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Identifying Barriers to Entry: A South African Perspective

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I. Evolving Policy Thinking

A broader view of entry barriers has gained traction in South African competition policy over the past twenty years. Following the global financial crisis, policymakers in South Africa grew increasingly concerned about the causes of relatively low levels of economic growth. These concerns grew markedly from around 2016, fueled by two international antitrust developments. One key trend was the academic, and later policy, debate in the US about rising concentration levels and their claimed impact on the dynamism of the American economy. A second, and related trend, involves the debate around the social impact of big tech companies (Google, Facebook, Apple, Amazon, Microsoft, and the like) and the ability of newcomers to challenge these companies in their respective digital markets. .

Reflecting these international developments, the result was that many South African industries and markets are characterized by low levels of new entry and, especially, entry by firms owned by HDIs. This evolving stance of the South African competition authorities on entry barriers is reflected both in wide-ranging amendments to the Competition Act, and in policy practice over the past few years. Indeed, "deconcentrating" the economy and advancing the position of small firms and firms owned by HDIs are now prominent policy goals of South African competition policy.

This piece argues that a broader view of barriers to entry further strengthens the need for context-specific economic analysis. While policy slogans, such as deconcentration, may be broad and cross-cutting, addressing barriers to entry requires industry- and market-specific evaluation. Furthermore, form-based approaches to identifying entry barriers – for example, in the digital sphere, by identifying whether incumbents are platforms – are likely to be of limited use. Ultimately, an economic assessment of the products or services being sold and the rivals and consumers involved is required – a task that requires considerable information to be collected by competition authorities.

II. Entry Barriers and Concentration

One consequence of the South African focus on broader barriers to entry and participation in markets is that concentration has acquired a broader meaning among policymakers. Policymakers now consider broader sectoral patterns to identify industries characterized by a lack of dynamism and entry or by limited participation by firms owned by HDIs. While a more expansive view of concentration certainly reflects policy priorities, it also creates challenges for certainty and dialogue. Using concentration to refer to market structure, industry structure. and ownership structure (sometimes interchangeably) creates significant challenges for conceptual clarity.

Analytical accuracy requires distinguishing between three types of concentration measure:

The first, and more traditional, measure of concentration relates to market concentration. Market Concentration measures are based on revenue or volume shares enjoyed by the various firms operating in a relevant market. Competition policy in South Africa and internationally treats a market as a carefully defined collection of products that are substitutable to buyers[2]. Market concentration measures, such as the Herfindahl-Hirschman Index, measure the distribution of market shares: the greater the market shares of the

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[2] Willem H. Boshoff, *Market definition as a problem of statistical inference*, 10 JOURNAL OF COMPETITION LAW AND ECONOMICS, 861-882 (2014).

larger firms, the higher the calculated concentration in the particular market.

A second measure, quite distinct from the first, relates to industry or sector concentration. Any one industry may consist of several and indeed hundreds to thousands of different markets. The South African competition authorities have recently published a concentration tracker report, which seeks to measure concentration in the South African economy at large[3]. This report relies on industry measures to calculate concentration.

The South African competition authorities acknowledge that their concentration measures are not market based, but it nevertheless infers market power on the basis of these industry measures. In some industries, relatively similar players may be active across most of their constituent markets, so industry-level concentration could be an indicator of market power across markets in a particular industry. In others, aggregating the individual markets to an industry level can greatly mask what may be sharp differences in the structure of individual markets and the level of dynamism and entry. It is therefore critical to differentiate industry concentration from market concentration and to be clear about the specific conditions under which these two concepts may be aligned.

A third measure relates to ownership concentration. In keeping with their broader policy goals, the South African Competition Commission argues for a link between market concentration and ownership spread, by which it means the distribution of corporate ownership among a larger number of owners[4]. The promotion of a greater spread of ownership is a goal of South African competition law, but it is critical not to conflate the concept of ownership concentration with that of market concentration. Large incumbents, facing limited threat of entry, may well be owned by a variety of owners.

Clarity about how ownership concentration is measured is also important to the policy goal of promoting entry by firms owned by HDIs. Higher levels of HDI ownership need not translate into a broader ownership distribution measured in terms of the size of shareholders. Nor does it have any necessary link to entry. These conceptual ambiguities are worsened when referring to industry concentration to make claims about ownership concentration.

Identifying barriers to entry – by reference to outcomes measured by concentration – requires conceptual rigor. Indeed, conceptual clarity is critical not only to competition law proceedings, but also in helping guide policymakers to focus information-collection efforts, including those during market inquiries, which are now a common policy tool in South Africa.

III. Entry Barriers in the Digital Sphere

The focus of South African competition policy on entry barriers of various forms is particularly evident in the approach taken toward issues in the digital sphere. Here, policy concerns again reflect those of the US, UK, Europe, and elsewhere. One of the main challenges is how to tailor digital competition policy to the broader entry barrier issues relevant to South Africa.

Digital platforms and their offerings tend to develop more slowly or, at least, differently in developing countries. Many South African markets based on digital products or services may not yet be at a consolidation stage. Also, South Africa has seen the emergence of several successful local platforms, which have developed into large players in their respective markets. This is contrary to the dominance of well-known US platforms in other jurisdictions.

One implication is that it is particularly important to understand competition in these markets from an economics perspective. A principal challenge is to avoid a form-based approach, which would merely categorize particular businesses as digital platforms and make automatic inferences about the viability of entry and expansion in markets in which these platforms operate[5]. Generalizations about barriers to entry, including an overemphasis on market tipping due to network effects (which theoretically favor

[3] See: https://www.compcom.co.za/measuring-concentration-and-participation-in-the-south-african-economy-levels-and-trends/.
[4] Id., at 1.
[5] John M. Yun, *Antitrust has forgotten its Coase*, 23 NEVADA LAW JOURNAL, 1-53 (2022).

incumbents and limit entry), may not necessarily align with the empirical reality.

A proper definition of the relevant market as well as an empirical evaluation of the type and dynamic nature of network effects in the market remains critical to assessing possibilities for entry[6]. Indeed, market tipping and the possibilities for new entry and expansion can vary greatly by geographic region or product market[7]. This suggests that wide-ranging inquiries, including the on-going market inquiry into online intermediation platforms in South Africa, face considerable obstacles.

Understanding the relevant network effects and their implications for entry requires detailed analysis, including of market outcomes at a fairly disaggregated level. Such a requirement suggests that a market inquiry that seeks to ultimately impose remedies on a broad class of business organizations (for example, online intermediation platforms) must tread carefully. The arguments presented here suggest that a more modest, yet critical, aim of market inquiries must be the establishment and maintenance of relevant databases concerning how large platforms, and their rivals (not limited to platforms), operate and perform over time.

IV. Conclusion

Competition policy seeking to foster entry – including entry by designated groups such as firms owned by HDIs in South Africa – raises key analytical challenges. Indeed, an analysis of entry barriers requires both clarity of concepts – such as different types of concentration – and an assessment of competition based on empirical evidence. It is critical, both to legal certainty and to policy dialogue, that a competition policy concerned with addressing entry barriers remain grounded in context-specific economic analysis.

[6] David S. Evans & Richard Schmalensee, *MATCHMAKERS: THE NEW ECONOMICS OF MULTISIDED PLATFORMS* 10-11 (2016).

[7] Martin Cave, *Platform software versus the software of competition law*, 10 JOURNAL OF EUROPEAN COMPETITION LAW AND PRACTICE, 472-477 (2019).