



competition commission
south africa

**RED MEAT ABATTOIR
ASSOCIATION**

**THE COMPETITION COMMISSION AND
COMPLIANCE TO THE COMPETITION ACT
89/1998**

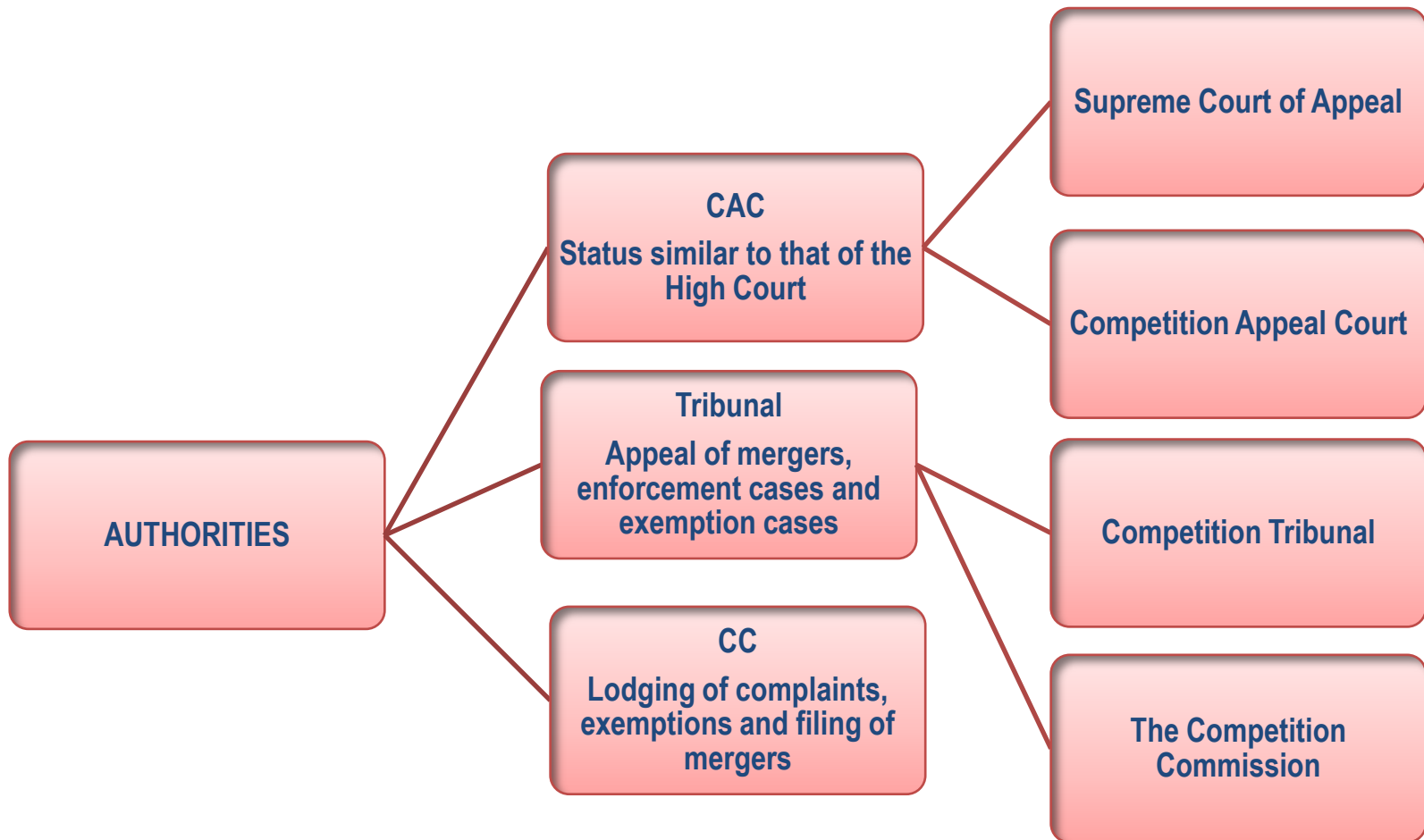
DR. THAPI MATSANENG

COMPETITION AUTHORITIES



competitioncommission
south africa

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL



THE COMPETITION COMMISSION

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL



competitioncommission
south africa

- **Body of authority**
- **Created by the Competition Act 89/1998, as amended**
- **Reports to the Department of Economic Development**
- **Housed at the DTI Campus in Sunnyside, Pretoria**

