Achieving SDG 10: What role for Competition Law and Policy?

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DECLARATION

I declare that this report is my own, unaided work. It is submitted in partial fulfilment of the requirements for the degree of Master of Laws in the field of International Economic Law at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any other degree or examination in any other university.

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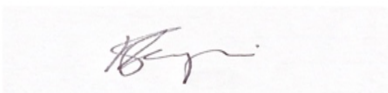

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ABSTRACT

Inequality has been one of South Africa's biggest challenges and with stagnating economic growth, the future does not look enticing. If the country wants to ultimately achieve sustainable equality, an extensive legislative scheme that caters for the present and the future is crucial. The implementation of these legislative schemes should not give complete precedence to measures which lead to economic growth. This is because economic growth does not automatically lead to poverty reduction or reduced inequality. Poverty and inequality have increased in most countries over the last decades despite decent economic growth rates because the capital growth mostly goes to the top of the income distribution and does not trickle down. Rather, legislative schemes must apply measures which promote and emphasise participation of historically disadvantaged persons in the economy. This kind of approach is good because it decreases levels of inequality in such a manner that is good for sustainable economic growth. Furthermore, this approach shares similarities with the United Nations Sustainable Development Goal 10: Reducing Inequalities and it is also cognisant of the economic circumstances in South Africa and has had relative success when executed correctly.

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I. INTRODUCTION

The 1994 elections may have brought in political change, but economic challenges such as inequality, poverty and unemployment which were rampant during apartheid, still remain massive challenges faced by the government. [1] Thirty-years into the Constitutional dispensation, South Africa has not improved the welfare of its citizens. High levels of inequality have been influenced by a legacy of exclusion from the economy. With a Gini coefficient of 0.67, this is easily one of the most unequal countries in the world [2]. Moreover, the percentage of the population living under the upper-middle-income poverty line was estimated at 62.6% in 2022, furthermore poor governance, maladministration and weak economic growth has stagnated any progress in reducing poverty levels, which were only exacerbated by the COVID-19 pandemic. [3] Despairingly, the current unemployment rate for the first quarter of 2023 was recorded at 32.3%. [4] While 66.5% of youth between 15 and 24 have no sort of employment across all sectors. [5]

For economic prosperity, a comprehensive legislative plan is required to alleviate the effects of these issues. Effective implementation of these policies needs to make sure they cater for the present and the future generations. In other words, they need to be sustainable. The goal of these policies should not focus on the immediate eradication of poverty, inequality and unemployment. Rather, focus must be placed on the prolonged participation of historically disadvantaged persons in the economy. This kind of approach mirrors the United Nation's Sustainable Development Goal 10 (herein referred to as "Sustainable Goal") of reducing inequalities and making sure no one is left behind. [6]

The South African government is no stranger to these types of policy and legislative adjustments. For example, during the COVID-19 pandemic, the South African Reserve Bank

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[1] F Wilson 'Human capital formation and the labour market in South Africa: Challenges for the post-apartheid economy' (1996) 86(2) *The American Economic Review* 324
[2] The Gini coefficient measure is used to determine the distribution of income within a population of a country. The World Bank in South Africa' 30 March 2023 at https://www.worldbank.org/en/country/southafrica/overview (Accessed 21 June 2023)
[3] 'Ibid
[4] 'Beyond employment – Time Related Underemployment in the SA Labour Market' 16 May 2023 https://www.statssa.gov.za/?p=16312#:~:text=South%20Africa%27s%20unemployment%20rate%20in,the%20highest%20in%20the%20world. (Accessed 21 June 2023)
[5] Op cit note 4.
[6] Goal 10: Reduce inequality within and among countries at https://www.un.org/sustainabledevelopment/inequality/ (Accessed 21 June 2023)

reduced interest rate basis points by 100 points in March 2020, another 100 basis points in April 2020, 50 more in May 2020 and a further 25 points in July 2020. [7] We also saw financially distressed companies and employees assisted through special programs instituted via the Unemployment Insurance Fund. [8] Throughout South Africa's history, the implementation of affirmative action measures to achieve socio-economic equality aimed at addressing historical exclusion of the black people has been moderately effective. [9]

The government's increasing interventionist role in the economy, combined with its institutional support for the realisation of its developmental objectives and its appreciation that participatory democracy lies at the core of the transformation project is why it can be said that South Africa can be defined as an emerging democratic developmental country. [10]

One of the tenets of an emerging developmental country is to have the capacity for the formulation and implementation of a development agenda. [11] Competition Law plays an instrumental role in fostering economic welfare and making markets work for development.[12] The *Competition Act* 89 of 1998 (the Act) was drafted to establish general competition law norms that would regulate business conduct in order for the optimal and competitive functioning of the economy. [13] In addition to provisions which promote free market practices and maintain competition, this Act includes public interest objectives and certain exemptions aimed at the promotion of employment and the expansion of ownership of historically disadvantaged persons in the economy. Therefore, I submit that competition law and policy in South Africa can serve as a means to eradicate inequality within the scope and ambit of Sustainable Goal 10: Reduced Inequalities. This Goal was established to reduce inequalities within and among countries, highlighting various topics namely income growth, social inclusion, equal opportunities, and fiscal policy. Through harmonizing competition law with these objectives, South Africa can establish an economy that encourages fair

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[7] International Monetary Fund Policy Responses to Covid 19 at https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#S (Accessed 7 June 2023)
[8] Ibid
[9] K Adam 'The politics of redress: South African style Affirmative Action' (1997) 35(2) *The Journal of Modern African Studies* Cambridge University Press 234
[10] S Rosa 'Transformative Constitutionalism in a democratic developmental state' (2011) 22(3) *Stellenbosch Law Review* Juta Law Publishing *55*
[11] Ibid at page 56
[12] Markets and Competition Policy: Fostering growth and shared prosperity by opening and transforming markets' The World Bank available at https://www.worldbank.org/en/topic/competition-policy (Accessed 26 September 2023)
[13] Competition Act 89 of 1998

competition, prevent anti-competitive practices, and most importantly advocate equal opportunities for all market participants, especially historically disadvantaged persons. This paper critically discusses the relationship between competition law and certain objectives of Sustainable Goal 10, illuminating how competition law can contribute to reducing inequality in South Africa.

This paper begins with setting out the extent of the inequality crisis in South Africa. It logically proceeds with a synopsis of relevant aspects of Sustainable Goal 10. Afterwards, it looks at South Africa's current approaches to addressing inequality through examination of existing fiscal policies. Focus is then shifted to assessing the relationship between competition law and inequality thorough a Constitutional lens. On this backdrop, an illustration is made on how competition law and policy can be implemented to effectively reduce inequalities. Thereafter, the Act is then extensively discussed with emphasis on its historical context, the preamble, legislative provisions, and the Act's application in cases that relate to the reduction of inequalities.

II. INEQUALITY IN SOUTH AFRICA

South Africa remains one of the most unequal countries in the world, with race playing a significant factor in a society where approximately 10% of the population owns more than 80% of the wealth. [14] High levels of inequality are one of the historical legacies of the brutal apartheid regime, which strived to structure income inequalities systematically and unfairly as possible to disadvantaged groups. [15] For example, black and white people with the same qualifications were remunerated different wages for the same job because of racial discriminatory policies which affected income and earnings.[16] Moreover, black people were denied access to forms of wealth such as property, business opportunities and education to enter the labour market based on their racial classification. From this, it becomes easy to

[14] Aljazeera 'South Africa most unequal in the world: Report' 10 March 2023 available at https://www.aljazeera.com/news/2022/3/10/south-africa-most-unequal-country-in-the-world-report#:~:text=South%20Africa%20is%20the%20most,World%20Bank%20report%20has%20said (Accessed 11 July 2023)

[15] N Nattrass & J Seekings (2008) *Class, Race, and Inequality in South Africa* United Kingdom: Yale University Press 2.

[16] R Burger, J Rachel & D von Fintel 'Affirmative action policies and the evolution of post-apartheid South Africa's racial wage gap' (2016) 2016/66 *WIDER Working Paper* 3

ascertain how the economic gap between those in who were favoured by apartheid economic policies and those who were not, widened. Three decades later, no significant evidence exists which suggests that income inequality has diminished post-apartheid. [17] Instead, one can argue it has increased even higher with roughly 64% of black people living in poverty without access to electricity, housing, or clean water, whilst white people still continue to control a large chunk of the economy. [18]

There is a sentiment that levels of inequality continue to rise because of the collusion and corruption between public and private institutions. One could argue that state capture was a by-product of political interference in massive contracts with public institutions and cadre deployment in high ranking government positions. The cumulative effect of this kind of corruption is detrimental to the general population as it delays efficient service delivery and this leads to widespread inequality, poverty and lack of trust with the government. [19] According to the International Monetary Fund, high levels corruption could lead to higher poverty and inequality for two reasons. First, a growing economic rate is synonymous with a higher rate of poverty reduction, and corruption slows the rate of poverty reduction by reducing economic growth. [20] Secondly, inequality can be harmful to economic growth, therefore, if corruption contributes to an increase in inequality, it will subsequently reduce economic growth and thus limit poverty reduction. [21]

Despite coming from difficult circumstances, it would be remiss not to acknowledge South Africa's economic growth since the end of apartheid. From an annual growth rate of 1.4% between 1980 and 1993, growth accelerated to a rate of 3.3% per annum over the period of 1994 to 2012. [22] GDP in 2007 was 77% larger than it was in 1994 and the country's fastest growth since 1960s was recorded in the period between 2004 to 2007, with GDP growth averaging approximately 5.2% per annum.[23] Unfortunately, GDP growth coincided with

