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Promoting Financial Inclusion in South Africa: The Role of Competition Law in Addressing Big Four Banks' Market Concentration

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Submitted in partial fulfilment of the requirements for the degree of

Master of Laws by Coursework and Research Report

at the University of the Witwatersrand, Johannesburg

Date: 28 February 2025

Supervisor: Judge Dennis Davis

DECLARATION

I, 1441143, declare that this Research Report is my own unaided work, it is submitted in partial fulfilment of the requirements for the degree of Master of Laws (by Coursework and Research) at the University of Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in this or any other University.

I have submitted my final Research Report through TurnItIn and have attached the report to my submission

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LIST OF KEY WORDS

- Financial Inclusion
- Competition Law
- Big Four Banks (FirstRand, Absa, Standard Bank, Nedbank)
- Market Concentration
- Marginalized Communities
- Apartheid Legacy
- Socioeconomic Disparities
- Regulatory Framework
- Competition Act 89 of 1998
- Alternative Banking Models
- Fintech Solutions
- Twin Peaks Regulatory Model
- Pricing and Costing Reforms
- Financial Literacy

I. ABSTRACT

This research investigates the role of competition law in promoting financial inclusion within South Africa's banking sector, examining the dominance of the Big Four banks— First Rand, Absa, Standard Bank, and Nedbank. It examines the pivotal issue of market concentration and its adverse effect on financial inclusion, particularly concerning marginalized and underserved communities.

Notwithstanding the government's efforts to improve financial accessibility, and a progressive financial system, a pertinent segment of the country's population remains exempted from essential financial services, deepening economic disparities and restricting economic growth prospects.

The study situates these disparities within the country's historical and socio-economic context, including the continual effects of apartheid, which have substantially influenced the country's present financial segregation. From a legal perspective, the study evaluates the feasibility of the Competition Act 89 of 1998;[1] South Africa's main legislative framework for regulating competition, focusing on key provisions that interdict restrictive agreements and address abuse of market dominance.

The study offers a thorough examination of the South African banking sector, including its existing market structure, and assesses the efficacy of competition law instruments. It also considers leading-edge regulatory strategies, including alternative banking models and fintech solutions to promote competition and increase access to financial services.

This research provides actionable recommendations for legislators, regulators, and industry participants, offering practical insights to foster a more inclusive and competitive banking sector. By confronting the oligopolistic structure of the Big Four banks and proposing modifications to competition law and regulatory policies, the study tends to integrate the financial sector with South Africa's broader socio-economic objectives, supporting poverty alleviation, economic growth, and social fairness.

[1] Competition Act 89 of 1998.

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II. INTRODUCTION

Financial inclusion is fundamental to South Africa's economic and social development. It serves as a mechanism to mitigate poverty, address systematic disparities, and enhance the quality of life through access to financial services.[2] Financial inclusion is especially pertinent for disadvantaged and vulnerable populations—including but not limited to low-income households, rural communities, undocumented individuals, and informal traders—whose exclusion from the formal financial sector significantly hampers their ability to access credit, save, and achieve economic growth. [3]

Defined broadly, financial inclusion entails ensuring that individuals and businesses alike have equitable and affordable access to a comprehensive suite of financial services, such as banking facilities, credit, insurance, and payment systems, which are tailored to meet the users' needs and foster economic security.[4] Financial inclusion enables individuals and businesses to engage meaningfully in economic activities, thereby fostering socio-economic mobility and driving economic growth. [5]

However, notwithstanding the considerable progress in the financial sector, South Africa continues to grapple with entrenched barriers to financial inclusion which deserts a substantial portion of the population excluded and unable to fully participate in the economy. The barriers to financial inclusion in South Africa are diverse and interconnected; these key barriers include the inadequate development of financial infrastructure in rural areas and underserved communities, exorbitant transactions and service fees,[6] the rigorous provisions of the Financial Intelligence Centre Act (FICA),[7] and the know-your-customer (KYC) requirements.[8]

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[2] Chartier Frederic & Louis Lydie 'Financial inclusion in South Africa: An integrated framework for financial inclusion of vulnerable communities in South Africa's regulatory system reform' (2017) 1 *Journal of Comparative Urban Law and Policy* 13 at 170.
[3] Kawadza H 'Shadow banking law of banking and finance week 8 power point presentation' School of (University of Witwatersrand, Johannesburg, 2024).
[4] National Treasury 'An inclusive financial sector for all November 2023' available at https://www.treasury.gov.za/comm_media/press/2023/2023112701%20An%20Inclusive%20Financial%20Sector%20for%20all%202023.pdf, accessed on 27 November 2024.
[5] Ibid.
[6] Staff Writer 'High prices, fraud and four other reasons why South Africans don't trust SA banks' available at https://businesstech.co.za/news/banking/173527/high-prices-fraud-and-four-other-reasons-why-south-africans-dont-trust-sa-banks/, accessed on 27 November 2024.
[7] Financial Intelligence Centre Act 38 of 2001.
[8] Dow Jones 'Understanding the steps of a ''Know Your Customer' process' available on https://www.dowjones.com/professional/risk/glossary/know-your-customer/, accessed on 27 November 2024.

In addition to these challenges, the high cost of accessing banking services in the traditional banking sector is one of the prevailing causes of financial exclusion.[9] Traditional banking institutions often impose exorbitant fees for the basic usage of banking services; these fees are often associated with monthly account maintenance, transactions, withdrawals, and other banking services.[10] These fees become cumbersome for marginalized communities and low-income households, often compelling them to resort to unconventional banking means in the informal financial sector such as shadow banking through stokvels (community-based savings groups) or unregulated lenders (commonly known as loan sharks.)[11]

Furthermore, although stokvels and loan sharks play a pertinent role in the financial landscape for marginalized communities and low-income households, they possess a hybrid impact on financial inclusion with both beneficial and detrimental consequences. Defined broadly, stokvels are community-based savings groups that enable members to combine their resources and share financial burdens.[12] The informal financial system encourages mutual aid and savings and serves as an alternative banking model to traditional banking services by enabling members to access emergency funds and manage finances as a collective.[13] As a result, stokvels foster a sense of unity and financial security among members of the community which makes them especially appealing for individuals who are unable to satisfy the requirements of traditional financial institutions.[14]

In contrast to these benefits, detrimental consequences are found lurking in this informal system as stokvels commonly lack the regulatory control and consumer protection oversight found in traditional financial institutions, resulting in issues of fraud, poor administration, mismanagement, or unequal access to funds within the community-based savings group.[15] Furthermore, the absence of standardized practices creates discrepancies in the distribution of

[9] Staff Writer 'High prices, fraud and four other reasons why South Africans don't trust SA banks' available at https://businesstech.co.za/news/banking/173527/high-prices-fraud-and-four-other-reasons-why-south-africans-dont-trust-sa-banks/ accessed, on 27 November 2024.
[10] Ibid.
[11] Kawadza H 'Shadow banking law of banking and finance week 8 power point presentation' School of (University of Witwatersrand, Johannesburg, 2024).
[12] Sally Matuku, Edwell Kaseke 'The role of stokvels in improving people's lives: the case in Orange farm, Johannesburg, South Africa' (2014) 50 *Social Work Journals* 4 at 504.
[13] Mduduzi J.K. Bopjela and Njabulo Khumalo 'The role of stokvels in South Africa: a case of economic transformation of a municipality' (2019) 17 *Problems and Perspectives in Management* 4 at 28.
[14] Sally & Edwell op cit note 12 at 508.
[15] The Conversation 'How South African stokvels manage their lending activities outside the courts' available on https://theconversation.com/how-south-african-stokvels-manage-their-lending-activities-outside-the-courts-135449, accessed on 27 November 2024.

funds and the repayment of loans as the member's sole reliance on the principles of trust and cohesion are often scalable and unsustainable on a long-term basis.[16]

In addition to stokvels, the financially excluded margin of the population engages with loan shark schemes. Broadly, loan sharks may be defined as unregulated lenders who provide immediate relief by offering quick access to credit, often at high interest rates.[17] Similarly to stokvels, loan sharks pose a significant threat to financial inclusion. This easily accessible credit-availability-hub coupled by egregious interest rates and unethical collection tactics, perpetuates debt cycles for borrowers as they are often embraced with the difficulty of repaying their loans, leading to financial distress and further exemption from formal credit markets.[18] In addition, this unregulated lending scheme lacks consumer protection oversight which exposes vulnerable people to financial abuse and predatory lending practices.