THE COMMISSION'S POWERS & OBJECTIVES



competitioncommission
south africa

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL

Act applies to:

- all economic activity within or having an effect within the Republic, except collective bargaining
- all enterprises (i.e. all types: CCs, partnerships, INCs, Cos) ,

Objectives:

- to promote and maintain competition in order to:
 - Promote efficiency and development of the economy
 - Provide consumers with competitive prices and product choices
 - Ensure SMME's an equitable opportunity in the economy
 - Others

PRIORITY SECTORS



competitioncommission
south africa

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL

- **Banking**
- **Health**
- **Food & Agro-Processing**
- **Infrastructure and Construction**
- **Intermediate and Industrial products (steel)**
- **Energy**
- **Other sectors (also investigated)**

DEPARTMENTS OF THE COMMISSION & FUNCTIONS



competitioncommission
south africa

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL

- Enforcement & Exemptions (E&E): Investigates:
 - interactions between competitors (s4)
 - Interactions between suppliers and their customers (s5)
 - Instances of abuse by dominant firms/firms with market power (s8 & s9)
 - refers findings to LSD / Non-refers
- Mergers & Acquisitions: Analyses:
 - filed mergers and acquisitions
 - approves or prohibits mergers
- Policy & Research:
 - assists E&E and M&A
 - conducts research studies
- Legal Services Division
 - assists in cases
 - refers to the Competition Tribunal
- Advocacy and Stakeholder Relations
 - negotiates, educates and comments on policies

PROHIBITED PRACTICES: RESTRICTIVE HORIZONTAL PRACTICES

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL



competitioncommission
south africa

- **Restrictive horizontal practices (cartels): S(4)**
 - an agreement or a concerted practice by companies (competitors) that involves substantial lessening of competition or
 - direct or indirect price fixing,
 - market allocation, and/or
 - collusive tendering (bid rigging) = cartel conduct
- **Criminal liability of cartels**
 - Amendment introduces criminal offence against a director or an executive of cartel member firm
 - Director may be prosecuted by NPA if firm found guilty of engaging in a cartel
 - Cartels equated with theft therefore a fine not exceeding R500 000 or Imprisonment not exceeding 10 years or both may be imposed

PROHIBITED PRACTICES: RESTRICTIVE VERTICAL PRACTICES

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL



competitioncommission
south africa

- Restrictive vertical practices : (S5)
 - an agreement between parties in an vertical relationship that substantially prevents or lessens competition in the market **UNLESS** there are efficiency reasons
 - the practice of minimum resale price maintenance
- Commission examines the reasonableness of vertical agreements:
 - duration of the exclusive agreement
 - height of barrier entries into the affected market (foreclosure)
 - the extent of market foreclosure.

PROHIBITED PRACTICES: ABUSE OF DOMINANCE

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL



competitioncommission
south africa

- Abuse of dominance (S8)
 - charging an excessive price
 - refusing access to an essential facility
 - exclusionary conduct (margin squeeze)- *Efficiency Reasons*
 - exclusionary conduct:- *Efficiency reasons*
 - Inducement
 - Refusal to supply scarce goods
 - Tying and bundling
 - Predatory pricing
 - Buying up all scarce supply

- Price discrimination (S9)- *justifications allowed*

PROHIBITED PRACTICES: ABUSE OF DOMINANCE



competitioncommission
south africa

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL

- **Dominance measure: If the company has**
 - **45% of the market**
 - **35% but less than 45% of the market unless it has no market power**
 - **Less than 35% of the market but has power**