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[17] A Sguazzin ' South Africa Wealth Gap Unchanged Since Apartheid, Says World Inequality Lab' *Time Magazine* 5 August 2021 Available at https://time.com/6087699/south-africa-wealth-gap-unchanged-since-apartheid/ (Accessed 12 July 2023)
[18] O Lannegren & I Hiroshi 'The end of the ANC era: An analysis of corruption and inequality in South Africa' (2017) 10 (4) *Journal of Politics & Law* 57
[19] EA Mantzaris 'Corruption as a violation of basic human rights in South Africa and Russia' (2017) 9(8) *African Journal of Public Affairs* 19
[20] S Gupta et al 'Does Corruption affect income inequality and poverty' (1998) International Monetary Fund Working Paper 8
[21] Ibid
[22] Industrial Development Corporation 'South African economy: An overview of key trends since 1994' (2013)
[23] Ibid

worsened economic disparities. South Africa's Gini coefficient increase from 0.64 in 1995 to 0.69 meant a rise income inequality. To put it in another way, a declining share of the general population were able to enjoy economic growth, making poverty reduction harder to realise. [24]

Under inequality, it is often the poorest who experience the most relative and absolute loss. They are incapable of financing their education or make use of opportunities from modern advancements in technology, markets, and migration becomes increasingly difficult to nigh-on impossible. Moreover, they are entangled in a poverty trap that requires more than luck to escape. Lack of productivity then manifests into an absolute waste of human resources. Hence, prospects for potential for future economic growth are lost. [25] At the end of apartheid, there was much needed hope that black people would enjoy some economic liberties that were not afforded to them previously. Mandela's dream of economic equality convinced many sceptics that change would come for oppressed black South Africans. [26] Fortunately, there has been change, however it has been immaterial. Inequality not only persists, but has gotten exponentially worse in almost three decades. Therefore, it is very important that the government takes immediate action to improve the welfare of its citizens that have been marginalised from the economic development South Africa has seen post 1994. This can be done through the implementation of effective policies that will allow economic gains to be more linked to the improvement of welfare. [27]

III. UNITED NATIONS SUSTAINABLE DEVELOPMENT GOAL 10

The Millennium Development Goals (MDGs) were developed in September 2000 with the objective of achieving certain development targets by 2015. These goals, which comprised an extensive range of issues including poverty, illiteracy and the environment were established to address global development challenges. After 2015, these goals were superseded by the Sustainable Development Goals which offered a more humanitarian-centred development agenda focusing on reduction of extreme poverty, inclusive social development and inclusive

[24] C Van Der Westhuizen 'South Africa: Economic growth, poverty and Inequality' in Foresight Africa: Top Priorities for the Continent in 2012 (2012) *33*
[25] AM Balisacan 'Towards a fairer society: inequality and competition policy in developing Asia' (2010) LVI (1) and (2) *The Philippine Review of Economics* 133
[26] Op cit note 18
[27] Op cit note 23 at 33

economic development compared to the MDGs which only included limited notions of human rights, equity and empowerment. [28]

Sustainable Goal 10 aims to reduce inequality within and among countries. It calls for reducing inequalities in income as well as those based on age, sex, disability, race, ethnic origin, religion or economic or other status within a country. Also, it addresses inequalities among countries, including those related to representation, migration, and developmental assistance. [29] It was essentially designed to reduce inequalities within and among counties, focusing on various aspects such as income growth, social inclusion, equal opportunities and improved regulation of financial markets. [30]

The intention of these goals was not to impose, but rather to encourage corporate social responsibility on governments all over the world to attain basic levels of goods and services for all, enhance levels of wealth distribution, facilitate equitable access to opportunities, information and rule of law, and invest in innovation that has the ability to build capacities at all levels of society.[31]

Dismantling inequality remains one of the toughest objectives for governments. Firstly, because inequality threatens social and political stability. Secondly, there is a link between growing inequality and economic crises throughout the world. [32] Thirdly, inequality is detrimental for the achievement of other social welfare goals, including the eradication of poverty, ensuring decent work and transforming economic structures. [33] The effects of inequality can be curbed through effective policy formulation, public-private partnerships, and measures by respected international institutions. All that is required is a set framework to

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[28] 70/1 Transforming our world: the 2030 Agenda for
Sustainable Development: Resolution adopted by the General Assembly on 25 September 2015

[29] Op cit note 7

[30] A Sajjad et al. 'The implementation of sustainable development goals in "BRICS" countries' (2018) 10(7) *Sustainability* 1

[31] United Nations Environment Programme 'Why do the Sustainable Development Goals Matter?'. Available at https://www.unep.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter#:~:text=To%20achieve%20basic%20levels%20of,level%20of%20society%20are%20needed. (Accessed 5 July 2023)

[32] M Bordo & C Meissner 'Does Inequality lead to a financial crisis' Centre for Economic Policy Research Policy Portal 24 March 2012. Available at https://cepr.org/voxeu/columns/does-inequality-lead-financial-crisis (Accessed 5 July 2023)

[33] CL Carpentier et al 'Goal 10 – Why Addressing Inequality Matters' UN Chronicle April 2015 4 (LI))

solve it and in this paper I aim to illustrate that Sustainable Goal 10 is a viable framework option.

To reduce inequalities, Sustainable Goal 10 has set interconnected targets for 2030. Within the framework of this research paper, focus is placed on 3 Goals; 10.1, 10.2, and 10.3. Firstly, Goal 10.1 aims to achieve and sustain income growth for the bottom 40% of the population at a rate which surpasses the national average. [34] Secondly, Goal 10.2 promotes the inclusion and advocates for empowerment of all persons in social, economic and political aspects, irrespective of age, gender, disability, race, ethnicity, origin, region or economic or other status. [35] Thirdly, Goal 10.3 seeks to ensure fair opportunities through the elimination of discriminatory policies legislation, policies and practices and the adoption of appropriate legislative measures, polices, and sufficient action in to achieve equal opportunities. [36] Sustainable Goal 10 embodies a multifaceted effort in addressing inequality by promoting income growth, social inclusion, and the removal of discriminatory barriers. In the next section, I assess South Africa's methodologies to tackling inequality, by analysing its own challenges, policy initiatives and progress taken to achieve Sustainable Goal 10.

IV. SOUTH AFRICA'S APPROACHES TO RESOLVING INEQUALITY

South Africa has taken steps to eradicate inequality through formulation and implementation of different development strategies such as the Reconstruction and Development Programme (RDP), Growth Employment and Redistribution (GEAR), the Accelerated and Shared Growth Initiative for South Africa (ASGISA) and the New Growth Path (NGP). [37] The RDP has stated that if South Africans remain in poverty, without land and tangible prospects for a better life, economic prosperity and political democracy cannot survive and flourish. [38] Therefore, an aggressive approach to reducing inequality is required. Fortunately, the National Development Plan (NDP) which aims to accelerate economic progress and decrease inequality by 2030 has a 74% convergence with the United Nations Sustainable Goals. [39] The

[34] M Öberg 'The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ' (2005) 16 *The European Journal of International Law* 879–906
[35] Ibid
[36] Ibid
[37] D Malan 'Corporate Support for the SDGs: A South African perspective' (2016) 64 *The Journal of Corporate Citizenship* Theme Issue: The United Nations Global Compact and the Encyclical Laudato *Si* 110
[38] Sustainable Development Report: Country Report (2019) Statistics South Africa 133
[39] Ibid

NDP predated the agenda of the United Nations 2030 Agenda for Sustainable Development and it serves as a comparative yardstick that determines if South Africa has adopted the correct measures in eliminating poverty, prioritizing job creation, reducing inequality and growing an inclusive economy by 2023. The NDP overlaps with the objectives of the 2030 Agenda, through the prioritisation of poverty eradication, inequality reduction, and growing an inclusive economy by 2030. [40] The NDP's objectives are in accordance with those of the Sustainable Goals, and are included in government planning systems at national, provincial and local levels. [41] For example, policies such as the Economic Recovery and Reconstruction Plan of 2020, Broad Based Black Economic Empowerment (BBBEE)[42] and the Employment Equality Act [43] have been adopted to address inequality in unison with Sustainable Goal 10.

Ultimately, South Africa's economic issues require robust policies that need to pass the test of economic sustainability and intergenerational equity. [44] Economic policies need to be implemented in such a way that they do not compromise the long-term aspirations of the economy to actively engage in globally competitive markets. The core focus of these policies must emphasise economic transformation, inclusive growth and competitiveness as these tenets provide the most viable strategy to combat the socio-economic challenges of unemployment, inequality and poverty. [45] It has been widely submitted that stable macroeconomic policy is an essential requirement for sustainable economic growth. [46] Similarly, economic growth reform tends to be more successful when implemented beside macroeconomic policies that emphasize greater fiscal responsibility. The achievement of economic transformation, inclusive growth and competitiveness cannot be obtained without these complimentary actions that would usher in a new era of economic growth and prosperity for all South Africans. [47]

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[40] Sustainable Development Goal Knowledge Platform 'South Africa Voluntary National Review 2019'. Available at https://sustainabledevelopment.un.org/memberstates/southafrica#:~:text=The%20NDP%20prioritises%20the%20elimination,national%2C%20provincial%20and%20local%20level (Accessed 15 February 2024)

[41] Ibid

[42] Broad Based Black Economic Empowerment Act 53 of 2003

[43] Employment Equity Act 55 of 1998

[44] National Treasury of South Africa 'Economic Transformation, Inclusive Growth and Competitiveness' (2019) 15 available at https://www.treasury.gov.za/comm_media/press/2019/towards%20an%20economic%20strategy%20for%20sa.pdf (Accessed 10 July 2023)

[45] Ibid

[46] Ibid

[47] Ibid

Fortuitously, the NDP has identified a number of detailed growth reforms used as an organizational framework to assist in economic transformation, inclusive growth and competitiveness. [48] Out of the five mentioned, one growth reform is compatible with this paper. This reform involves enhancing competition so that it can be a vehicle for inclusive growth and economic transformation by encouraging the growth of smaller firms, the entry of new firms and growth in innovation and productivity. [49] Addressing anti-competitive behaviour can have a significant distributional impact by lowering consumer prices in markets that are essential for low-income households. [50] For example, the Competition Commission's investigations of cartels in the poultry, wheat, pharmaceuticals and maize industry subsequently reduced the poverty rate by 0.4% in 2016. [51]