Meanwhile, stringent documentation requirements imposed by banks further contribute to the exclusion of the vulnerable margin of the population.[19] To open a basic bank account in South Africa, FICA requires the prospective account holder to present proof of residence, formal identification such as a (national ID or passport) and sometimes proof of income or proof of employment. These requirements are in line with the FICA – KYC compliance.[20] However, these requirements are impossible to satisfy for many low-income individuals, particularly those who are domiciled in informal housing or those without stable employment. Individuals domiciled in informal settlements often do not possess utility bills or formal lease agreements to prove their residence, making it challenging for them to satisfy these requirements. This challenge is especially acute for the undocumented populations, migrants, and refugees, who do not possess formal identification or official records, further aggravating their exemption from financial services.[21]

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[16] Sally & Edwell op cit note 12 at 513.
[17] Oloan 'Exploring the role of loan sharks and how to avoid them' available on https://oloan.co.za/understanding-loan-sharks-south-africa, accessed on 27 November 2024.
[18] Inna Opperman 'Loan sharks and the curse of poverty' available on https://press.debtrescue.co.za/loan-sharks-and-the-curse-of-poverty/, accessed on 28 November 2024.
[19] Cover Web Magazine – Feature ' Regulation and its impact on financial inclusion and insurance penetration in Africa' available on https://magazine.cover.co.za/october-2023-edition/regulation-and-its-impact-on-financial-inclusion-and-insurance-penetration-in-africa/, accessed on 28 November 2024.
[20] Know Your Customer (KYC) is a process that lawfully mandates banks to know their customers, to fight against fraud and money laundering. This process is a part of the Financial Intelligence Centre Act 38 of 2001.
[21] Ting Zhang 'Often shut out of the financial system, refugees and other migrants face economic integration challenges' available on https://www.migrationpolicy.org/article/refugees-migrants-financial-inclusion, accessed on 28 November 2024.

In addition to exorbitant fees and stringent documentation challenges, physical access to brick-and-mortar banking services remains a significant issue for underserved communities. This is due to the country's banking infrastructure largely concentrated in urban areas, where most of the financial institutions' branches are found; whereas in rural areas, particularly those in remote and economically underdeveloped regions have scarce to non-existent ATMs or bank branches.[22] Individuals domiciled in these areas are often met with the challenge of having to commute to access banking facilities. Financial constraints further hinder their ability to make such journeys, making accessing basic financial services an insurmountable task. These geographical restrictions effectively exclude large swaths of the population, leaving them with fewer options for financial services engagement.[23] This exclusion not only exerts personal inconvenience but also has overarching consequences for economic growth and development.

The circumstances are equally difficult for small to medium enterprises (SMEs). Numerous SMEs in the informal sector do not possess the extensive documentation commonly required by banks, such as business registration certificates, financial statements, or tax records.[24] Consequently, they encounter challenges when seeking access to credit, business loans, or even a basic business bank account. This not only restricts their capacity to grow their enterprises but also restricts their engagement in the formal financial sector.[25]

These challenges are further compounded by the continual legacy of apartheid which institutionalised socio-economic disparities through geographical and racial segregation by ensuring that economic resources remain disproportionately concentrated in affluent urban areas and among higher-income demographic groups. Consequently, the legacy of these systematic divisions continues to exacerbate restricted access to financial services, further perpetuating a persistent wealth gap amongst the country's population. [26]

[22] World Bank Group ' Financial inclusion in Sub-Saharan Africa - overview' available on https://www.worldbank.org/en/publication/globalfindex/brief/financial-inclusion-in-sub-saharan-africa-overview, accessed on 29 November 2024.
[23] Ibid.
[24] Ayana Sibiya 'Challenges experienced by SMMEs and interventions by the South African national and provincial government: A literature review' (2023) 5 *African Journal of Inter/Multidisciplinary Studies* 1 at 6.
[25] Ibid.
[26] United Nations Human Rights '30 years on, South Africa still dismantling racism and apartheid's legacy' available on https://www.ohchr.org/en/stories/2024/04/30-years-south-africa-still-dismantling-racism-and-apartheids-legacy, accessed on 29 November 2024.

III. RESEARCH PROBLEM

In South Africa, financial inclusion persists as a material concern, particularly for low-income populations and rural communities. This issue is aggravated by systematic impediments, including the oligopolistic structure of the banking sector which restricts competition and prevents equitable access to banking services.[27] Notwithstanding the progressive regulatory framework, primarily the Competition Act,[28] and initiatives intended to foster financial inclusion, the dominance of the Big Four banks still reinforces substantial hindrances to inclusive financial services. The efficacy of the Act in addressing the barriers to financial inclusion is circumvented by numerous challenges, including the operational, regulatory, and structural constraints inherent in the country's financial sector.[29] The research problem centres on the persistent financial exclusion unevenly affecting low-income populations, rural communities, and SMEs .

IV. RESEARCH QUESTION AND RESEARCH OBJECTIVE

a) Research question

(i) How does the dominance of the Big Four banks perpetuate financial exclusion in South Africa, and how can competition law be leveraged to circumvent this challenge and enhance financial inclusivity?

b) Research Objectives

(i) To explore the socio-economic and historical factors exacerbating financial disparities in South Africa, particularly the residual effects of apartheid.

(ii) To investigate the role of competition law in promoting financial inclusion within South Africa's banking industry by assessing how competition law impacts the accessibility of financial services in the banking industry.

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[27] L Louis & F Chartier 'Financial inclusion in South Africa: An integrated framework for financial inclusion of vulnerable communities in South Africa's regulatory system reform' (2017) 1 *Journal of Comparative Urban Law and Policy* 13 at 170.

[28] Competition Act.

[29] Chitimira H & Ncube M 'Legislative and other selected challenges affecting financial inclusion for the poor and low-Income earners in South Africa' (2020) *Journal of African Law* 64 at 341.

(iii) To examine the ramifications of the Big Four banks' market dominance on financial inclusion in South Africa by assessing how the market share exerted by the major banks restricts the accessibility of financial services for the marginalized.

(iv) To provide actionable recommendations for industry stakeholders and regulators to enhance financial accessibility, curtail socio-economic inequalities, and promote competition in South Africa's banking sector by proposing regulatory interventions and policy adjustments to curtail the barriers to financial inclusion encountered by marginalized communities.

V. RESEARCH METHODOLOGY

a) Qualitative Methodology:

A qualitative methodology in the form of a literature review will be explored in this research. An in-depth review of existing literature on financial inclusion, the South African financial sector, and competition law will establish a theoretical framework for the study. Key sources will be analysed including academic articles, industry analysis, and government reports, with a specific emphasis on the impact of competition on financial services in South Africa.

This qualitative research method will allow for a nuanced understanding of the relationship between competition law enforcement, market structure, and financial inclusion in South Africa while offering evidence-based suggestions for reform.

VI. LITERATURE REVIEW

a) Setting the scene

Financial inclusion refers to the process of natural and juristic persons having access to quality, equitable, and affordable financial products and services irrespective of their socioeconomic and demographic status.[30] Financial inclusion goes beyond ensuring accessibility and having a

[30] Chitimira H & Ncube M of cit note 29 at 338.

bank account, it emphasizes the effective utilization of financial products and services to meet the diverse needs of end-users.[31]

Financial inclusion seeks to incorporate these products and services into the lives of the segment of the population who have traditionally been exempted from the formal financial system. Its prominence extends beyond consumer welfare, it encompasses equipping consumers with the resources to manage their finances, save for the future, and access credit, fostering heightened economic participation and stability.[32]

However, the journey of attaining financial inclusion is fraught with challenges. Major barriers, *inter alia*, include insufficient banking infrastructure in rural areas, limited financial literacy, and exorbitant service fees.[33] The current products and services offered are not designed to address the specific challenges encountered by marginalized groups, who frequently have unstable employment, inconsistent income, or the absence of collateral, which hinders them from utilizing traditional banking systems. Compounding these issues is distrust in formal financial institutions, often stemming from exclusionary practices that marginalized significant segments of the population in the apartheid era.[34]

The emergence of digital financial services demonstrates a crucial remedy for these challenges by providing innovative ways to extend financial access to underserved communities. Arguably, these services minimize the need for brick-and-mortar branches, making it feasible for the underserved to participate in the financial system which in turn enables users to engage in these financial services at a much lower cost in contrast to traditional banking services. However, whilst these progressive innovations demonstrate noteworthy potential, their efficacy hinges on continuous improvement and assessment.[35]