DOMINANCE OR MARKET

POWER

is not against the law

but

the ABUSE of it is

MERGERS & ACQUISITIONS



competitioncommission
south africa

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL

- Commission has power to **CONSIDER/EVALUATE** mergers on the basis of thresholds i.e combined annual turnover & assets
- Merger types (defined by thresholds)
 - Small mergers
 - Intermediate mergers
 - Large mergers
- Companies must **NOTIFY** the Commission of Intermediate & Large mergers
- Companies need not **NOTIFY** on Small mergers **UNLESS** directed to do so by the Commission (Public Interest/ Competition concerns)

- On consideration of a merger the Commission analyses whether there will be substantially lessening or preventing competition:
 - If so-efficiency reasons are evaluated
 - If so -public interest reasons are evaluated
- Consideration actually focuses on:
 - whether firms in the market will behave competitively after the merger
 - the strength of competition in the market

- Exist in most industry sectors
- Carry on legitimate activities beneficial to members. (e.g. lobbying and improving safety of products)
- They may create avenue for CC to educate their members etc
- Therefore: CC is not against the establishment of industry associations

- **Associations/Forums cannot be used as:**
 - forums to facilitate collusion (*price fixing, market allocation, collusive tendering*)
 - platforms for competitors operating in the same market/ industry firms to agree (written/oral) on anti-competitive behaviour

- **Competition risks may arise:**
 - where members exchange information and can observe individual firm information and/or facilitates collusion
 - where remarks, statements, recommendations or proposals for specific joint/uniform market conduct (even if non-binding) are made
 - where statements that influence members not to do business with certain parties, i.e. group boycotts are made, inducement
 - where rules denying members termination of membership are enforced

- **Forms of Information Exchange**
 - Direct & vertical exchanges
 - Industry Association exchanges
 - Spread of data by independent 3rd parties (i.e consulting companies)

- **Characteristics of the information**
 - Subject matter of the information & the level of detail of the information (prices, discounts, rebates, fee guidelines, increases, reductions, terms of sale, supply, payments = aim to coordinate the market)
 - The age of the information (eg future strategies of cos, not historical data)
 - The frequency of the information

INDUSTRY ASSOCIATIONS: WHAT CAN BE DONE?

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL



competitioncommission
south africa

- Information that can be exchanged
 - Publicly available information
 - Benchmarking information (aggregated industry wide information)
- Meetings must have a clear agenda
- Beware of standard setting that restricts entry into the industry, deters innovation and/or generally discourages competition amongst members

If exchange of sensitive information is
necessary

Association should consider

Exemption Application (Schedule 1 of
CC Act)

COMPLIANCE SOLUTIONS FOR ASSOCIATIONS

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL



competitioncommission
south africa

- Seek a clarification (free)
- Seek an advisory opinion (R2500)
- Apply for an exemption (filing fee R100 000):
 - for export maintenance & promotion purposes
 - to promote small business & black business competitiveness
 - to stop a decline in industry
 - to maintain economic stability of designated industry
 - to exercise of intellectual property rights
- Apply for leniency (CLP):
 - Corporate Leniency Policy (CLP) started in 2004
 - Pro-active tool, integral to detect and eradicate cartels only
 - Immunity against prosecution to honest firms providing full information of cartel activities a cartel. First come first serve basis
- Consider a compliance programme as a risk management tool

CONCLUSION



competitioncommission
south africa

TOWARDS A FAIR AND EFFICIENT ECONOMY FOR ALL

- **Competitors must avoid:**
 - current and future prices
 - decreases or increases in prices
 - standardisation or stabilisation of prices
 - cash discounts
 - credit terms (justifications)
 - restrictions on supply
 - allocation of customers or markets
- **avoid disseminating fee guidelines**

- **Complaints on CC1 Form (www.compcom.co.za) can be faxed or emailed (attach a word document detailing the complaint) to ccsa@compcom.co.za**



competition commission
south africa

THANK YOU

Dr. Thapi Matsaneng

thapim@compcom.co.za
(012) 394 3535

General email: ccsa@compcom.co.za
Website: www.compcom.co.za

“ towards a fair and efficient economy for all ”