

# Enforcement priorities of the SA Competition Commission

BIICL/RBB Competition Law and Economics  
Conference: South African Developments in  
Light of Recent European Experience

17 June 2009

# Overview

- Anti-competitive conduct highlighted in recent years as having damaging impact on SA's growth and development
  - For example, 2006 Harvard Team findings - suggested more proactive approach by Commission, initiating investigations where anti-competitive outcomes observed and greater emphasis on cartels
  - Industrial Policy highlighting conduct in various sectors
- Commission already moving in this direction
- Cartels uncovered, especially bread, led to public outcry
- Commission's Corporate Leniency Policy bearing fruit with sharp increase in leniency applications in 2008/09
- Commission cartel cases suggestive of widespread collusion
- Ongoing focus on anti-competitive conduct by entrenched dominant firms

# Commission's approach to enforcement prioritisation

- Better use of resources
- Improved effectiveness
- Prioritisation is about prioritising cases and identifying priority sectors where the Commission will be proactive
- Broad criteria:
  - Likelihood of competition infringements (especially cartels)
  - Impact on consumers, especially low income consumers
  - Economic growth and development (growth strategy, industrial policy)

# Priorities in practice

- Cartels and CLP
- Sectors identified:
  - Infrastructure/construction
  - Food and agro-processing
  - Intermediate industrial products
  - Banking
- Process followed (infrastructure/construction; food products):
  - Research phase to scope the sector → Raise concerns, make links with key stakeholders, etc
  - Prioritisation of specific markets
- Process in Banking:
  - Enquiry panel chaired by former judge, public hearings, report to Commission with recommendations, June 2008
  - Joint process with Treasury, DTI, SARB to take recommendations forward

# Reflections on abuse

- V. concentrated economy, quasi-monopolies in important products
  - In many cases state sponsored/created, mature products
  - Industries in practice? basic chemicals, grain silos, fertilizer, airlines, steel, fixed line telecoms, cigarette distribution, beer
- Entrenched dominance is particularly important in the South African context – liberalisation and reform were to increase economic participation and improve economic efficiency
- ‘Naturally protected’ local market
- ‘post Chicago’ theory: incentives & potential for anti-competitive exclusionary conduct may be wider than previously thought
- Same standards as in e.g. European jurisdictions suggests greater concerns in South Africa about unilateral abuse – both likelihood and impact
  - addressing such behaviour rests on detailed, case-by-case analysis of the actual conduct and effects under SA Act

# Cartels

- Proactive research and initiations has uncovered cartels – e.g. construction and infrastructure products
- Major firms starting to change their position with regard to cooperation and leniency
- What does cooperation mean?
  - Substantive, proactive
  - Not limited to ensuring managers sign codes of ethics or good business practices but about uncovering actual conduct
  - Leniency or substantially reduced penalties as a result of co-op; steep penalties where opposite path followed
- Going forwards need to follow-up to examine whether anti-competitive conduct persisting
- NB Some important cartels occurring in conjunction with exclusionary conduct