(i) Historical context of financial inclusion in South Africa

The apartheid regime's policies of financial exclusion were both explicit and implicit, systematically denying black South Africans from accessing the full spectrum of financial

[31] National Treasury 'An Inclusive Financial Sector for All Nover 2023' available at https://www.treasury.gov.za/comm_media/press/2023/2023112701%20An%20Inclusive%20Financial%20Sector%20for%20all%202023.pdf accessed, on 27 November 2024.
[32] Chitimira H & Ncube M of cit note 29 at 337.
[33]Simatele, Munacinga; Maciko, Loyiso 'Financial inclusion in rural South Africa: A qualitative approach' (2022) 376 *Journal of Risk and Financial Management* 15 at 2.
[34] Ibid.
[35] Van Niekerk MG & Phaladi NH 'Digital financial services: Prospects and challenges' (2021) 24 *PELJ* 1 at 1.

services made available to their white counterparts. Under apartheid, black people were deliberately segregated from the formal economy, a reality reflected in the financial sector's policies and practices.[36] The formal financial system was designed to benefit the white minority, ensuring that credit, banking, and insurance services were predominately allocated to white South Africans, while black people were confined to informal financial systems that provided unreliable and restricted services.[37]

One of the most notable characteristics of the apartheid era of financial exclusion was the economic and spatial segregation of black South Africans.[38] The Group Areas Act of 1950,[39] for instance, limited geographic mobility and economic opportunity through the confinement of black South Africans to designated areas, often on the outskirts of cities or in rural areas, where access to banking institutions was limited or completely absent.[40] Banks were reluctant to establish branches in these peripheral areas, leaving the Black population with limited access to formal financial services; even when financial institutions were present, their services were restricted and discriminatory in nature.[41]

The formal credit market during apartheid was aligned with the racial hierarchy which substantially discriminated against Black South Africans. During apartheid, Black South Africans faced considerably higher interest rates on loans in contrast to White South Africans, illustrating the deeply entrenched racial division and discriminatory policies and practices in the financial sector at the time.[42] These disparities were not founded on objective inherent creditworthiness but from the systemic racial discrimination in the financial sector, wherein Black South Africans were considered higher-risk borrowers.[43] The financial system under apartheid not only restricted equitable access to credit but inflated the cost of financial services

[36] South Africa's Economic Transformation ' A Strategy for broad-based black economic empowerment' available on https://www.gov.za/sites/default/files/gcis_document/201409/dtistrat1.pdf, accessed on 31 January 2025.
[37]Claudine Cassar 'The origins of apartheid – how institutionalized racism took hold in South Africa' available on https://anthropologyreview.org/anthropology-glossary-of-terms/apartheid-racial-segregation-based-on-institutionalised-racism/, accessed on 29 November 2024.
[38] Ibid.
[39] The Group Areas Act of 1950.
[40] Erin Blakemore 'The harsh reality of life under apartheid in South Africa' available on https://www.history.com/news/apartheid-policies-photos-nelson-mandela accessed on 31 January 2025.
[41] The Group Areas Act.
[42] Feroza Peterson 'Apartheid shadow looms over financial inclusion' available at https://www.iol.co.za/sundayindependent/news/apartheids-shadow-looms-over-financial-inclusion-18978006-be30-49a0-bfdf-4df57417d015#google_vignette, accessed on 29 November 2024.
[43] Ibid.

for those already marginalized. These systematic injustices had lasting effects, perpetuating economic inequalities which are prevalent to this day.[44]

Although the Banking Association of South Africa (BASA) refuses the discrimination allegations, Black consumers and Black owned businesses continue to struggle for support and financing.[45] Presently, there are notable inequalities between Black and White populations concerning borrowing costs and access to financial services. Practices like credit score margins, redlining and inequitable lending have entrenched these disparities, amplifying the difficulty for Black individuals to access affordable credit.[46] These practices are deeply entrenched in historical inequalities originating from the apartheid era and persist in affecting economic opportunities and financial accessibility for Black South Africans.[47] A recent discovery by former WesBank employee exposed that the finance house uses a system that charges black clients an interest rate of around 18% and more, whereas white clients are charged an interest rate not exceeding 10%.[48]

These racialized economic policies formed part of a broader strategy to sustain white monopoly capital 'a term used to describe a perceived concentration of economic power and wealth among white South Africans', with banks and financial institutions complicit in reinforcing these disparities by charging higher rates to Black clients to offset perceived risks. These risks were not based on actual financial behaviour but rather on racialized economic regimes that restricted the wealth-building potential of Black South Africans.[49]

The widespread lack of financial literacy further aggravates these issues. The Bantu Education Act of 1953,[50] entrenched a system of inferior education for Black people, circumventing their

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[44] Mapalo Makhu 'Does your race affect your interest rate? ' available on https://www.news24.com/citypress/Personal-Finance/does-your-race-affect-your-interest-rate-20190315, accessed on 30 November 2024.
[45] Feroza Peterson 'Apartheid shadow looms over financial inclusion' available at https://www.iol.co.za/sundayindependent/news/apartheids-shadow-looms-over-financial-inclusion-18978006-be30-49a0-bfdf-4df57417d015#google_vignette, accessed on 29 November 2024.
[46] Neil Bhutta, Aurel Hizmo, Daniel Ringo ' How much does racial bias affect mortgage lending? evidence from human and algorithmic credit decisions' available on file:///C:/Users/millicek/OneDrive%20-%20Gildenhuys%20Malatji%20Attorneys/Desktop/2022067pap.pdf, accessed on 31 January 2025.
[47] Oliver Mtapuri & Partson Tinarwo 'From apartheid to democracy' (2021) 21 *Southern African Journal of Demography* 1 at107.
[48] Bongiwe Mati 'Wesbank exposed for charging black clients more by former employee' available on https://www.bona.co.za/lifestyle/wesbank-exposed-for-charging-black-clients-more-by-former-employee/, accessed on 29 November 2024.
[49] Feroza Peterson 'Apartheid shadow looms over financial inclusion' available at https://www.iol.co.za/sundayindependent/news/apartheids-shadow-looms-over-financial-inclusion-18978006-be30-49a0-bfdf-4df57417d015#google_vignette, accessed on 29 November 2024.
[50] Bantu Education Act of 1953.

opportunities to access well remuneratory employment that would facilitate their accessibility to formal financial services thereby curtailing their economic mobility.[51] Deprived of formal financial services, the majority of the Black population resorted to informal and unregulated financial systems such as stokvels and loan sharks which offered high interest rates and minimal consumer protection, further exacerbating financial fragility.[52] Although these informal financial systems perform a pivotal role in managing financial needs in the absence of formal credit options, they lack the regulatory oversight and safeguards of conventional financial institutions. [53]

The formal end of apartheid in 1994 marked the transition to a democratic South Africa which began a series of policy reforms, particularly in the realm of economic inclusion. The new government sought to dismantle the structures of the apartheid era's economic segregation by enacting policies that were designed to expand access to financial services, previously enjoyed by white South Africans. [54]

The government implemented various policies to promote access to formal financial services. These policies include the Black Economic Empowerment (BEE) which aims to address historical injustices by fostering economic participation among historically marginalized South Africans,[55] and the Financial Sector Charter, which seeks to advance inclusivity and transformation within the country's financial sector by increasing economic participation for previously disadvantaged individuals and encourage the development of black-owned businesses. [56]

A significant step towards fostering financial inclusivity was the Financial Sector Charter in 2003, which sought to encourage financial institutions to broaden their services to historically disadvantaged communities; this policy underscored the significance of financial institutions, particularly banks – to adapt to inclusive practices such as expanding their reach to the unbanked regions by offering affordable financial products and services and reducing the barriers to entry to the formal financial sector.[57] Additionally, the National Treasury's 'Draft

[51] Oliver Mtapuri & Partson Tinarwo op cit note 47 at 107.
[52] Chitimira H & Ncube M of cit note 29 at 348.
[53] Ibid.
[54] Roger Tangri & Roger Southall 'The politics of Black Economic Empowerment in South Africa' (2008) 34 *Journal of Southern African Studies* 3 at 699.
[55] Ibid.
[56] Financial Sector Chater Code available on https://www.banking.org.za/consumer-information/consumer-information-legislation/financial-sector-charter-code/, accessed on 30 November 2024.
[57] Ibid.