According to the OECD, approximately 37 % of Small, Medium and Micro- enterprises (SMMEs) are formally recognized in South Africa. While 54% of these are micro-enterprises, the other 15% are found in rural areas. [52] Owners of these SMMEs are usually entrepreneurs who have either zoned in on a business opportunity because of necessity, or have no alternative source of income. [53] It is estimated that 32% of SMMEs employ between one and ten jobs and this accounts for almost 50% of all employment opportunities in South Africa. [54] In 2020, the total contribution of SMMEs to South Africa's GDP reached 40% compared to 18% in 2010. [55] Taking into account the economic growth contribution and the probable employment viability of these SMMEs, why do owners have low confidence in future growth of their own enterprises? The main reason for this is because of the high failure rate of SMMEs in South Africa [56] Roughly 70% to 80% of SMMEs are unsuccessful in their inaugural year. [57] If SMMEs are lucky enough to venture beyond that point, there is a 37% chance of remaining operational within the first four years and a 9% chance of operating for ten years. [58] South Africa's current unfavourable economic climate illustrates how the

[48] Ibid
[49] Ibid
[50] Ibid
[51] Ibid
[52] OECD 'Financing SMEs and Entrepreneurs 2022: An OECD Scoreboard' (2022) *OECD Publishing* 219
[53] Ibid
[54] Op cit note 48 at 219
[55] Op cit note 45
[56] Business Tech '6 things killing small business in South Africa right now' 17 Jan 2022. Available at https://businesstech.co.za/news/business/551324/6-things-killing-small-businesses-in-south-africa-right-now/ (Accessed 15 July 2023)
[57] Op cit note 52
[58] Ibid

country's entrepreneurial environment is generally not beneficial for business growth and development for SMMEs. [59] To generate inclusive economic growth in a manner that promotes economic transformation and facilitates the entry of more SMMEs, the National Treasury has recommended lowering barriers to entry via legislation, developmental finance institutions, or venture capital to address distorted patterns of ownership through increased competition and business growth. [60]

Thus, for the achievement of prolonged and sustainable economic growth. It is clear South Africa needs to implement suitable policies that have the potential to raise the economic growth rate. [61] It is hoped that the cumulative effect of the implementation of these policies would lead to economic prosperity, opening the door for reduced inequalities. Hence, I believe for the sustainable achievement of reduced inequalities, it is important that these policies must be geared to realising the targets set out in Sustainable Goal 10. [62]

V. THE RELATIONSHIP BETWEEN INEQUALITY, COMPETITION LAW AND POLICY

During the 19th century, powerful non-state institutions lacked the required knowledge to assess necessary forms of intervention required to solve economic inequality, providentially this had led to the development of specific policies and institutions by the State in order to respond to the pursuit for collective action to overcome inequality. [63] As time has passed and inequality continued to increase, States needed to be flexible in finding alternative methods such as competition law to rectify social ills. The use of competition law makes sense because it contains provisions that aim for the sustainable achievement of a market where fair competition results in the most efficient allocation of economic resources and the production of goods and service at the cheapest price. [64]

Scholars have argued that the goals of competition law and policy should include the moderation of economic concentration and the fair distribution of economic ownership and

[59] W Matekenya & C Moyo. 'Innovation as a driver of SMME performance in South Africa: a quantile regression approach' (2022) 13(2) *African Journal of Economic and Management Studies* 454
[60] Op cit note 27 at 16
[61] Op cite note 36 at 11
[62] Op cit note 7
[63] I Lianos 'Competition law as a form of social regulation' (2020) 65(1) *The Antitrust Bulletin* 19
[64] M Neuhoff et al *A Practical Guide to the South African Competition Act* (2nd ed) (2017) 7

control, limiting unjust transfers of wealth from consumers to firms with extensive market power, and the preservation of open markets so that independent entrepreneurs are given opportunity to participate in the economy. [65] Moreover, a number of commentators have also submitted that competition law and policy should strive to reduce inequality, in collaboration with its other set of conventional objectives. [66]

For a sustainable reduction of inequality levels, is it important that competition law and policy plays a role that could bring about a continuous cycle of economic development? To answer this question, a consideration of the specific jurisdiction in which this question applies needs to be taken into account. In other words, the answer to whether competition law and policy should play a role in sustainably reducing levels of inequality is fully dependent on the legal framework of the specific jurisdiction in which the question is posed. The reason for this is that every jurisdiction could have a different answer based on their respective constitutional and legal setting. [67]

South Africa's Constitution in s 9(2) explicitly endorses affirmative action. [68] Affirmative action refers to legislative and other measures designed to protect or advance persons, disadvantaged by unfair discrimination which may be taken to encourage the achievement of equality. The inclusion of the affirmative action clause in South Africa's constitutional legal framework was made in line with the presumption that when equal laws are applied to people in unequal circumstances because of the legacy of apartheid, inequality may arise. [69] In *Minister of Finance v Van Heerden* Moseneke DCJ held, the Constitution not only advocates for the equal protection of the law and non-discrimination, but it also represents the beginning of a sincere and abiding process of reparation for past exclusion, dispossession and indignity within the discipline of our constitutional framework. [70] The Constitution's legal framework explicitly commits to achieving equality and reducing inequality by addressing past racial transgressions through affirmative action. Therefore, legislative measures such as

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[65] N.W Averitt & RH Lande 'Consumer Sovereignty: A unified theory of Antitrust and Consumer Protection Law' (1997) 56 *Antitrust Law Journal* 713-715

[66] Op cit note at page 56

[67] J Nowag 'Sustainability & Competition Law and Policy – Policy Background Note' (2020) 3 DAF/COMP *OECD* 9

[68] The Constitution of the Republic of South Africa, 1996.

[69] M McGregor 'The nature of affirmative action – a defence or a right? (2003) 15(30 *SA Mercantile Law Journal* 165

[70] *Minister of Finance and Other v Van Heerden* 2004 (11) SA 121 (CC) para 25

competition law and policy could have a role to play in sustainably reducing levels of inequality in South Africa.

VI. THE COMPETITION ACT 89 OF 1998

In 1997, the Department of Trade and Industry prepared guidelines for competition policy which would ultimately be a precursor for the Competition Act 89 of 1998.[71] This is because the democratically elected government inherited weak competition legislation that was relatively inefficient and failed to primarily address issues around the extent of the concentration of ownership. [72] South Africa's competition law and policy was drafted during the advent of its democratic dispensation, which was a time marked by significant changes in domestic polices and regulatory reform. [73] There are three reasons for this. First, economic reforms for socio-economic and political transformation served as South Africa's re-introduction into the global economy after apartheid isolation. [74] Secondly, regulatory reforms which sought to eradicate economic imbalances were prioritized to address high levels of concentration in the economy, in respect of ownership and market share.[75] Thirdly, the government singled out reforms like competition law and policy as a solution to remedy the disastrous effects of apartheid government whilst simultaneously advocating for the promotion of employment and economic development. [76] It is clear, that South African lawmakers understood that competition law and policy could lead to viable economic development if it addressed public interest concerns through strong emphasis on development. [77] Additionally, for the creation of an inclusive and dynamic economy, no trade-off should exist between equity and efficiency, rather collaboration between the two must be present.[78] After an extensive consultation process which included debates within the

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[71] EM Fox 'Equality, Discrimination and Competition: Lessons from and for South Africa and Indonesia' (2000) 41(2) *Harvard International Law Journal* 583

[72] S Roberts 'The role for competition policy in economic development: The South African experience' (2004) 21(2) *Development Southern Africa* 233

[73] T Hartzenberg 'Competition policy and practice in South Africa: Promoting competition for development' (2005) 26 (2) *Northwestern Journal of International Law & Business* 667

[74] Op cit note 67

[75] D Davis & L Granville '7 South Africa *The Competition Law System and the Country's Norms*', in Eleanor M Fox, and Michael J Trebilcock (eds), *The Design of Competition Law Institutions: Global Norms, Local Choices*, Law And Global Governance 268

[76] Ibid

[77] Op cit note 67

[78] E Fox 'Antitrust: Tracing inequality – From the United States to South Africa' (2017) *CPI Antitrust Chronicle* 4

National Economic Development and Labour Council (NEDLAC) for the development of competition framework, the Competition Act 89 of 1998 became effective on 1 September 1998. [79] This Act contains features that can be amenable and are cognisant of the unique situation of South Africa. [80]

To move in unison with the political targets of the government when competition law was on the agenda, the Act includes ambitious goals where efficiency and equity meet. [81] These radical interventionist, distributive, and development goals were utilized to illustrate the Act was fully committed to addressing historically skewed economic distributions and the poor allocation of opportunities to actively engage in the market which symbolised apartheid South Africa. [82] The preamble states that apartheid discriminatory laws and policy had resulted in excessive concentrations of ownership and control, anti- competitive practices and unjust restrictions on economic participation for all South Africans. [83] The preamble identifies restrictions which curtail participation in the economy and that should be regarded as 'unjust' rather than 'inefficient'.[84] Most importantly, it states that an efficient competitive environment which balances the interests of workers, owners and consumers, and focuses on development will benefit all South Africans. [85] According to Le Roux, the first two sentences of the preamble – *provide all South Africans equal opportunity to participate fairly in the national economy*
achieve a more effective and efficient economy in South Africa . . ." – indicate that in the South African context, competition law and policy are explicitly linked to development and the reduction of inequality. [86] Following the preamble, the purposes of the Act are located in s *2* of the Act, which reads:

The purpose of this Act is to promote and maintain competition in the Republic in order:

