12-COMESA-Competition-Regulations-English.pdf.

[10] Public interest considerations inevitably entail trade-offs. Does one preserve short-term employment at the expense of long-term economic growth? Does one favour a small group of designated competitors (such as Small, Micro and Medium Enterprises ("**SMMEs**")) at the expense of efficiencies that may ultimately undermine consumer welfare (thus breaching the old antitrust adage of protecting "competition rather than competitors")? Does one actively discourage or address high levels of concentration even absent anti-competitive features in order to spread ownership?

[11] Coeuré, B., De Loecker, J., Caffarra, C., Duso, T., & Valletti, T. (2024). *New European Commission, New Mission: "Modernising Competition Policy"- How?* Recording available here: https://cepr.org/multimedia/new-european-commission-new-mission-modernizing-competition-policy-how.

[12] Coppola, M. (2015). *Consideration of Public Interest Factors in Antitrust Merger Control*. CPI. Available here: https://www.pymnts.com/cpi-posts/consideration-of-public-interest-factors-in-antitrust-merger-control/.

[13] Duncan, R.W. (1999). *The Competition Act, 1998 An Economic Perspective*. The South African Journal of Economics. vol. 67(2). p203.

[14] *Ibid*. p203.

[15] Eveleigh, J. (2021). *Revisiting the Burger King prohibition: [Unintended] Consequences & [Possible] Reconsideration*. Available here: https://africanantitrust.com/2021/08/01/revisiting-the-burger-king-prohibition-unintended-consequences-possible-reconsideration/.

[16] Competition Tribunal of South Africa. (2021). *Tribunal Releases Public Version of Conditions Imposed on Sale of Burger King SA*. Available here: https://www.comptrib.co.za/info-library/case-press-releases/tribunal-releases-public-version-of-conditions-imposed-on-sale-of-burger-king-sa.

[17] See the OECD Global Forum on Competition Peer Review: Paris, 11 February 2003. *Competition Law and Policy in South Africa*. Available here: https://www.comptrib.co.za/Content/Documents/Info%20Library/Reports/oecd-peer-review-report-paris-11-february-2003-competition-law-and-policy-in-south-africa.pdf.

[18] *Ibid*. Page 8.

[19] Competition Commission of South Africa v. Mediclinic Southern Africa (Pty) Ltd and Anther (CCT 31/20) [2021] ZACC 35; 2022 (5) BCLR 532 (CC); 2022 (4) SA 323 (CC); [2023] 1 CPLR 2 (CC); [2022] HIPR 200 (CC) (15 October 2021). Available here: https://www.saflii.org/za/cases/ZACC/2021/35.pdf.

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[21] Minister of Economic Development and Others v. Competition Tribunal and Others, South African Commercial, Catering and Allied Workers Union (SACCAWU) v. Wal-Mart Stores Inc and Another (110/CAC/Jul11, 111/CAC/Jun11) [2012] ZACAC 2; [2012] 1 CPLR 6 (CAC) (9 March 2012).

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[24] Avery, M. (2023). *MICHAEL AVERY: Tribunal puts a pox on Patel's public interest conditions*. Business Day. Available here: https://www.businesslive.co.za/bd/opinion/columnists/2023-07-17-michael-avery-tribunal-puts-a-pox-on-patels-public-interest-conditions/.

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[28] South Africa: Government Gazette No. 50746. *Block Exemption Regulations for Small, Micro and Medium-sized Businesses, 2024.* Published 03 June 2024. Available here: https://www.gov.za/sites/default/files/gcis_document/202406/50746gen2538.pdf.

[29] Chance, C. (2023). *Trends in African Merger Control for Transport & Logistics*. Page 11. Available here: https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2023/04/latest_developments_in_africa_and_transport_logistics.pdf.

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