Market Conduct Policy Framework for South Africa', a report which seeks to treat individuals fairly and expand financial inclusion of the South Africa's marginalized communities.[58] The objective of the report was clear: to integrate previously marginalized groups — particularly Black South Africans, the segment of the population that engaged in the informal economy, and the rural populations into the formal financial system. [59] However, the effectiveness of these policies has been inconsistent, notwithstanding the Big Four bank's considerable involvement in this complex process.

(ii) Challenges in advancing financial inclusion in South Africa's banking sector

The Big Four banks hold a dominant position in the country's financial sector, exercising control of approximately 84% of the country's banking assets.[60] In the post-apartheid era, these banks were anticipated to serve a transformative function in advancing financial inclusion, leveraging their extensive infrastructure and capital resources to access underserved populations.[61] To this end, they implemented initiatives designed to facilitate financial inclusion and stimulate effective economic contribution to the economy among the unbanked population.[62] The private commercial banking sector made efforts to harness the swift use of technology to reach the unbanked. However, much to their dismay, these initiatives were short-lived due to fiscal policy burdens of the banking sector which ultimately hindered their long-term effect.[63]

In October 2004, an initiative called the Mzansi Account was established through collaboration and inaugurated by the state-owned bank, Post-bank and the Big Four banks.[64] This initiative was welcomed as an initiative that ought to cater to all citizens. It was inaugurated along the objectives set forth by the country's Financial Sector Charter. The Financial Sector Charter

[58] Chartier Frederic & Louis Lydie op cit note 2 at 185.
[59] Ibid.
[60] Chartier Frederic & Louis Lydie op cit note 2 at 170.
[61] Elizabeth Lwanga Nanziri 'Financial Inclusion and Welfare in Post-Apartheid South Africa' available on chrome extension://efaidnbmnnnibpcajpcglclefindmkaj/https://publication.aercafricalibrary.org/server/api/core/bitstreams/bb776d64-159e-4667-849f-48f1a22969ef/content', accessed on 30 November 2024.
[62] Ibid.
[63] Chartier Frederic & Louis Lydie op cit note 2 at 170.
[64] Bankable Frontier Associates 'The Mzansi Account Initiative in South Africa' available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://finmark.org.za/system/documents/files/000/000/316/original/MsanziBankAccInitiativeSA_2009.pdf?1614593520, accessed on 30 November 2024.

assigns banks with the responsibility of ensuring accessible banking services and the utilization of these services by all members of the Republic, irrespective of social class.[65]

This program was conceived with the objective to provide financial accessible and affordable financial services to the historically marginalized segment of the population by offering a low-cost transactional banking account.[66] The account was simple and user-friendly, initially it only offered a transactional account with a basic debit order platform.[67] Overtime, its services were enhanced to include features such as stop orders and automatic payments.[68] It sought to enable the end-user to effectively manage their finances by reducing their financial exclusion through equipping them with the resources to participate in the formal economy.

The Mzansi account had no monthly fees, and the end-user was charged lower transactional fees on ATM withdrawals compared to the traditional banking services. Moreover, it allowed the end-user to utilize all the ATMs and post office branches without incurring any extra cost. In doing so, the initiative ensured that barriers to access banking facilities were mitigated if not eradicated.[69] The account performed a pivotal role in addressing the market failure within the banking sector which became evident through the substantial portion of the population remaining unbaked. The Mzansi initiative proved successful in respect of the number of accounts opened; approximately six million Mzansi accounts had been opened by December 2008,[70] which marked a significant achievement considering a significant portion of the country's adult population remained unbanked. The account increased the proportion of banked adults in the country from 46% in 2004 to 63% in 2008.[71] This initiative not only aided in promoting financial inclusion but generated widespread local and international interest.

[65] Elizabeth Lwanga Nanziri 'Financial Inclusion and Welfare in Post-Apartheid South Africa' available on chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://publication.aercafricalibrary.org/server/api/core/bitstreams/bb776d64-159e-4667-849f-48f1a22969ef/content', accessed on 30 November 2024.
[66] N Nene 'Mzansi account success' available on https://www.gov.za/news/n-nene-mzansi-account-success-31-mar-2009, accessed on 30 November 2024.
[67] Bankable Frontier Associates 'The Mzansi Account Initiative in South Africa' available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://finmark.org.za/system/documents/files/000/000/316/original/MsanziBankAccInitiativeSA_2009.pdf?1614593520, accessed on 30 November 2024
[68] N Nene 'Mzansi account success' available on https://www.gov.za/news/n-nene-mzansi-account-success-31-mar-2009, accessed on 30 November 2024.
[69] Ibid.
[70] Bankable Frontier Associates FinMark Trust 'The Mzansi Account Initiative in South Africa' available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://finmark.org.za/system/documents/files/000/000/316/original/MsanziBankAccInitiativeSA_2009.pdf?1614593520, accessed on 30 November 2024.
[71] Ibid.

Nonetheless, the campaign failed to garner momentum. As soon as these accounts were inactive, banks ceased marketing them.

In 2013, Standard bank, introduced an innovative system called 'the Access Account Program'. The program sought to increase financial services accessibility by bridging the gap between conventional banking systems, and the unbanked and underserved communities.[72] The objective was to provide convenient and affordable banking services for these communities by enabling an end user to conduct transactions outside of the traditional banking systems. [73] The bank provided a user-friendly platform that allowed the end-user to withdraw cash at various till points where there were no ATMs in the user's area. Furthermore, it enabled the end-user to send instant cash to recipients within the Republic without the recipient having a transactional banking account.[74] Notable as it was, the program was halted due to its limited contribution to the bank's profit-generation strategy. Although the program advanced financial inclusivity by expanding its reach to the marginalized communities, it did not yield the anticipated financial benefits. The bank sought to strike a balance between financial inclusivity and increasing the bank's profitability. It sought to generate a consistent revenue stream through enhanced consumer engagement, increased market share and banking transactions. Notwithstanding its social impact, the program ceased to exist. [75]

New digital banks like Bank Zero and TymeBank entered the market, targeting the same low-income customers.[76] The need to adapt to the emerging market competition contributed to the decision to discontinue the program. As a result, the bank was prompted to update their offerings to remain competitive,[77] leading to the cessation of the program irrespective of its positive contribution to these communities.[78]

Although these financial institutions have made notable strides in enhancing accessible and affordable banking services, the deeply historically entrenched disparities could not be eliminated overnight as systematic barriers continue to plague the banking sector. The vast

[72] Leon Kaye 'Standard Bank and SAP Team Up to Expand Banking to Millions in South Africa' available on https://www.triplepundit.com/story/2013/standard-bank-and-sap-team-expand-banking-millions-south-africa/52371, accessed on 31 January 2025.
[73] Ibid.
[74] Ibid.
[75] Standard bank 'Access Account' https://www.standardbank.com/southafrica/personal/products-and-services/bank-with-us/bank-accounts/our-accounts/access-account accessed, on 01 December 2024.
[76] Parddon Khumalo 'Standard bank Access Account Review 2022' available on https://www.rateweb.co.za/news/banking/standard-bank-access-account-review/ accessed on 01 December 2024.
[77] Ibid.
[78] Ibid.

majority of Black South Africans, particularly those living in remote or underdeveloped areas, still faced barriers to financial inclusion[79]. Access to banking services remains restricted with a significant portion of rural communities lacking adequate banking infrastructure. Quantitative research entails that 23.5% of the country's population remains unbanked – this accounts for approximately 245,000 people residing in the Republic.[80] In addition, an estimated of over R12 billion has been discovered to be excluded from the formal banking sector. [81] The exclusion is a result of individuals keeping their savings 'underneath the mattress' instead of a bank account.[82] *Inter alia,* contributing factors include the lack of financial trust in traditional banks and inadequate financial literacy in conventional banking systems. Presently, many Black South Africans continue to distrust the formal banking system, given the historical discriminatory practices, and prefer to rely on informal financial systems instead.[83]

Furthermore, the expansion of banking services in urban areas has not adequately translated to the historically marginalized communities, resulting in considerable inequalities in accessing financial services; although progress has been made in expanding financial services, it is pivotal to consider the wider historical, socioeconomic, and structural factors that continue to plague financial inclusion in South Africa.[84]

VII. THE IMPACT OF CAPITEC BANK ON FINANCIAL INCLUSION IN SOUTH AFRICA

The influence of new-entry banks on financial inclusion in South Africa has sparked great interest and discussion in recent years. The emergence of new banks such as Capitec Bank has