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[79] D Prins & P Koornhof 'Assessing the Nature of Competition Law in South Africa' (2014) 18 *Law Democracy & Development* 140
[80] OECD 'Competition Law and Policy in South Africa' (2003) 15
[81] E Fox 'Restoring Equity by Antitrust in a Land where Markets were Brutally Skewed' (2019) 3(1) *CPI Antitrust Chronicle* 8
[82] M Le Roux 'A More Effective Efficiency: The normative potential of constitutional economics to achieve the stated objectives of the Competition Act' (2014) 3
[83] Preamble of the Competition Act 89 1998
[84] Ibid
[85] Ibid
[86] Op cit note 78 at page 7

(a) To promote the efficiency, adaptability and development of the economy;

(b) To provide consumers with competitive prices and product choices;

(c) To promote employment and advance the social and economic welfare of South Africans;

(d) To expand opportunities for South African participation in world markets and to recognise the role of foreign competition in the Republic;

(e) To ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and

(f) To promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged people.[87]

South Africa's competition law was designed in such a manner that it is highly aware of its socio-economic characteristics. [88] This approach has contributed to the legitimacy of competition law amongst citizens because it values inclusiveness, and this inclusiveness for all intents and purposes results in lower barriers and opens markets to historically disadvantaged persons. [89] Furthermore, it envisages a congruent relationship between the promotion of developmental objectives in the public interest and objectives that promote a competitive economy. This is to rebut presumptions of competition law purely targeting economic efficiency, or that all public interest objectives are in conflict with efficiency. [90]

In *Competition Commission v Mediclinic (Pty) Ltd,* the Constitutional Court held:

> *"It ought never to be acceptable for any of us, including the corporate citizens of this land, to indulge, talk less of over-indulge, in the unconscionable practice of seeking to record the highest profit margin possible by any means necessary, in wanton disregard for what that would do to the rest of humanity. Neither should the historic exclusion of some from meaningful participation, particularly in the mainstream economy, be normalised.* [91] *Thus, when interpreting the Act, regard must be given to s 39(2) of the Constitution because it provides interpretive guidance in understanding any legislative*

[87] s(2) of the Act

[88] L Mncube & H Ratshisusu 'Competition Policy and Black Empowerment: South Africa's Path to Inclusion' (2021) SCIS Working Paper | Number 22 3

[89] Op cit note 76 at page 8

[90] Op cit note 68 at page 273

[91] *Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and* Another (5) BCLR 532 (CC) para 3

provisions. A court or tribunal which does not engage in this exercise, would have failed to embrace their obligations to promote the spirit, purport and objects of the Bill of Rights." [92]

In essence, the Act reflects competition policy where the promotion of preserving competition is aligned with the goal of promoting equity amongst historically disadvantaged persons and decreasing high levels concentration amongst markets and ownership. [93] Examining the Sustainable Goals reveals a distinct alignment between the Preamble of the new Act and the targets outlined in Goal 10.1, 10.2, and 10.3 of the Sustainable Goals.

a) Public interest considerations

Competition law and its associated institutions can be seen as a means for the government to regulate, or control markets or apply public interest provisions to achieve various socio-political goals. [94] Against this backdrop, the legislature felt the need to include public interest objectives as part of the assessment of competition issues, particularly mergers. [95] Employment creation and black economic empowerment have been identified as the major obstacles to sustainable development. These factors have been singled out because they are more than likely to play crucial role in competition law and policy, and they provide a variety of considerations to create a set of supportive strategies that facilitate the promotion of employment and the expansion of ownership stakes of historically disadvantaged persons. [96] According to the Minister of Trade, Industry and Competition, public interest considerations are crucial because it is imperative that all economic policy decisions must be placed in the grand context of welfare and employment goals of South Africa. South Africa's competition laws are not entirely focused on competition fundamentalism, but rather utilise the power of competition to foster the broader developmental needs of society. [97]

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[92] Ibid para 71
[93] Op cit note 78 at page 4
[94] WH Boshoff ; D Dingley & J Dingley 'The economics of public interest provision in South Africa competition policy' (2012) In *6th Annual Conference on Competition Law, Economics and Policy. Pretoria: Competition Commission South Africa* 4
[95] J Hodge; S Goga & T Moahloli 'Public intrest provisions in the South African Competition Act : A critical review) (2012) *The Development of Competition Law & Economics in South Africa* 1
[96] T Hartzenberg 'Competition Policy and Enterprise Devlopment: The Role of Public interest objectives in South Africa's Competition and Policy' (2004) *TRALAC REPORT, August* 17
[97] Minister Patel *'Competition Policy within a developmental framework—Some reflections. Remarks at the competition lawyers'* Breakfast hosted by the Law Society of the Northern Provinces on 3 November 2011.

The public interest inquiry is a holistic approach used for the consideration of mergers for two main reasons. First, other than your standard anti-competitive behaviour, mergers pose the greatest inequality inducing threat through enterprises utilizing markets to move towards increased concentration of ownership. Secondly, mergers can result in monopsony power in the labour market, by reducing wages to much lower than would normally should be in competitive market and less concentrated markets. [98] To avoid such consequences, competition authorities lament that in assessing public interest, a balance must be struck between competition, a broad definition of efficiency and public interest considerations such as stipulated in the Act. [99] The emphasis on merger control sheds some light into the relative importance of the public interest objectives within the scope of competition law and policy in South Africa. For example, the participation of the government and trade unions coupled with the increasing number of analysts to evaluate the impact of public interest considerations on a proposed merger transactions, illustrate how competition law and policy should be in parallel with broader development policies. [100]

According to s 12A(3) of the Act , when determining whether or not a merger can be justified on public interest grounds, the Commission or the Tribunal must consider the effect the merger will have on:

a) A particular industrial sector or origin,
b) Employment,
c) The ability of small and medium businesses or firms controlled by historically disadvantaged persons to participate within the market , and
d) the ability the ability of national industries to compete in international markets, and
e) The promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market. [101]

Based on the Guidelines on the Assessment of Public Interest, the Competition Commission will adopt the following procedures to assess each of the above public interest provisions:

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[98] Q Du Plessis 'The role and nature of the public interest in South African competition law' (2020) *South African Mercantile Law Journal* 236.
[99] Ibid
[100] Op cit note 69
[101] S 12A (3) of the Act

1. Determine the likely effect on the public interest;
2. Determine whether the alleged effect on a specific public interest is a result of that merger or is merger specific. In other words, is there a sufficient causal nexus between the merger and the alleged effect;
3. Determine whether these effects are substantial;
4. Consider whether the merging parties can justify the likely effect on the particular public interest; and
5. Consider possible remedies to address any likely negative effect on the public interest. [102]

In the Competition Commission's recently revised Draft Merger Assessment Public Interest Guidelines relating to Merger Control, an attempt was made to offer more legislative certainty in the uncharted terrain of public interests assessments. [103] Under these Guidelines, it is submitted that s 12A(3)(e) imposes a positive obligation on parties seeking merger approval. [104] This obligation requires all mergers to promote a greater spread of ownership amongst historically disadvantaged persons and/or workers. [105] If not, the proposed merger will be classified as unjustifiable on public interests grounds. [106] If a merger is found to promote ownership amongst historically disadvantaged persons, this does not preclude a merger from the obligation to promote increased ownership by workers and vice versa. [107] In this context, the Competition Commission will accept ownership in the form of voting shares or a stake in the business entity or its respective constituents including tangible and intangible assets.[108].

However, in the event where a merger transaction culminates in the decrease in the ownership of historical disadvantaged persons, an employee share ownership scheme (ESOP) may be proposed as a remedy to cancel out the dilution of ownership. [109] In other words, if a proposed merger results in a 10% dilution of ownership of historically disadvantaged

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[102] GN 309 GG 40039 of 2 June 2016
[103] S Meyer & R Henney 'New merger guidelines: In the 'public interest' to comment' CDH Inc 6 Oct 2023. Available at https://www.cliffedekkerhofmeyr.com/news/publications/2023/Practice/Competition/competition-law-alert-6-october-new-merger-guidelines-in-the-public-interest-to-comment (Accessed 8 February 2024)
[104] GN 3945 GG 49407 of 6 October 2023
[105] Supra at 6.5.3
[106] Supra at 6.5.4
[107] Supra at 6.5.9
[108] Supra at 6.5.10
[109] Supra at 6.5.13

persons, an ESOP which promotes 10% ownership will be required. [110] On the occasion where a proposed merger does not dilute or promote ownership amongst historically disadvantaged persons, it is expected that the ESOP proposed should hold no less than 5% values/share of the merged entity. [111] Lastly, where the merger transaction is proposed to promote historically disadvantaged ownership, only a shareholding of 25% +1 should confer control on the historically disadvantaged persons to ensure that the remedy responds to the public interest requirement in s 12A(3)(e). [112] One could argue that public interest inquiry and all its components (ESOP remedies) speaks to the kind of socio-economic empowerment and inclusion that has been stated in Goal 10.2 of the Sustainable Goals, which promotes and advocates the empowerment of all persons in social, economic and political aspects.

b) Exemptions

Another manner in which competition law and policy aims to achieve its socio-economic objectives, is through either preferential treatment or exceptions that would normally infringe prohibited practices of the Act. [113] In terms of s 10(3)(b) of the Act, exemptions can be granted on the premise of 'public interest' objectives regarding any prohibited practice. [114] According to this section, the Commission is required to determine whether exemption promotes the objectives listed in s 10(3)(b) of the Act which include:

(i) The maintenance or promotion of exports,
(ii) The promotion of the effective entry of small or medium business or firms controlled by historically disadvantaged persons,
(iii) Change in productive capacity or the to stop a decline in industry,
(iv) The economic stability of designated by the Minister responsible for that industry, and
(v) Competitiveness and efficiency gains that promote employment or industrial expansion. [115]

The exception for the promotion of small firms controlled or owned by historically disadvantaged persons has clear socio-economic goals. South African SMMEs almost

[110] Supra at 6.5.13.1
[111] Supra at 6.5.13.2
[112] Supra at 6.5.14.1
[113] Op cit note 58 at page 207
[114] Kelly et al '*Principles of Competition Law in South Africa'* (2016) 258
[115] S 10(3)(b) of Act

account for 60% of the country's GDP, are vastly responsible for the a large part of employment and concentration while economic wealth is mainly held with the white minority. Exemptions are a partisan effort aimed at encouraging the participation of historically disadvantaged persons in the economy, economic development, growth and transformation to competitiveness and efficiency goals that promote employment or industrial expansion. [116] The inclusion of exemptions in the Act supports Goal 10.3 of the Sustainable Goals because it permits the elimination of certain legislative provisions to ensure for the achievement of equal and fair opportunities for historically disadvantaged persons or SMMEs.

