




# Select Competition Law Issues – What you need to know



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***Southern African Gas Association***

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# ▼ Agenda

- Introduction to competition law
- Agreements between competitors
- Information exchange
- Meetings with competitors
- Vertical agreements and participation of small firms



What is competition  
and competition law?

# What is competition?

- “The process of *rivalry* between firms by which prices are reduced to their optimal levels and output is maximised”
- Leads to socially and economically desirable outcomes:
  - Efficiency
  - Innovation and creativity
  - Employment
  - Growth
  - Low prices
  - Consumer choice



# ▼ What is competition law?

The Competition Act:

Objectives	The three pillars
<ul style="list-style-type: none"><li>• Low prices</li><li>• Better products</li><li>• Consumer choice</li><li>• Innovation</li></ul>	<ul style="list-style-type: none"><li>• Restrictive agreements (horizontal and vertical)</li><li>• Abuse of dominance</li><li>• Merger control</li></ul>

# What are the risks?

- **For the business:**

- Fines – up to 10% of turnover
- The costs of investigation and litigation
  - Monetary costs
  - Management time
- Reputational damage
  - Banks
  - Construction
  - Cement
- Damages claims
  - ComAir – R1.16 billion

- **The strategic advantages of compliance** – a competitive corporate culture



# ▼ What are the risks?

- **For the individuals:**

- Criminal sanctions for cartel conduct

*directors, managers and employees purporting to have management authority who cause the firm to engage in the conduct, or knowingly acquiesce in the conduct*

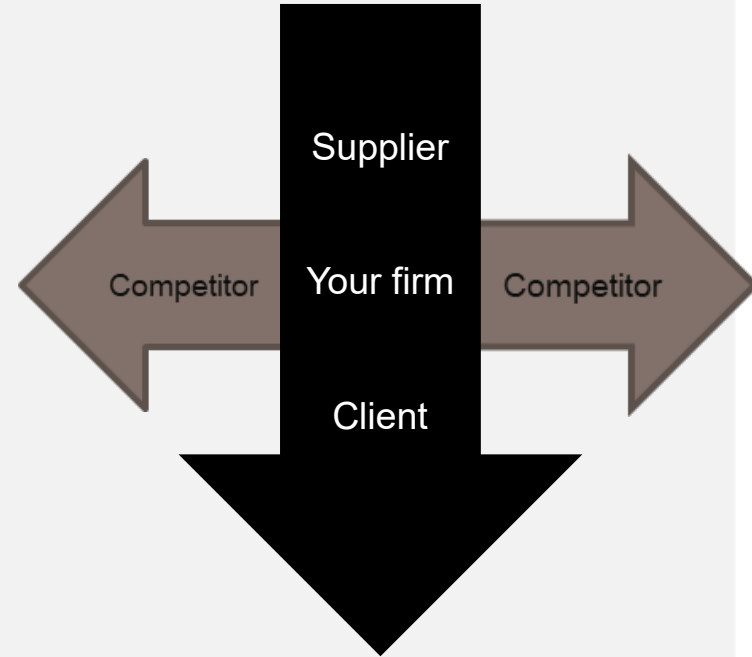
- Internal disciplinary action
- Director disqualification
- Fiduciary duties of directors under the Companies Act
- Involvement in litigation



Horizontal agreements –  
communications  
between competitors

# Relationships: vertical and horizontal

- Competition law applies to the relationships between participants in a market.
- Those relationships are usually vertical or horizontal, however sometimes it can be intertwined as both – a distributor that is also a direct competitor.



# ▼ What type of contact is caught?

*An **agreement** between, or **concerted practice** by, firms or a **decision** by an association of firms, is prohibited if it is between parties in a horizontal relationship and if...*



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# ▼ The rule of reason contravention

a) it has the effect of **substantially preventing or lessening competition** in a market, unless a party to the agreement, concerted practice, or decision can prove that any technological, efficiency or other pro-competitive, gain resulting from it outweighs that effect; or

# ▼ Per se offences – cartel conduct

- b) it involves any of the following restrictive horizontal practices:*
- i. directly or indirectly **fixing** a purchase or selling **price** or any other trading condition;*
  - ii. **dividing markets**, by allocating market shares, customers, suppliers, territories, or specific types of goods or services; or*
  - iii. **collusive tendering***



# Information exchange – how to draw the line

# Information exchange

- **Information that:**
  - reduces strategic uncertainty by
  - enabling your actual or potential competitor to
  - predict your strategy or future conduct in the market (which could be called 'competitively sensitive' information)

**should not be shared, particularly with direct rivals**

# Information exchange

Topics which are absolutely off limits:

- **Price** - price level, increase, decrease, discount, rebate, surcharge, ceiling, floor, bid price, or starting price in a negotiation
- **Volume** - actual, estimated, market share, capacity
- **Other** - customer lists, production costs, revenue, marketing plans, investments

# Information exchange

- Context matters – history of interaction, stable market, price following
- What's the objective of the information exchange?
- Doesn't matter what you use it for – what could you use it for?
- What are the efficiency benefits?
- What are the benefits to consumers?



Meetings where  
competitors are present –  
practical guidance

# ▼ Meetings where competitors are present

- Be prepared – *no agenda, no agenda*
- Keep minutes
- Silence can be consent
- Public distancing from unlawful conversations
- If in doubt, don't attend, consult legal



# Vertical agreements and access for small firms

# ▼ Agreements with suppliers and customers

- Minimum resale price maintenance prohibited outright
- Exclusivity can sometimes create a risk if the overall effect is anti-competitive

# ▼ Key contacts

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