[79] Michel Hanouch 'Beyond the Mzansi Account in South Africa – Targeting Usage' available on https://www.cgap.org/blog/beyond-mzansi-account-in-south-africa-targeting-usage, accessed on 01 December 2024.
[80] OBG 'South African banks making efforts to reach and integrate the unbanked population' available at https://oxfordbusinessgroup.com/reports/south-africa/2016-report/economy/the-final-20-reaching-theunbanked-population-is-a-complex-task, accessed on 01 December 2024
[81]Fikile Kuhlase "Financial Cooperatives Indaba 2012" available on chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.treasury.gov.za/coopbank/Conferences/CFI%20Indaba%2016%20-%2019%20October%202012/Stakeholder%20BASA_Kuhlase_BASA.pdf, accessed on 01 December 2024.
[82] Kawadza H 'Shadow banking law of banking and finance week 8 power point presentation' School of (University of Witwatersrand, Johannesburg, 2024).
[83] World Economic Forum '6 challenges to financial inclusion in South Africa' available on https://www.weforum.org/stories/2017/04/financial-inclusion-south-africa/ accessed, on 31 January 2025.
[84] Ibid.

transformed the conventional banking sector by providing affordable and convenient financial products and services to the underserved population.[85]

Capitec Bank was one of the first new-entry banks to emerge as a significant disruptor to the traditional banking sector in South Africa. Its banking model is based on three core principles: affordability, accessibility, and simplicity.[86] By offering basic banking products such as cheaper transactional accounts, micro-loans, and savings plans, the bank has provided a vast majority of the population with the opportunity to effectively participate in the formal financial sector.[87]

The bank swiftly expanded its branches and inaugurated a variety of innovative financial products and services tailored to be both cost-effective and accessible.[88] Capitec's streamlined approach to banking is one of its most notable innovations; contrary to the Big Four banks, the accessibility of the bank's basic banking products and services is not contingent upon stringent requirements that exempt low-income individuals from accessing their banking services.[89] This approach has become particularly appealing to the segment of the population that struggle to satisfy the stringent requirements of traditional banks. [90]

Capitec's impact on financial inclusion in South Africa has been nothing short of profound. According to a study conducted by the South African Reserve Bank (SARB), the percentage of South Africans aged 15 years and older with access to a transactional account grew from 54% in 2011 to approximately 85% in 2021, arguably as a result of the affordable banking options that cater to the youth and the unemployed.[91]

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[85] Makhaya, T., & Nhundu, N. 'Competition, barriers to entry and inclusive growth in retail banking: Capitec case study' (2016) 17 *The African Journal of Information and Communication* at 131.
[86] Makhaya, Trudi & Nhundu, Nicholasop cit not 85 at at 124.
[87] Centre for Competition, Regulation and Economic Development (CCRED) University of Johannesburg 'Barriers to entry and financial sector transformation: Lessons from Capitec's experience in banking' available on chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://static.pmg.org.za/170314CCRED_Policy_Brief_Barriers.pdf, accessed on 01 December 2024.
[88] Makhaya, Trudi & Nhundu, Nicholas op cit note 85 at 128.
[89] Capitec 'How Capitec became SA's biggest digital bank' available at https://www.capitecbank.co.za/blog/articles/experiences/how-capitec-became-sas-biggest-digital-bank/ accessed on 01 December 2024.
[90] Makhaya, Trudi & Nhundu, Nicholas op cit note 85 at 134.
[91] Tendai Gwatidzo and Witness Simbanegavi 'Financial inclusion and banking sector competition in South Africa' available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.resbank.co.za/content/dam/sarb/publications/working-papers/2024/financial-inclusion-and-banking-sector-competition-in-south-africa.pdf, accessed on 01 December 2024.

Moreover, the bank's affordable products played a considerable role in advancing financial inclusivity through the provision of microloans with reasonable interest rates.[92] Capitec's loans provide a crucial tool for managing financial emergencies for individuals who have restricted access to credit due to the inability to offer collateral or a formal credit history. This approach not only fosters access to basic banking services but serves as a viable alternative for the population who are susceptible to predatory lending practices in the informal sector. [93]

Alongside its affordability and simplicity, the bank has leveraged technology to enhance access to financial services through its mobile banking platform which permits the end user to make transfers, access loans and manage their bank accounts directly from their smartphones, making banking services cost-effective and convenient, particularly for people residing in rural areas with inadequate bank branches.[94] The expansion of mobile banking has enabled Capitec to extend its reach to rural and remote communities, where brick-and-mortar banks are either scarce or entirely non-existent.

Notwithstanding Capitec's positive contribution to the market, the cost of complying with strict financial regulations and the need for significant initial capital continue to plague the entry of smaller financial institutions.[95] To start a commercial bank in South Africa, SARB and the Prudential Authority (PA) stipulate that the financial institution in question must have an initial capital of R250 million or more.[96] The capital requirement is set to guarantee the bank has sufficient resources to handle risks and sustain operational costs. However, it is common cause to argue that the initial capital requirement acts as an exclusionary practice mechanism, designed to pose financial hurdles for new entrants. This requirement may be stringent for prospective financial institutions who seek to cater to a niche market such as the underserved

[92] Gerhard Coetzee 'Innovative Approaches to Delivering Microfinance Services: The Case of Capitec Bank' available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.findevgateway.org/sites/default/files/publications/files/mfg-en-case-study-innovative-approaches-to-delivering-microfinance-services-the-case-of-capitec-bank-aug-2003.pdf, accessed on 01 December 2024.
[93] Hanna Ziady 'Gold cards for everyone. How a bank for the forgotten made its investors very rich' available at https://edition.cnn.com/2019/11/29/business/capitec-south-africa-bank/index.html, accessed on December 2024.
[94] Capitec 'How Capitec became SA's biggest digital bank' available at https://www.capitecbank.co.za/blog/articles/experiences/how-capitec-became-sas-biggest-digital-bank/, accessed on December 2024.
[95] The Conversation 'How Capitec overcame barriers to entry' available on https://theconversation.com/how-capitec-bank-overcame-high-barriers-to-entry-in-south-africa-58883, accessed on December 2024.
[96] Ibid.

communities as the high capital threshold is often attainable by well-resourced entities; effectively deterring prospective entrants from entering the market.[97]

Although Capitec's low-cost banking model has proven a success, it is important to stipulate that it has been able to flourish due to its ability to identify and cater to a specific niche and untapped market. [98] However, the bank's founding principles of affordability and simplicity entail that it does not offer the same array of high-end financial products and services in comparison to the Big Four banks. This gap in service and product offerings underscores the restrictions found in Capitec's banking model which seeks to satisfy the diverse financial needs of all South Africans.[99] Therefore, whilst Capitec plays a pertinent role in enhancing financial inclusion, it is unfortunate to note that its banking model cannot fully replace the broader range of financial products and services provided by the Big Four banks.

Therefore, Capitec's success story may be illustrated as the exception rather than the standard. Irrespective of Capitec's growth, the banking sector remains deeply entrenched in market concentrations, wielding substantial influence over credit allocation, financial mobility, and pricing, thereby confining the smaller financial banks to limited market share.[100] The absence of competition resulting from the concentrated banking sector not only yields stifled innovation but impedes the development of improved products and services in the market, ultimately obstructing progress in the banking sector.

a) The impact of the market concentration of the Big Four banks on new entrants

A popular indicator of market concentration in the banking industry is the Herfindahl-Hirschman Index (HHI). This indicator is computed as a percentage that is the sum of the square of the market share of all firms in the market conveyed as a percentage.[101] In 2011, the SARB published a report which revealed that the level of concentration within South Africa's banking industry is highly concentrated.[102] The market power of the Big Four banks remains

[97] The Conversation 'How Capitec overcame barriers to entry' available on https://theconversation.com/how-capitec-bank-overcame-high-barriers-to-entry-in-south-africa-58883, accessed on December 2024.
[98] Michael Coenraad de Lange A strategic analysis of Capitec bank limited within the South African bank limited within the South African banking industry (unpublished MBA thesis, Nelson Mandela Metropolitan University Business School, 2013) 24.
[99] Ibid.
[100] Makhaya, Trudi & Nhundu, Nicholas op cit note 85 at 114.
[101] Tim Vipond 'Herfindahl-Hirschman Index (HHI)' available at https://corporatefinanceinstitute.com/resources/valuation/herfindahl-hirschman-index-hhi/, accessed on 01 December 2024.
[102] Tankiso Moloi 'Understanding banking regulatory and market framework in South Africa' (2014) *Journal of Governance and Regulation* 3 at 37.