VII. HOW CAN COMPETITION LAW AND POLICY BE IMPLEMENTED IN A WAY THAT WILL EFFECTIVELY REDUCE INEQUALITIES IN A SUSTAINABLE DEVELOPMENT GOAL 10.1, 10.2, AND 10.3 SENSE?

a) Inclusion and enforcement of policies.

The inclusion and stringent enforcement of competition law and policy that is targeted at limiting the impact of market power and enables much greater spread of wealth distribution is a solid start. [117] According to the Act, market power refers to the power of a firm to control prices, to exclude competition, to behave to an appreciable extent independently of its competitors, customers or suppliers.

The existence of market power has the ability to have a lob-sided dual effect on income distribution.[118] Profits obtained from marked up products are enjoyed amongst business owners, while people from lower income groups are disproportionally affected as they either have to spend significantly more of their income on products that were previously affordable or they have simply been priced out. [119] According to the OECD, it is logical to assume that a considerable portion of the impact of market power stems from illegitimate or excessive market power originating from sources that could potentially be diminished through the implementation of more effective competition policies.[120] Therefore, it is imperative that an

[116] M W Gehring 'Competition for sustainability: Sustainable development concerns in national and EC competition law ' (2006) 15(2) *Review of European Community & International Environmental Law*, *15*(2) 179
[117] J Baker & S Salop 'Antitrust, Competition Policy, and Inequality' (2015) 104(1) *Georgetown Law Journal Online* 18
[118] S Ennis et al (2017) 'Inequality: A hidden cost of market power' (2014) *OECD* 7
[119] A Ezrachi et al 'The effects of competition law on inequality—an incidental by-product or a path for societal change?' (2023) 11(1) *Journal of Antitrust Enforcement* 56
[120] Op cit note 63 at page 23

efficient inclusion combined with strict enforcement of competition law involves a clear focus on wealth redistribution. The inclusion of provisions that directly affect equality refers to considering factors that have a substantial effect on employment, localisation or industrial development (SMMEs), and the economy.

Conversely, enforcing competition law in an efficient manner involves classifying any conduct as anti-competitive if it negatively affects lower and middle income consumers, even if it entails benefitting wealthy consumers, shareholders and business owners. [121] South Africa has employed this approach, by incorporating public interest provisions built in their competition legislative framework. [122] On the policy side, it been proved that less stringent product market regulations have a considerable impact on economic growth. For instance, the reduction of barriers to entrepreneurship to standard consistent with best practicing OECD members would require the average OECD country to achieve approximately a 0.35% to 0.4% annual growth rate of GDP per capita. [123]

b) Prioritizing equality in certain markets.

The prioritization of equality in competition law and policy offers another viable solution. [124] This can be done by targeting markets like agriculture and medicine that are considered essential for lower income people. These sectors provide an excellent starting point, because not only are significant portions of lower income salaries or wages are spent on their goods, but their goods are crucial for the well-being for this demographic. Further, these sectors are notorious for the degree of concertation in crucial sectors and they are synonymous with anticompetitive behaviour. [125] The prioritization of equality based approach to competition law and policy, focuses on repairing sectors that have a massive effect of the welfare on low-income people, rather than focusing on expensive sectors like automobiles and jewellery. [126] However, this does not mean that the implications of those expensive sectors on lower income people do not matter. Similarly, the prioritization of the labour market in competition law and policy where pay gaps are purely dependent on race or gender can also achieve reduced inequalities. [127] In the past ten years, there has been a persistent link between

[121] S Goga 'Competition and Inequality in Developing Countries' (2022) (40) *SCIS Working Paper* 17
[122] Ibid
[123] Op cit note 63 at page 56
[124] EA Posner & CR Sunstein 'Antitrust and Inequality' (2022) 2 *American Journal of Law and Equality* 200
[125] Ibid
[126] Ibid
[127] Ibid

inequality and the labour market in South Africa. [128] Looking at the income sources of labour market, it is evident that historical features such as gender and race continue to play a role in determining the earnings of individuals. [129] The cumulative effect of this is the extension of pre-existing salary gaps and increasing inequality. [130] Another situation which warrants prioritization of the labour market includes scenarios when the employer market power is so high, that it has the effect of suppressing salaries, subsequently reducing labour share and increasing inequality. [131] Since labour markets were generally ignored by competition law and policy, academics have called for the prioritization of the labour market in competition law and policy because employers commonly utilize anticompetitive practices without any punishment due to lack of enforcement by the competition authorities. [132] Nonetheless, prioritizing labour markets through competition law and policy may assist in mitigating economic inequality and this approach would not require altering the existing application of competition law or its normative obligations. [133]

There is no question that stringent enforcement and the prioritization of labour markets and equality in competition law and policy would be key in reducing inequalities in South Africa. In light of this, South Africa's development of robust competition law and policy that caters for various market characteristics and legal enforcement difficulties is vital. [134] Fortunately, the Act has set out in its purpose, the promotion of competition to foster various objectives. It expressly emphasizes allowing SMMEs to have a fair chance to participate in the economy, and to promote a greater share of ownerships, including the ownership stakes of historically disadvantaged persons. [135] Additionally, it permits exemptions from co-ordination provisions based on specific criteria, including SMMEs, and business owned by historically disadvantaged persons, employment considerations, sector specific impacts during merger

[128] A Thornton 'Reducing Inequality in South Africa' (2020) South African Presidential Economic Advisory Council (PEAC) 6
[129] Ibid
[130] Ibid
[131] Op cit note 99 at page 73
[132] A Zac 'Competition law and economic inequality: A comparative analysis of the US model of law' (2022) 25(3) *Journal of International Economic Law* 23
[133] Op cit note 99 at page 73
[134] Sixth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices 'The role of competition policy in promoting economic development: The appropriate design and effectiveness of competition law and policy' United Nation Conference on Trade and Development. Item 6 (a) of the provisional agenda, UN Doc TD/RBP/CONF.7/3 (30 August 2010) 16
[135] Op cit note 102

evaluations. [136] Through this observation it is clear that South Africa has tailored its competition law and policy according to own capabilities and development levels. Competition polies adopted by South Africa are cognisant of the inequalities that exist, and to counteract them, provisions such as s 12A(3) and s 10(3)(b) of the Act which are congruent with Sustainable Goal 10.1, 10.2, and 10.3 to reach the ultimate goal of reducing inequalities have been adopted.

I now look at cases that illustrate how enforcement of the public interest inquiry and exemptions have led to the achievement of government's broader socio-economic goals.

Minister of Economic Development and others v Wal-Mart Stores Inc. and Others [137]

The proposed merger between Wal-Mart and Massmart Holdings was the first high profile public interest case, because it considered the effect of the diminished local procurement on employment. Despite the initial uproar, this merger was eventually approved by the Competition Appeal Court.[138] This merger had opposed by a number of Ministers including the Minister of Economic Development, the Minister of Agriculture Forestry and Fisheries, the Minister of Trade and Industry (the Ministers), trade unions NUMSA, SACCAWU, FAW and the South African Medium and Micro Enterprises Forum.

The Ministers apprehension for the proposed merger was based on concerns related to the impact of Wal-Mart's global procurement network and the degree to which its logistical capabilities might affect imports into South Africa. Ministers submitted that local producers would be left in a vulnerable position because of a shift in procurement from South Africa to Asia. [139] The result of this shift in procurement would inadvertently result in extensive closure for SMMES, the stifling of the development of domestic industries and ensuing loss of employment. Upset with the Competition Tribunal's reasoning to minimize probable public interest implications of the proposed merger, the Ministers, trade unions and other intervening parties took this matter on appeal to the Competition Appeal Court.

[136] Ibid
[137] *Minister of Economic Development and others v Wal-Mart Stores Inc. and* others (110/CAC/Jun11)
[138] *Wal-Mart Inc and Massmart Holdings Ltd [2011] 1 CPLR 145 (CT)*
[139] Ibid

Even though the Competition Appeal Court approved the merger, it was fully aware of the relevant public interest considerations that are implicated in the merger. The Competition Appeal stated that an introduction of the largest retailer in the world into South Africa needed to be thoroughly examined as 'failure to engage meaningfully with the implications of the challenge posed by globalisation can have well detrimental socio-economic effects to SMMEs and for the South African economy in general'. [140] The Competition Appeal Court further held that Act provides a clear and distinct public interest consideration, that must be applied by the competition authorities, and the application of this principle has not happened in the Competition Tribunal. In this regard, the Competition Appeal Court held –

> *'Given Wal-Mart's size and expertise...the proposal for a condition which would seek to enhance the participation of South African small and medium size producers in particular, in global value chains which are dominated by Wal-Mart so as to prevent job losses, at the least, and, at best, to increase both employment and economic activity of these businesses protected under s 12 A must form part of the considerations which this Court is required to be taken into account in considering a merger of this nature...This flows from the model of competition law chosen by the legislature and in particular as set out in s 12 A. It also forms part of the mandate given to the Tribunal and, on appeal, to this Court when faced with the inquiry as to whether a merger should be approved'.* [141]

The Competition Appeal Court also held that the conditions imposed by the Competition Tribunal with regards to the formation of a procurement fund to help local suppliers, was insufficiently interrogated and considered. [142] The Competition Appeal Court alternatively suggested that a study be carried out by experts nominated by the government, the merging parties and the unions to determine an investment remedy, which is both rational, justifiable in terms of the available evidence where South African suppliers may be empowered to respond to the challenges imposed by the merger and subsequently benefit.[143] Following competing studies by the merging parties and the interveners, the Competition Appeal Court

[140] Ibid
[141] Ibid para 162
[142] Ibid para 165
[143] Ibid para 177

concluded that the fund should operate for at least 5 years and that a maximum amount of R200 million should be contributed by the merged entity. [144]

In terms of employment, the Tribunal ordered that the 503 employees who were retrenched by the merged entity 2010, need to be given preference when job opportunities become available. [145] Conversely, the Competition Appeal Court did not agree with the order and the held all retrenched employees must be reinstated as it found that their retrenchment was directly linked to the merger.[146] Other employment relayed conditions imposed by the Competition Appeal Court included a moratorium on retrenchments based on the merged entity's operation requirements for a period of two years; and the merged entity must honour existing labour agreements and current practice of bargaining with the SACCAWU. [147] Given that Wal-Mart/MassMart's merger specific concern was the loss of employment because of shift in procurement to other low-cost markets, the Competition Appeal Court still found ways to reduce employment and facilitate a fund for economic development through the public interest inquiry. Firstly, by reinstating those retrenched employees and through establishing the Massmart special development fund, which has extensively contributed to the achievement of job creation local procurement and industrial policy objectives which are contained in the public interest provisions of the Act. [148]

ECP Africa Fund IV A LLC and Others v Competition Commission [149]

The Competition Commission received a notice of a proposed merger between ECP Africa Funds, Burger King South Africa (BKSA) and Grand Foods Meat Plant. However, the merger between the respective parties was prohibited on public interest grounds.[150] The Competition Commission held that the merger was prohibited mainly because it would have

[144] *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* (110/CAC/Jun11, 111/CAC/Jul11) para 43
[145] Supra note 124 at para 146
[146] Ibid
[147] Supra note 124 at para 108
[148] T Mandiriza; T Sithebe & M Viljoen 'An ex-post review of the Wal-Mart/Massmart Merger' *Competition Commission* Working Paper cc2016/03 1
[149] *EC ECP Africa Fund IV A LLC and Others v Competition Commission* IM053Aug21
[150] Ibid at para 3

had a negative effect on public interest, specifically the spread of ownership by historically disadvantaged persons. [151]

This case is based ECP Africa Funds 95.78% acquisition of BKSA issued share capital [152] At that time Grand Parade Investments though two subsidiaries (Grand Foods & Grand Food Investments 1 Limited) had 95.36% controlling stake of BKSA.[153] Approximately 68,56% of Grand Parade Investments shareholding is held by historically disadvantaged persons, of which 22.87% is held by black women. [154]

The Competition Commission found the proposed merger was unlikely to substantially prevent or lessen competition in any market or have any effect on employment. [155] However, the proposed merger was cited to have a negative effect on promoting a greater spread of ownership amongst historically disadvantaged persons. [156] This is because ECP Africa Funds had no ownership of historically disadvantaged persons. As already stated, BKSA is controlled by Grand Parade Investments. Post-merger implications of the proposed acquisition would result in a drop of historically disadvantaged persons ownership from 68% to 0%. Thus, ECP Africa Funds and BKSA would lack requisite ownership by historically disadvantaged persons as mandated per s 12A(3)(e) of the Act [157] Not only did this proposed merger have a substantial effect on the ownership of historically disadvantaged persons, it also did not meet significant BEE thresholds. This decision drew widespread criticism from lawyers as it limited the commercial opportunities of historically disadvantaged persons, inadvertently marginalising their bargaining power, and culminating in uncertainty which adversely affects foreign direct investment in South Africa. [158]

The parties in the proposed merger approached the Tribunal for a reconsideration of the Competition Commission's decision. The Tribunal subsequently approved the merger subject to certain conditions.

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[151] Ibid at para 4
[152] Ibid at para 11
[153] Ibid at para 16
[154] Ibid
[155] Ibid para 23 and 27
[156] Ibid para
[157] Ibid at para 28
[158] C Fisher 'Why is Burger King Proving a Hard Sell?' HSF. Available at https://hsf.org.za/publications/hsf-briefs/why-is-burger-king-proving-a-hard-sell (Accessed 27 February 2024)

In a five-year period BKSA must:

- Facilitate the addition of sixty new franchises relative to a capital expenditure of R500million must be rolled out. [159] Provide for the employment of not less than 1250 historically disadvantaged persons as permanent staff employees, subsequently increasing the payroll by an amount of no less than R120million. [160]
- Improve local procurement and to improve compliance with the Enterprise Development element of the merger parties' BBEEE scorecard. [161]
- Establish an employee ownership share program, which will provide an effective 5% interests to employees. [162]

National Hospital Network (NHN) [163]

The NHN is non-profit company, a co-operative venture that is controlled by its members, who are a group of independent private hospitals that run medical institutions such as clinics, sub-acute facilities and psychiatric facilities. The NHN applied for an exemption in respect of agreements to engage in global fee agreements with medical schemes, administrators, the state and healthcare providers and to undertake negotiated collective prices or centralise procurement on behalf of its members. [164] Under normal circumstances, this anti-completive conduct constitutes price fixing, while is an infringement of s 4(1)(b) of the Act. Nonetheless, via s 10(3)(b) the Competition Commission has discretion to grant an exception under the required conditions.

The Competition Commission found that these agreements were required to promote the ability of small businesses' or firms owned by historically disadvantaged persons to become competitive. Considering that a large portion of NHN members are small businesses or firms controlled by historically disadvantaged persons and the healthcare sector is synonymous with high levels of concertation and high barriers to entry, the Competition Commission granted NHN an exemption for a period of five years. The Competition Commission imposed

[159] Ibid at para 53.3
[160] Ibid at para 53.4
[161] Ibid at para 48.1
[162] Ibid at para 48.2
[163] *National Hospital Network (NHN)* 2003/Nov717
[164] Ibid

another condition that required NHN members who did not meet the required criteria to be classified as either small businesses or firms owned by historically disadvantaged persons to transform their ownership within 24 months to meet the requirements stipulated in the Act. This would allow the Competition Commission to effectively monitor the implementation of the condition and allow the NHN to be in synergy with the objectives in the exemption application. [165]

VIII. ECONOMIC OBSERVATIONS

South Africa should be proud for the innovative manner competition law and policy has been used to achieve significant economic redress and alleviate inequality. Unfortunately, the effects of these policies leave a lot to be desired. The BBBEE Commission report on the National Status and Trends on BBBEE for 2021 indicate:

- 1.5% shrinkage in levels of transformation,
- 1.5% decrease in overall black ownership,
- 5.4% decrease in management control (more BBBEE points recorded in junior and middle management, but not top and senior management),
- 0% of entities listed on the JSE are black owned,
- JSE listed entities board control by black people rose by 11% with significant growth in both genders,
- Contributions towards Skills Development and Enterprise & Supplier Development ranged between 54.8% and 46.5% as compared to 2020 which showed an average of 60%-61%, and
- Socio-Economic Development has increased by 4% in the last year, after 4 dipping twice during a five year period [166]

These facts point a grim reflection of the South African economy. Under these conditions SMMEs and businesses controlled by historically disadvantaged persons struggle to stay afloat. Morphet submits that the reason for this s because the country's economy is not

[165] Ibid
[166] 'B-BBEE Commission Annual Report on National Status and Trends on BBBEE Show Stagnation in Changing Ownership Patterns' (2020) BBEE Commission 1 at https://www.bbbeecommission.co.za/wp-content/uploads/2022/08/MEDIA-RELEASE-ON-NATIONAL-STATUS-AND-TRENDS-ON-B-BBEE-2021-31-07-22-MT-V3.pdf (Accessed 3 August 2023)

growing at a sufficient enough rate to encourage the establishment of successful SMMEs. [167] Combine this with the widespread corruption, maladministration and unemployment, there is only so much competition law and policy can do. According to ENS, there has been a substantial increase in merger transactions being approved subject to spread of ownership conditions. [168] Since the Burger King decision in 2021, approximately 191 large mergers have been heard by the Competition Tribunal, with 31% directly involved with regard to spread of ownership amongst historically disadvantaged persons. This illustrates a massive 13.4% increase compared to 2019 to 2021. [169] Based on the Competition Commission's Annual Report in 2022/23, it was shown that in 28% of mergers that concerned public interest inquiry, involved parties had agreed to implement share employee ownership plans. [170] Thus, the Act and its application has done its part in trying to achieve socio-economic objectives. However, it cannot fix what the State progressively makes worse with its limited scope. Fox put this in a such a succinct way, when she stated that 'antitrust alone cannot produce equality' [171].