substantial, as these banks collectively account for approximately 84% of the market share within the banking industry. [103] Their dominance presents challenges for both businesses and customers, including but not limited to:

- Pricing power: The Big Four banks set exorbitant fees and charge high interest rates within the banking industry.[104]
- Economies of scale: Banks that are established, leverage their economies of scale to operate more efficiently and offer competitive rates. Whereases new entrants such as fintech's startups and smaller banks face challenges to match these efficiencies, making it difficult to establish a strong presence within the financial services market.[105]
- Capital requirements: A substantial initial capital requirement of approximately R250 million is required for a new entrant to open a commercial bank in South Africa. This regulatory requirement hinges upon potential competitors which further reinforces the dominance of the Big Four banks.[106]

The oligopolistic nature of the country's banking sector entails that a large portion of the market is controlled by the Big Four banks which restricts competition and limits pricing flexibility. [107] The implications of this nature on financial inclusion entails that these banks are not incentivised to provide their services to low-income or rural customers;[108] and in a concentrated market, consumers are diminished when choosing banking services. This lack of choice fosters complacency among banks, further weakening the incentive to reduce costs or enhance their products offerings and services.[109]

[103] Chartier Frederic & Louis Lydie ''Financial Inclusion in South Africa: An Integrated Framework for Financial Inclusion of Vulnerable Communities in South Africa's Regulatory System Reform'' (2017) 1 *Journal of Comparative Urban Law and Policy* 13 at 70.
[104] Staff Writer 'High prices, fraud and four other reasons why South Africans don't trust SA banks' available at https://businesstech.co.za/news/banking/173527/high-prices-fraud-and-four-other-reasons-why-south-africans-dont-trust-sa-banks/, accessed on 27 November 2024
[105] Asongu, Simplice A & Odhiambo, Nicholas M 'Size, efficiency, market power, and economies of scale in the African banking sector' (2019) Financial *Innovation* 5 at 1.
[106] The Conversation 'How Capitec overcame barriers to entry' available on https://theconversation.com/how-capitec-bank-overcame-high-barriers-to-entry-in-south-africa-58883, accessed on December 2024.
[107] Tim Vipond 'Herfindahl-Hirschman Index (HHI)' available at https://corporatefinanceinstitute.com/resources/valuation/herfindahl-hirschman-index-hhi/, accessed on 01 December 2024.
[108] Fiveable Library ' Market concentration from class: Principles of economics' available on https://library.fiveable.me/key-terms/principles-econ/market-concentration, accessed on 01 December 2024.
[109] Ibid.

VIII. THE IMPACT OF COMPETITION LAW ON FINANCIAL INCLUSION

The Competition Act no 89 of 1998,[110] serves as the primary legislation that regulates competition and addresses anti-competitive practices within the market. The ethos of the Act,[111] is to safeguard consumers from exclusionary practices, encourage fairness in the market, and align with the objectives of fostering fair and inclusive competition in the country.[112] This is illustrated through its provisions which hinders oligopolistic and monopolistic practices within a specific market. These practices include abuse of dominant positions, market allocation, and price-fixing which negatively affects consumers and stifles economic growth and development.[113] In addition to its role in regulating competition, the Act underscores public interest considerations, which include promoting affordable goods and services that enhance the quality of life for all South Africans and cater to the needs of disadvantaged communities.[114]

In the context of financial inclusion, the Act[115] functions as both an instrument to address structural barriers that hinder broader access to financial services and a regulatory mechanism that encourages fair competition. In a country where financial inclusion remains a cause for concern, the impact of competition law may be twofold depending on the manner it is enforced and the manner it is integrated within the wider regulatory framework.[116]

One of the primary objectives of competition law is to prevent against anticompetitive practices. However, the enforcement of competition law, particularly in the financial sector is not without challenges.[117] This is due to the previously stated systematic barriers that restrict access to the banking services for the underserved communities and the intricate market dynamics in the financial sector. One of the primary challenges is the high market concentration exerted by the Big Four banks, these banks possess the means and the power to withstand regulatory intervention which makes it challenging for regulators and competition authorities to effectively address the anti-competitive practices in question.[118]

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[110] The Act.
[111] Ibid.
[112] Ibid.
[113] *s* 8 of the Act.
[114] The preamble of the Act.
[115] The Act.
[116] The preamble of the Act.
[117] The Act.
[118] Thembalethu Buthelezi, Thando Mtani and Liberty Mncube 'The extent of market concentration in South Africa's product markets' available on chrome extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.compcom.co.za/wp-

Moreover, the costs associated with regulation and compliance when entering the financial services sector can be prohibitive, the measures present significant barriers to entry for smaller financial institutions. Although competition law aims to mitigate if not eradicate these barriers, the intricacy and the costs of regulatory compliance may still deter prospective entrants, thereby restricting the diversity of financial services accessible to the underserved communities.[119] In addition, the challenge of aligning the efficient enforcement of competition law with the objectives of financial inclusion demands a nuanced approach that ensures regulatory interferences that do not unintentionally deepen existing disparities in accessing equitable and affordable financial services. [120]

IX. THE IMPLICATIONS OF THE TWIN PEAKS REGULATORY MODEL ON FINANCIAL INCLUSION AND COMPETITION IN SOUTH AFRICA

The Twin Peaks model is a regulatory system that is designed to protect consumers and improve the stability of the financial sector. The model is centred around two primary regulatory bodies; the FSCA and the PA. [121] These regulatory bodies are tasked with protecting the reliability and stability of financial institutions against economic shocks by ensuring that remain resilient and robust.[122] The one peak which is the FSCA is primarily mandated to safeguard consumers interest by ensuring that the financial products sold and marketed to them are administered in a fairly, and in a responsible and transparent manner; the peak supervises market conduct to safeguard against unethical practices.[123] Whilst the other peak which is the PA is primarily mandated to maintain financial soundness and stability by overseeing financial institutions, supervising banks and managing risks that pose a threat to the overall stability of the financial system. [124]

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content/uploads/2020/03/Working-paper_The-extent-of-South-Africas-concentration-problem-13082018.pdf accessed, on 01 December 2024.

[119] J. Luis Guasch and Robert W. 'The Costs and Benefits of Regulation: Some Implications for Developing Countrie' available on Hahnhttps://www.researchgate.net/publication/5217894_The_Costs_and_Benefits_of_Regulation_Implications_for_Developing_Countries, accessed on 01 December 2024.

[120] Ibid.

[121] National Treasury 'New Twin Peaks established' available on chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.treasury.gov.za/twinpeaks/Press%20release%20Twin%20Peaks%20implementation%20March2018_FINAL.pdf, accessed on 01 December 2024.

[122] Ibid.

[123] Ibid.

[124] South African Reserve Bank Prudential Authority 'A stable and efficient financial system is instrumental in attaining and maintaining balanced and sustainable economic growth' available on https://www.resbank.co.za/en/home/what-we-do/Prudentialregulation, accessed on 01 December 2024.

In the context of financial inclusion, the Twin Peaks model plays a pivotal role in the maintenance of financial stability against the backdrop of protecting customers and ensuring that fair, affordable and accessible financial services are extended to all, particularly the underserved communities. This regulatory framework founded on the PA and the FSCA work hand in hand to promote the country's financial inclusion landscape. In addressing both the conduct of financial service providers and financial institutions, the Twin Peek seeks to create a financial system that caters to everyone in the country.[125]

The PA is entrusted with ensuring financial stability in financial institutions which is important to promote consumer trust, particularly to individuals who are reluctant to engage with financial institutions. A resilient financial system fosters trust and confidence which is crucial to the historically disadvantaged who may distrust in formal traditional banking services. [126]

Conversely, the FSCA prioritizes the protection of consumers by ensuring that financial institutions sell and promote their financial products in a fair, reasonable and transparent manner.[127] The regulator oversees market conduct to hinder predatory practices such as excessive banking fees, misrepresentation and misleading advertisement. Moreover, the FSCA plays a significant role in promoting financial inclusion by encouraging financial institutions to create affordable and accessible financial products. By emphasizing openness and fairness, the FSCA fosters trust for consumers who have historically been exempted.[128]

Moreover, the Twin Peaks model stresses the significance of financial literacy through their initiatives which aids consumers in forming a solid comprehension of their obligations and prerogatives when engaging with financial products and services.[129] These initiatives include the FSCA's MyMoney Learning Series. [130] The FSCA's MyMoney Learning Series is a guided programme that employs conversations, peer to peer discussions, and visuals to convey basic Consumer Financial Education (CFE) content to consumers.[131] The aim of the initiative is to