IX. CONCLUSION

This paper investigates the relationship between inequality and competition law and policy in South Africa, through the lens of the United Nations Sustainable Goals. The Act's provisions symbolise a nuanced understating of South Africa's socio-economic climate, thus prioritising inclusivity and equitable market access

Through the incorporation of public interest considerations and exemptions, the Act emphasises its transformative duty to promote employment, empower historically disadvantaged persons and facilitate economic development. Through cases studies and critical analysis, this paper has illustrated the Act plays in addressing socio-economic inequalities within the scope of Sustainable Goal 10.1, 10,2 and 10.3 in South Africa. The

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[167] L Morphet 'Competition v promoting small business and black economic empowerment – an evaluation of South African competition law and its enforcement' 22 June 2021

[168] A Scallan & M Chetty 'Revised Public Interest Guidelines: Are they really in the Public Interest?' ENS (2023) Available at https://www.ensafrica.com/uploads/newsarticles/0_ens%20competition%20piece%2011%20oct%2023%20final.pdf (Accessed 1 February 2024)

[169] Ibid

[170] M Garden et al 'Part 3: A closer look at the Competition Commission's draft Public Interest Guidelines' Webber Wentzel 22 November 2023. Available at https://www.webberwentzel.com/News/Pages/part-3-a-closer-look-at-the-competition-commissions-draft-public-interest-guidelines.aspx (Accessed 1 February 2024)

[171] Op cit 99 at page 1

enforcement of the public interest inquiry in the *Wal-Mart Stores Inc.* and *ECP Africa Fund IV A LLP* cases exemplify a positive approach to diminish the anti-transformative effects of mergers on employment and ownership distribution. By mandating parties to enforce conditions and remedies that are targeted at local procurement, increasing employment, and promoting ownership amongst historical disadvantaged persons, competition authorities have sought to align mergers with the broader socio-economic objectives of the Act. Conversely, exemptions permitted under different specific requirements, have promoted more participation and encouraged transformation toward equality. The *NHN* case embodies how exemptions can be implemented to support the growth of historically disadvantaged persons small businesses and promote competition in sectors associated with high levels of concentration. Therefore, the Act can play a role in achieving Sustainable Goal 10 in South Africa. Through alignment with the objectives in Sustainable Goal 10.1, 10.2 & 10.3, the Act contributes to building a more equitable society via fostering fair competition, preventing anti-competitive practices, and promoting economic inclusivity for historically disadvantaged persons,

In spite of these advancements, economic indicators suggest additional efforts are required to address challenges like maladministration, corruption and slow economic growth. While the Act can play a role in reducing inequality, it is unable to resolve broader structural problems within the economy. Therefore, competition lawmakers and lawyers should continuously advocate for the refinement of the Act to enhance its effectiveness in reducing inequality. In conclusion, the Act can serve a valuable tool in the ultimate realisation of socio-economic equality per Sustainable Goal 10.1, 10.2 and 10.3. However, it must be accompanied with a multitude of efforts across different sectors to achieve lasting impacts. By collaborating together with other policy initiatives like the NDP and addressing economic barriers to economic involvement through legislative provisions, South Africa can take a step closer in achieving an economic equitable society outlined in the Sustainable Goals.

BIBLIOGRAPHY

The Constitution

The Constitution of the Republic of South Africa,1996.

Legislation

Broad Based Black Economic Act 53 of 2003

Employment Equity Act 55 of 1998

Competition Act 89 of 1998

Competition Amendment Act 18 of 2018

Guidelines on the Assessment of Public Interest Provisions in Merger Regulation under the Competition Act No. 89 of 1998 31 May 2016

Invitation for Public Comment on the Draft Amended Public Interest Guidelines Relating to Merger Control 6 October 2023

Cases

Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd and Another 2022 (5) BCLR 532 (CC)

ECP Africa Fund LA LLC; ECP Africa Fund LV A LLC and Burger King (South Africa) RF (Pty) Ltd; Grand Foods Meat Plant (Pty) Ltd IM053Aug21

Minister of Economic Development and others v Wal-Mart Stores Inc. and others (110/CAC/Jun11 and 111/CAC/Jun11)

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 (110/CAC/Jun11, 111/CAC/Jul11)

Minister of Finance and Others v Van Heerden 2004 (11) SA 121 (CC)

National Hospital Network (NHN) 2003/Nov717

Wal-Mart Inc and Massmart Holdings Ltd 2011 (1) CPLR 145 (CT)

Books

Davis, D & Granville, L '7 South Africa *The Competition Law System and the Country's Norms*', in Eleanor M Fox, and Michael J Trebilcock (eds), *The Design of Competition Law Institutions: Global Norms, Local Choices*, Law And Global Governance (Oxford, 2012; online edition, Oxford Academic, 24 Jan. 2013) at https://doi.org/10.1093/acprof:oso/9780199670048.003.0007 (accessed 27 July 2023)

Kelly, L; Unterhalter, D; Goodman, I; Smith, P & Youens, P '*Principles of Competition Law in South Africa'* Oxford University Press 2016

Neuhoff, M; Govender, M; Versveld, M & Dingley, D '*A Practical Guide to the South African Competition Act'* (2nd ed) Lexis Nexis 2017

Nattrass, N & Seekings, J. '*Class, Race, and Inequality in South Africa*' Yale University Press 2008

Journals

Adam, K. 'The Politics of Redress: South African Style Affirmative Action' (1997) 35(2) *The Journal of Modern African Studies* Cambridge University Press 231-249

Averitt, NW & Lande, RH 'Consumer Sovereignty: A Unified Theory of Antritrust and Consumer Protection Law' (1997) 56 *Antitrust Law Journal* 65

Baker, J & Salop, S 'Antitrust, Competition Policy, and Inequality' (2015) 104(1) *Georgetown Law Journal Online* 1- 28

Balisacan, AM 'Towards a fairer society: inequality and competition policy in developing Asia' (2010) LVI (1) and (2) *The Philippine Review of Economics* 127-144

Du Plessis, Q 'The role and nature of the public interest in South African competition law' (2020) *South African Mercantile Law Journal* 234 -252

Ezrachi, A; Zac, A & Decker, C 'The effects of competition law on inequality—an incidental by-product or a path for societal change?' (2023) 11(1) *Journal of Antitrust Enforcement* 51-73.

Fox, EM 'Antitrust: Tracing inequality – From the United States to South Africa' (2017) *CPI Antitrust Chronicle* 1-6

Fox, EM 'Equality, Discrimination and Competition: Lessons from and for South Africa and Indonesia' (2000) 41(2) *Harvard International Law Journal* 579-594

Fox, EM 'Restoring Equity by Antitrust in a Land where Markets were Brutally Skewed' (2019) 3(1) *CPI Antitrust Chronicle* 1-14

Gehring, M W 'Competition for sustainability: Sustainable development concerns in national and EC competition law '(2006) 15(2) *Review of European Community & International Environmental Law* 172-184

Hartzenberg, T 'Competition policy and practice in South Africa: Promoting competition for development' (2005) 26 (2) *Northwestern Journal of International Law & Business* 667-685

Hodge, J; Goga, S. & Moahloli, T. Public interest provisions in the South African Competition Act: A critical review. (2012)*The Development of Competition Law & Economics in South Africa* 1- 10.

Lannegren, O & Hiroshi, I 'The end of the ANC era: An analysis of corruption and inequality in South Africa' (2017) 10 (4) *Journal of Politics & Law* 55-59

Lianos, I 'Competition law as a form of social regulation' (2020) 65(1) *The Antitrust Bulletin* 3-86

Malan, D 'Corporate Support for the SDGs: A South African perspective' (2016) 64 *The Journal of Corporate Citizenship* Theme Issue: The United Nations Global Compact and the Encyclical Laudato *Si* (Greenleaf Publishing) 98-120

Matekenya, W & Moyo, C 'Innovation as a driver of SMME performance in South Africa: a quantile regression approach' (2022) 13(2) *African Journal of Economic and Management Studies* 452-467. Available at https://www.emerald.com/insight/2040-0705.htm (Accessed 17 July 2023)

Mantzaris, E.A 'Corruption as a violation of basic human rights in South Africa and Russia' (2017) 9(8) *African Journal of Public Affairs* 15-30.

Mcgregor, M 'The nature of affirmative action – a defence or a right? (2003) 15(30) *SA Mercantile Law Journal* 165

Öberg, M 'The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ' (2005) 16 *The European Journal of International Law* 879–906

Posner, E. A & Sunstein, C. R 'Antitrust and Inequality' (2022) 2 *American Journal of Law and Equality* 190-207.

Prins, D & Koornhof, P 'Assessing the Nature of Competition Law in South Africa' (2014) 18 *Law Democracy & Development* 139 at http://dx.doi.org/10.4314/ldd.v18i1.7 (Accessed 27 July 2023)

Rosa, S. 2011. 'Transformative Constitutionalism In a Democratic Developmental State. *Stellenbosch Law Review* 452-565. The original publication is available at https://journals.co.za/content/journal/ju_slr (Accessed 26 June 2023)

Sajjad, A et al. 'The implementation of sustainable development goals in "BRICS" countries' (2018) 10(7) *Sustainability* 1 -14 at https://www.mdpi.com/2071-1050/10/7/2513 (Accessed 8 July 2023)

Roberts, S. 'The role for competition policy in economic development: The South African experience' (2004) *21*(1) *Development Southern Africa*' 227-243.

Wilson, F 'Human Capital Formation and the Labour Market in South Africa: Challenges for the Post-Aparthied Economy' (1996) 86(2) *The American Economic Review* 322-325

Zac, A 'Competition law and economic inequality: A comparative analysis of the US model of law' (2022) 25(3) *Journal of International Economic Law* 484-500.

<u>Reports</u>

'B-BBEE Commission Annual Report on National Status and Trends on BBBEE Show Stagnation in Changing Ownership Patterns' (2020) BBEE Commission 1 at https://www.bbbeecommission.co.za/wp-content/uploads/2022/08/MEDIA-RELEASE-ON-NATIONAL-STATUS-AND-TRENDS-ON-B-BBEE-2021-31-07-22-MT-V3.pdf (Accessed 3 August 2023)

Boshoff, W. H; Dingley, D & Dingley, J (2012). The economics of public interest provision in South Africa competition policy (2012) In *6th Annual Conference on Competition Law, Economics and Policy. Pretoria: Competition Commission South Africa*.