[125] Prof Corlia van Heerden 'Twin Peaks model of financial regulation for South Africa seeks to promote and maintain financial stability' available on https://www.up.ac.za/mercantile-law/news/post_2705235-twin-peaks-model-of-financial-regulation-for-south-africa-seeks-to-promote-and-maintain-financial-stability, accessed on 01 December 2024.
[126] South African Reserve Bank Prudential Authority 'A stable and efficient financial system is instrumental in attaining and maintaining balanced and sustainable economic growth' available on https://www.resbank.co.za/en/home/what-we-do/Prudentialregulation, accessed on 01 December 2024.
[127] Ibid.
[128] Financial inclusion within the scope of the FSCA under the twin peaks model in South Africa
[129] Financial Sector Conduct Authority(FSCA) 'FSCA mymoney learning serries' available on https://www.fscamymoney.co.za/Pages/Projects/FSCA-Mymoney-Learning-Series.aspx accessed, on 28 November 2024.
[130] Ibid.
[131] Ibid.

bridge the missing foundational information of financial literacy for South Africa consumers, thereby empowering them with the necessary information to be able to make informed financial decisions which plays a pivotal role in promoting financial inclusion. In proving information and support, the FSCA equips consumers from underserved communities with the confidence and trust to engage with the financial sector and utilize financial services in accordance with their needs.[132]

In addition, the framework supports the fair participation of all financial institutions in the financial sector. These institutions also include microfinance institutions and fintech companies which provide cost-effective services to the marginalized communities.[133] These non-banking institutions often have low operational costs which enables them to serve communities and regions overlooked by the conventional banking systems. To distill it, the Twin Peaks model aid in the creation of a fair, stable and competitive financial system which ensures that everyone can access financial services.[134] This cohesive approach aids in the reduction of disparities found in the financial system. Thereby improving financial inclusion and fostering opportunities for economic growth and development.

Overall, the Twin Peaks model has had a positive impact on financial inclusion, particularly on encouraging and promoting a financial environment that is fair, transparent, competitive and protects consumers whilst equipping them with the necessary financial literacy to make sound financial decisions. However, in respect of the Big Four banks, the attainment of financial inclusion is still ongoing. Although there has been a considerable improvement in advancing financial inclusion in contrast to the apartheid era, much work needs to be done to improve accessibility and cater to the needs of SMEs and historically underserved communities. [135] It is pivotal to note that although the model has laid the foundation for an inclusive financial system, it is through ongoing regulatory oversight, innovation and improved accessibility will the remaining gaps in financial inclusion be effectively addressed. These efforts will not only

[132] Ibid.
[133] National Treasury 'New Twin Peaks established' available on chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.treasury.gov.za/twinpeaks/Press%20release%20Twin%20Peaks%20implementation%20March2018_FINAL.pdf, accessed on 01 December 2024.
[134] South African Reserve Bank Prudential Authority 'A stable and efficient financial system is instrumental in attaining and maintaining balanced and sustainable economic growth' available on https://www.resbank.co.za/en/home/what-we-do/Prudentialregulation, accessed on 01 December 2024.
[135] World Bank 'Overcoming the legacy of exclusion in South Africa' available on https://documents1.worldbank.org/curated/en/461191644334250047/pdf/An-Incomplete-Transition-Overcoming-the-Legacy-of-Exclusion-in-South-Africa.pdf, accessed on 01 February 2025.

ensure that individuals and business alike access financial services but fully benefit from them.[136]

An adaptable and comprehensive regulatory framework coupled with accessible and cost-effective financial services are required to eradicate the barriers of financial inclusion for those previously exempted from the sector. The effective achievement of these objectives hinges on an evolving and robust regulatory system that seeks to strike a balance between market equity, consumer accessibility and protection, and the maintenance of a financially sound sector.[137]

X. POLICY RECOMMENDATIONS

South Africa's Constitution, as the supreme law of the land embodies the autonomy of equity and the spirit of fairness which seeks to redress historical injustices and cultivate a society founded on *ubuntu* – human dignity. [138] The preamble echoes the believe that South Africa belongs to all individuals residing within its borders. These founding principles should permeate the financial sector as well, ensuring that financial institutions operate within the optimal degree of accessibility, fairness and transparency, guaranteeing that all customers benefit from the privileges and assurances ingrained in the founding doctrines.[139]

Section 21(1) of the Competition Act assigns the Competition Commission the responsibility to employ strategies that enhance market transparency. [140] Advancing financial inclusion in South Africa mandates a holistic approach that addresses systematic disparities and corrects the inefficiencies founded in the banking sector. A fundamental aspect of this approach is addressing the market concentration of the Big Four banks which can be accomplished through initiatives that targets fostering competition through the reduction of the initial capital requirement for new financial institutions, encouraging the involvement of alternative financial

[136] Adolf Barajas and Ratna Sahay 'A Broader Reach: When more people and more firms have access to financial services, the whole society can benefit' available on https://www.elibrary.imf.org/configurable/content/journals$002f022$002f0054$002f001$002farticle-A012-en.xml?t:ac=journals%24002f022%24002f0054%24002f001%24002farticle-A012-en.xml, accessed on 01 February 2025.
[137] Lwanga Elizabeth Nanziri and Paul Terna Gbahabo 'How can agency deepen financial inclusion in South Africa' accessed on 'https://www.resbank.co.za/content/dam/sarb/publications/working-papers/2025/how-can-agency-banking-deepen-financial-inclusion-in-south-africa.pdf, accessed on 01 February 2025.
[138] Constitution of the Republic of South Africa, 1996.
[139] Constitution of the Republic of South Africa.
[140] *s* 21(1) of the Act.

services providers such as fintech enterprises,[141] and broadening the access of financial services in marginalized and secluded rural communities. These measures will not only diversify the market and strengthen competition but will foster a just and accessible financial ecosystem. [142]

The policy recommendations outlined in this research seeks to address the concerns raised throughout the report herein. Through the examination of these challenges, the writer seeks to propose meaningful reform in the banking sector. These proposed reforms are intended to align with the recommendations brought forward in the Banking Enquiry Report to the Competition Commission,[143] and the objectives of the Competition Act. As such, these proposed reforms must be interpreted within this broader policy and regulatory framework.

a) Stringent regulatory requirements.

The intricacy of the onboarding process particularly the adherence to FICA remains one of the most profound barriers to accessing financial services in South Africa. FICA employs financial institutions with the mandate to conduct due diligence on their customers to avert illicit activities such as money laundering and terrorist financing.[144] Although this remains a crucial component in preserving financial security and integrity, the stringent documentation requirements may be cumbersome particularly for individuals from rural and marginalized communities who do not have access to the requisite identification records.[145]

In addressing these challenges presented by complying with the FICA requirements; banks should be encouraged to employ a risk-based approach assessment in compliance with FICA without compromising the integrity of financial institutions.[146] This may be accomplished through customizing due diligence in accordance with the customer's risk assessment profile.[147] This approach will enable financial institutions to accordingly adjust their procedures to prioritize high-risk customers;[148] by underscoring these customers, the banks in

[141] Competition Commission South Africa 'Competition in the Digital Economy' available on https://www.compcom.co.za/wp-content/uploads/2020/10/Competition-in-the-Digital-Economy-Report-7-September-2020.pdf, accessed on 01 February 2025.
[142] Ibid.
[143] Competition Commission of South Africa 'Banking Market Inquiry' available on https://www.compcom.co.za/banking-enquiry/ accessed on 01 February 2025
[144] Financial Intelligence Centre ' Financial Intelligence Centre' available on https://www.fic.gov.za/about/ accessed, on 01 February 2025.
[145] Cover Web Magazine – Feature ' Regulation and its impact on financial inclusion and insurance penetration in Africa' available on https://magazine.cover.co.za/october-2023-edition/regulation-and-its-impact-on-financial-inclusion-and-insurance-penetration-in-africa/ accessed on 28 November 2024.
[146] Guide Note 7 On the Implementation of Various Aspects of the Financial Intelligence Centre Act 38 of 2001.
[147] Ibid.
[148] Ibid.

accordance could offer streamlined services to customers who present minimal risks such as customers in marginalized and rural communities, thereby facilitating easier access to financial services. This approach ensures that the due diligence conducted is not a blanket approach but is tailored in accordance with the risk exposure each customer presents.[149]