Hartzenberg, T 'Competition Policy and Enterprise Development: The Role of Public Interest Objectives in South Africa's Competition Policy' (2004) *TRALAC Report, August*. 1-33

Industrial Development Corporation 'South African economy: An overview of key trends since 1994' (2013) 1-30 at https://www.idc.co.za/wp-content/uploads/2018/11/IDC-RI-publication-Overview-of-key-trends-in-SA-economy-since-1994.pdf (Accessed 12 July 2023)

OECD 'The role of competition policy in promoting economic recovery' (2020) 1-41 at *www.oecd.org/daf/competition/the-role-of-competition-policy-in-promoting-economic-recovery-2020.pdf* (Accessed 26 July 2023)

OECD 'South Africa' in *Financing SMEs and Entrepreneurs 2022: An OECD Scoreboard* (2022) OECD Publishing available at 1-11 https://doi.org/10.1787/4bada6a3-en (Accessed 14 July 2023)

National Treasury of South Africa 'Economic Transformation, Inclusive Growth and Competitiveness' (2019) 15 available at https://www.treasury.gov.za/comm_media/press/2019/towards%20an%20economic%20strategy%20for%20sa.pdf (Accessed 10 July 2023)

Sixth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. 'The role of competition policy in promoting economic development: The appropriate design and effectiveness of competition law and policy'. United Nation Conference on Trade and Development. Item 6 (a) of the provisional agenda, UN Doc TD/RBP/CONF.7/3 (30 August 2010) 1-18 Available at https://unctad.org/system/files/official-document/tdrbpconf7d3_en.pdf (Accessed 22 July 2023)

Sustainable Development Report: Country Report (2019) Statistics South Africa 1- 318

<u>Working Papers</u>

Burger, R; Jafta, R & von Fintel, D 'Affirmative action policies and the evolution of post-apartheid South Africa's racial wage gap' (2016) *WIDER Working Paper,* No 2016/66 1-33 at https://doi.org/10.35188/UNU-WIDER/2016/109-3 (Accessed 15 September 2024)

Ennis, S; Gonzaga, P & Pike C 'Inequality: A hidden cost of market power' (2017) (2015)10 DAF/COMP *OECD* 1-56 at www.oecd.org/daf/competition/inequality-a-hidden-cost-of-market-power.html (Accessed 19 July 2023)

Goga S 'Competition and Inequality in Developing Countries' (2022) SCIS Working Paper | Number 40 1-22 at https://wiredspace.wits.ac.za/server/api/core/bitstreams/565e084f-8dda-42e5-b286-7bbb567a425d/content (Accessed 1 February 2023)

Gupta, S; Davoodi, H & Alonso-Terme, R. 'Does Corruption affect income inequality and poverty' (1998) International Monetary Fund Working Paper WP/98/76 1-41 at https://www.imf.org/external/pubs/ft/wp/wp9876.pdf (Accessed 12 July 2023)

Le Roux, M 'A More Effective Efficiency: The normative potential of constitutional economics to achieve the stated objectives of the Competition Act' (2014) Summary and Working Draft for discussion purposes only at the Fourth Annual Competition Commission, Competition Tribunal and Mandela Institute Conference on Competition Law, Economics and Policy in South Africa 1-14 at http://www.compcom.co.za/wp-content/uploads/2014/09/A-MORE-EFFECTIVE-EFFICIENCY.pdf (Accessed 28 July 2023)

Mandiriza, T; Sithebe T & Viljoen M 'An ex-post review of the Wal-Mart/Massmart Merger' *Competition Commission* Working Paper cc2016/03 1 at http://www.compcom.co.za/wp-content/uploads/2017/11/CC201603-Mandiriza-T-Sithebe-T-and-Viljoen-M-2016-An-expost-evaluation-of-the-Walmart-Massmart-merger.pdf (Accessed 1 August 2023)

Mncube, L & Ratshisusu, H 'Competition Policy and Black Empowerment: South Africa's Path to Inclusion' (2021) SCIS Working Paper | Number 22 1-13 at https://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/scis/documents/Competition%20Policy%20and%20Black%20empowerment.pdf (Accesed 29 July 2023)

Nowag, J 'Sustainability & Competition Law and Policy–Background Note' 2020(3) DAF/COMP *OECD* 1-39.

Peer Reviews

OECD ‘Compeititon Law and Policy in South Africa’ (2003) 1-75 at https://www.oecd.org/daf/competition/prosecutionandlawenforcement/34823812.pdf (Accessed 28 July 2023)

Websites

Aljazeera ‘South Africa most unequal in the world: Report’ 10 March 2023 available at https://www.aljazeera.com/news/2022/3/10/south-africa-most-unequal-country-in-the-world-report#:~:text=South%20Africa%20is%20the%20most,World%20Bank%20report%20has%20said. (Accessed 11 July 2023)

Beyond employment – Time Related Underemployment in the SA Labour Market’ 16 May 2023https://www.statssa.gov.za/?p=16312#:~:text=South%20Africa%27s%20unemployment%20rate%20in,the%20highest%20in%20the%20world. (Accessed 21 June 2023)

Bordo, M & Meissner, C ‘Does Inequality lead to a financial crisis’ Centre for Economic Policy Research Policy Portal 24 March 2012 available at https://cepr.org/voxeu/columns/does-inequality-lead-financial-crisis (Accessed 5 July 2023)

Carpentier, CL; Kozul-Wright, R & Passos, FD ‘Goal 10 – Why Addressing Inequality Matters’ UN Chronicle April 2015 4(LI) available at https://www.un.org/en/chronicle/article/goal-10-why-addressing-inequality-matters (Accessed 5 July 2023)

Fisher, C ‘Why is Burger King Proving a Hard Sell?’ Helen Suzman Foundation. Available at https://hsf.org.za/publications/hsf-briefs/why-is-burger-king-proving-a-hard-sell (Accessed 27 February 2024)

Garden, M; Mogapi, D; Viljoen, B & Lane, T ‘Part 3: A closer look at the Competition Commission's draft Public Interest Guidelines’ Webber Wentzel 22 November 2023. Available at https://www.webberwentzel.com/News/Pages/part-3-a-closer-look-at-the-competition-commissions-draft-public-interest-guidelines.aspx (Accessed 1 February 2024)

Goal 10: Reduce inequality within and among countries at https://www.un.org/sustainabledevelopment/inequality/ (Accessed 21 June 2023)

International Monetary Fund Policy Responses to Covid 19 at https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#S (Accessed 7 June 2023)

Markets and Competition Policy: Fostering growth and shared prosperity by opening and transforming markets’ The World Bank available at https://www.worldbank.org/en/topic/competition-policy (Accessed 26 September 2023)

Meyer, S & Henney, R ‘New merger guidelines: In the 'public interest' to comment’ Cliffe Dekker Hofmeyr Inc 6 Oct 2023. Available at https://www.cliffedekkerhofmeyr.com/news/publications/2023/Practice/Competition/competition-law-alert-6-october-new-merger-guidelines-in-the-public-interest-to-comment (Accessed 8 February 2024)

Morphet, L ‘Competition v promoting small business and black economic empowerment – an evaluation of South African competition law and its enforcement’ 22 June 2021 at https://www.ibanet.org/south-africa-competition-law-enforcement (Accessed 4 August 2023)

Scallan A & Chetty M ‘Revised Public Interest Guidelines: Are they really in the Public Interest?’ ENS (2023) Avaliable at https://www.ensafrica.com/uploads/newsarticles/0_ens%20competition%20piece%2011%20oct%2023%20final.pdf (Accessed 1 February 2024)

Sustainable Development Goal Knowledge Platform ‘South Africa Voluntary National Review 2019’. Available at https://sustainabledevelopment.un.org/memberstates/southafrica#:~:text=The%20NDP%20pr ioritises%20the%20elimination,national%2C%20provincial%20and%20local%20level (Accessed 15 February 2024)

Sguazzin, A ‘ South Africa Wealth Gap Unchanged Since Apartheid, Says World Inequality Lab’ 5 August 2021 https://time.com/6087699/south-africa-wealth-gap-unchanged-since-apartheid/ (Accessed 12 July 2023)

The World Bank In South Africa’ 30 March 2023 at https://www.worldbank.org/en/country/southafrica/overview (Accessed 21 June 2023)

‘Why do the Sustainable Development Goals Matter?’ at https://www.unep.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter#:~:text=To%20achieve%20basic%20levels%20of,level%20of%20society%20are%20needed. (Accessed 5 July 2023)

Miscellaneous

Alves, P; Magadla, S & Mondliwa, P ‘The role of competition policy and law in growth and the recovery from COVID-19’ (23 October 2020) *Submitted to: the 14th annual competition law and policy conference* 8 at http://www.compcom.co.za/wp-content/uploads/2020/11/Alves-Magadla-Mondliwa-Comp-policy-and-COVID-recovery_conference-paper_draft_23102020.pdf (Accessed 27 July 2023)

Boshoff, W. H.; Dingley, D, & Dingley, J ‘The economics of public interest provision in South Africa competition policy’ (2012) In *6th Annual Conference on Competition Law, Economics and Policy Pretoria: Competition Commission South Africa* 1-31 at http://www.compcom.co.za/wp-content/uploads/2014/09/The-economics-of-public-interest-provisions-in-South-African-competition-policy.pdf (Accessed 31 July 2013)

Thornton, A ‘Reducing Inequality in South Africa’ (2020) South African Presidential Economic Advisory Council (PEAC) 1-11 available at https://www.thepresidency.gov.za/sites/default/files/07.%20Reducing%20Inequality%20in%20South%20Africa%202020.pdf (Accessed 20 July 2023)

‘Unleashing Rivalry’ (2020) Competition Commission 1-80 at https://www.compcom.co.za/wp-content/uploads/2020/01/Competition-Commission-20-year_V9.pdf (Accessed 29 July 2023)

Minister Patel *‘Competition Policy within a developmental framework—Some reflections. Remarks at the competition lawyers’* Breakfast hosted by the Law Society of the Northern Provinces on 3 November 2011.

70/1 Transforming our world: the 2030 Agenda for
Sustainable Development: Resolution adopted by the General Assembly on 25 September 2015

Van Der Westhuizen, C ‘South Africa: Economic growth, poverty and inequality’ in *Foresight Africa: Top priorities For The Continent in 2012* (2012) 33-34 at https://www.brookings.edu/wp-content/uploads/2016/06/01_snapshot_south_africa_westhuizen.pdf (Accessed 15 September 2024)