A pivotal development in digital onboarding is the utilization of electronic KYC (e-KYC) which enables customers to open transactional banking accounts online.[150] Additionally, banks are progressively incorporating the utilization of biometric technologies as a secure and practical way to verify identification. These procedures may further be enhanced and made more efficient provided financial institutions enable customers to authenticate their identity when opening basic banking accounts through facial or fingerprints scans.[151] In contrast to traditional forms of identification, biometric technologies are more challenging to duplicate if not falsify as biometric data is specific to each person. In accordance, this innovative procedure not only adds an extra degree of security to the e-KYC process but improves overall accessibility to the end-user who is financially excluded due to bureaucratic barriers of not possessing the requisite documentation and/or logistical challenges.[152]

Alternatively, establishing a public-private partnership to develop a government-led centralized FICA identity verification database (hereinafter referred to as 'the FICA Consolidation hub re the hub') is one potential reform in the country's financial verification landscape. This reform is in alignment with international standards which seek to promote efficient ways to manage financial identity.[153]

In the context of FICA – the platform would allow for efficient verification and reduce the probability of false matches. Additionally, the hub may employ sophisticated technologies for monitoring and tracking high-risk profiles. This will allow for the early detection of suspicious activity, empowering financial institutions to undertake relevant safeguards and comply with

[149] Ibid.
[150] Standard Bank 'MyMo Account -Bank for less ' available on https://www.standardbank.co.za/southafrica/personal/products-and-services/bank-with-us/bank-accounts/our-accounts/mymo-account, accessed on 01 February 2025.
[151] iDenfy 'Top 5 Use Cases of Biometrics in Banking' available on https://www.idenfy.com/blog/biometrics-in-banking/, accessed on 01 February 2025.
[152] Alice 'Biometric Authentication vs Traditional' available on https://alicebiometrics.com/en/biometric-authentication-vs-traditional-methods-pros-and-cons/, accessed on 01 February 2025.
[153] Alliance for Financial Inclusion 'Digital Financial Services Working Group (DFSWG)' available on https://www.afi-global.org/sites/default/files/publications/2017-08/AFI_DFS_17_AW_digital.pdf, accessed on 01 February 2025.

the counter terrorism financing (CFT),[154] and anti-money laundering (AML) regulations,[155] more efficiently.

Both the public and private entity will serve as the registry for the pre-populated identification information to improve the effectiveness of this verification technique and to detect and monitor suspicious profiles.[156]. In accordance, they will be mandated to share the information between financial institutions in order to source or verify these identities.[157] By working together, the verification procedure would be significantly streamlined, relieve the burden on individual institutions and enhance overall operational efficiency.

Ultimately, the FICA consolidation hub will serve as a comprehensive consolidated identity verification platform that will not only enhance the cooperative financial system but maintain the integrity of financial institutions.

b) Costing and Pricing Reforms

The pricing models proposed by banks during the Enquiry particularly the ad valorem pricing and bundled packages, have come under fire for failing to not adequately consider the financial realities of lower-income customers.[158] Presently, these proposed pricing structures do not appear to cater for the very same margin that requires relief from exorbitant banking costs.[159] It is therefore proposed that these pricing initiatives be strategically implemented for entry-level accounts to close the disparity and ensure that the marginalized segment of the population receives low banking prices.[160] To accomplish this, pricing reforms should be implemented in a manner that is directly beneficial to those who are deemed most vulnerable to financial exclusion. This entails that the costs of entry-level accounts are reflective of the financial limitations of these customers, thereby empowering them to access financial services without incurring exorbitant fees.[161]

[154] International Monetary Fund' Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)' available on https://www.imf.org/en/Topics/Financial-Integrity/amlcft, accessed on 01 February 2025.
[155] Ibid.
[156] Alliance for Financial Inclusion 'Digital Financial Services Working Group (DFSWG)' available on https://www.afi-global.org/sites/default/files/publications/2017-08/AFI_DFS_17_AW_digital.pdf accessed on 01 February 2025.
[157] Ibid.
[158] Competition Commission of South Africa 'Banking Market Inquiry' available on https://www.compcom.co.za/banking-enquiry/ accessed on 01 February 2025.
[159] Ibid.
[160] Ibid.
[161] Ibid.

The Banking Association should actively support these reforms by urging banks to implement more inclusive pricing models.[162] This could entail offering guidance on best practices and ensuring that financial institutions comply with pricing guidelines that emphasizes accessibility, transparency and affordability for low-income consumers.[163] Transparency is pivotal in mitigating hidden costs from jeopardizing the financial well-being of customers. In accordance, banks should be required to standardize the terminology used for fees and to clearly and transparently disclose all associated charges. In turn, customers will be better equipped to make informed decisions,[164] ultimately resulting in an increment in trust and engagement with the financial sector as the objective is to make financial products affordable and accessible by eradicating the barriers that prevent low-income households from participating in the formal financial system.[165]

c) Mitigate discriminatory pricing

Promoting financial inclusion and equal economic participation mandates that financial services be both affordable and accessible to low-income users and individuals in marginalized and rural secluded communities. However, this objective is yet to be attained provided systematic issues pertaining to discriminatory pricing practises remains prevalent.[166] These practices unevenly affect the marginalized margin of the population; and in order to attain the aforementioned objective, regulatory measures such as the Payment Clearing House (PCH) ,[167] should be implemented to prevent ATM service providers from engaging in discriminatory pricing practices.[168] The employment of this regulation entails the prevention of imposing exorbitant banking fees in accordance with the customer's demographic group and that all customers, irrespective of their financial institution are charged equitably for ATM transactions.[169]

d) Financial literacy and rural inclusion

[162] Ibid.
[163] Ibid.
[164] Zharif AKMAL ARIF bin Safie 'The Role of Transparency in Ethical Personal Finance Management' (Northern University of Malaysia, 2024) at 2.
[165] Ibid.
[166] Ibid.
[167] Bank for International Settlements 'Payment, clearing and settlement systems in South Africa' available on https://www.bis.org/publ/cpss105_za.pdf, accessed on 01 February 2025.
[168] Ibid.
[169] Competition Commission of South Africa 'Banking Market Inquiry' available on https://www.compcom.co.za/banking-enquiry/ accessed on 01 February 2025.

To ensure the longevity and the impact of these structural and regulatory reforms, it is pivotal to ensure that robust financial literacy initiatives aimed at improving financial inclusion are employed. National campaigns, such as the FSCA's MyMoney Learning Series,[170] should not only be established to meet the specific needs marginalized and rural communities but be extended to reach a broader audience outside of this scope. The main emphasis of these initiatives must be to address the hurdles these communities encounter in the world of the formal financial sector. The content must be customized to local language, and the economic realities of this segment of the population. In doing so, these initiatives will be effective and garner meaningful impact. [171]

XI. CONCLUSION

In conclusion, the study has critically analyzed the role of Competition law in mitigating financial exclusion in South Africa, with a particular emphasis on the prevalence of the Big Four banks. Notwithstanding the existence of the regulatory and legislative provisions such as the Competition Act 89 of 1998,[172] the persistent market concentration of the Big Four banks continues to stifle fair competition which, in turn, perpetuates systematic barriers that impede access to financial services and upholds barriers to entry for new financial institutions and alternative banking models.

Although the Act seeks to suppress monopolistic conduct, it encounters the challenge of inadequately dismantling the dominance of conventional financial institutions. Addressing institutional inefficiencies within the financial industry will not only expand financial inclusion but propel economic growth and foster opportunities for the marginalized communities. Although the emergence of non-conventional banking models such as the Capitec banking model has introduced viable alternatives, their expansion within the market is continuously plagued by stringent regulatory provisions and exorbitant initial capital requirements.

Moreover, the study demonstrates that financial exclusion does not exclusively stem from economic disparities, but it is also deeply entrenched in historical injustices, restrictive banking policies and exorbitant banking charges. Notably financial inclusion serves as a crucial

[170] FSCA 'FSCA Mymoney Learning Series' available on https://www.fscamymoney.co.za/Pages/Projects/FSCA-Mymoney-Learning-Series.aspx accessed on 01 February 2025.
[171] Ibid.
[172] The Act.

component to economic growth and social equity; however, entrenched market frameworks continue to plague access to financial amnesties for the marginalized demographic of the country. Financial inclusion surpasses merely the access to financial services; rather, it is a pivotal socio-economic component which underpins equitable economic growth and sustainable economic engagement.

In accordance with overarching developmental objectives, leveraging Competition law as a transformative tool, South Africa can foster a financial sector that is founded on inclusivity, sustainability and fair competition.

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