



Centre for Competition Law and Economics

Enhancing merger control
to support economic growth
in South Africa



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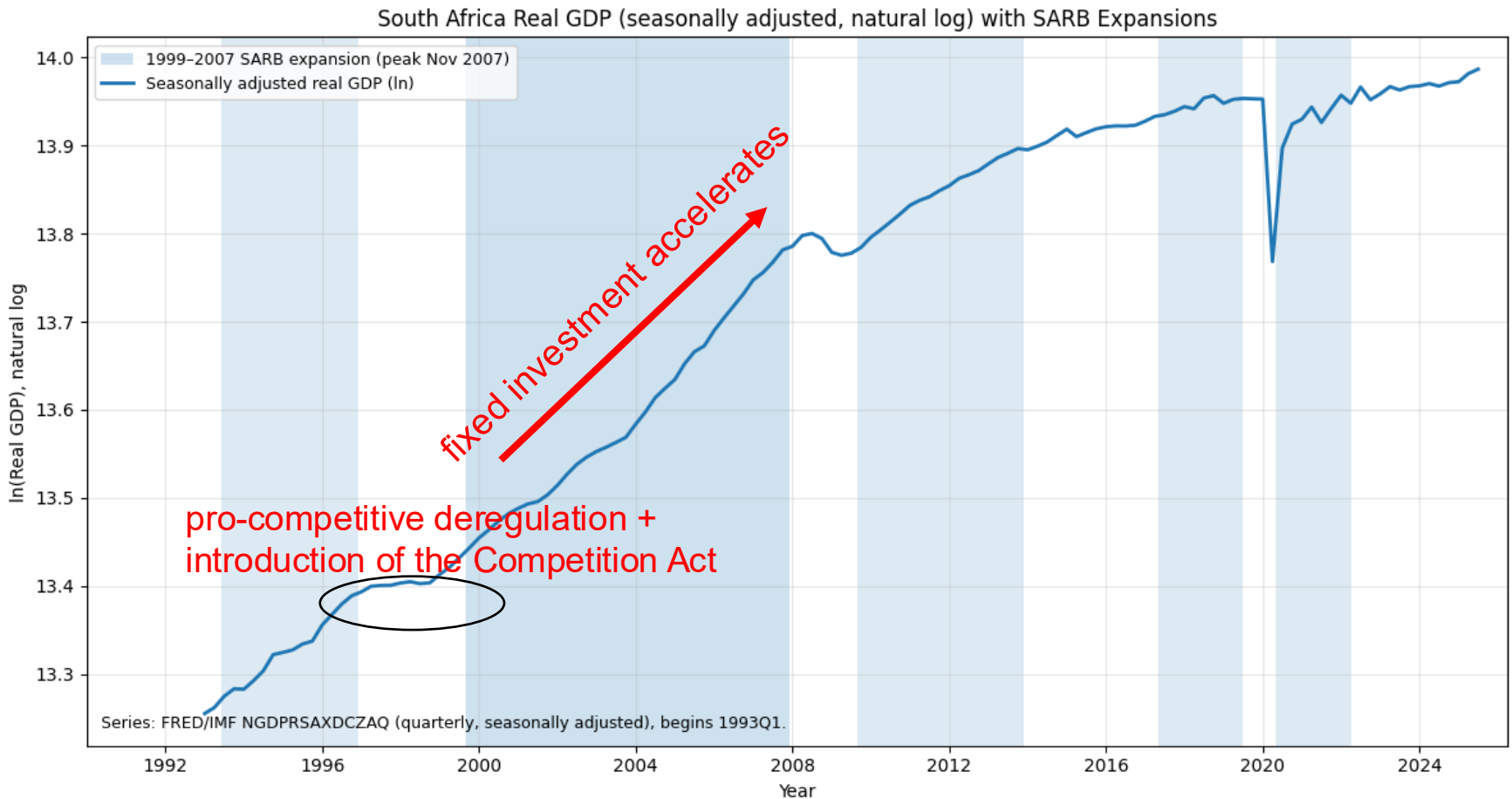
Competition and growth

- Competitive pressure or rivalry is strongly linked to innovation and productivity¹
- But not linearly so, complicating prediction at the market level²
- Our macro-economic evidence is striking

¹ Nickell (1996), Blundell et al (1999), Aghion *et al* (2005)

² Aghion *et al* (2005), Gilbert (2006)

Competition and growth



Boshoff, W.H. 2020. (ed) *Business cycles and structural change in South Africa: an integrated view*. Springer: Cham.

A role for competition policy

- Limited competition in key industries reflects a broader (if historical) lack of competition-enhancing regulation and coherence
 - Sectoral regulation reforms remain important
- Yet competition evolves, even without policy support, and for many reasons
- Mergers & acquisitions respond to, and shape, competition
- Merger control matters for growth

Synopsis

Non-competition objectives feature too strongly
in South African merger control

Leads to:

- ① Time-inconsistent behaviour
- ② Persistent rise in required merger 'remedies' +
Long adjudication time
- ③ Ambiguity about the competition objective

Effects on competition:

Taxing pro-competitive mergers;
Raising uncertainty and deterring pro-competitive mergers

Time inconsistency

- Competition policy entails a commitment to preserving competition;
- As in monetary policy, too much discretion gives rise to 'time inconsistency';
- *Ex ante* policy commitment to approve pro-competitive mergers clashes with *ex post* incentives:
 - Effects on particular interest groups;
 - ...or the opportunity to extract rent from merging parties;
- SA Competition Act allows pursuit of both competition and non-competition goals, and allows for Ministerial intervention.

Time inconsistency – some proposals

- Need to limit the goals of merger control and rethink institutional design¹
- Independence of competition authorities is critical², and requires significantly limiting ministerial discretion
- That may involve separating the authorities from the DTIC
- Increasing accountability, such as an oversight body akin to the German system

¹ Majone (1997); Alesina and Tabellini (2007)

² See Du Plessis et al (2024) on the importance of independence in monetary policy context

Non-competition objectives

- Mergers in SA assessed on both competition and non-competition grounds
- Public interest factors:

Employment

SMMEs /
HDP
promotion

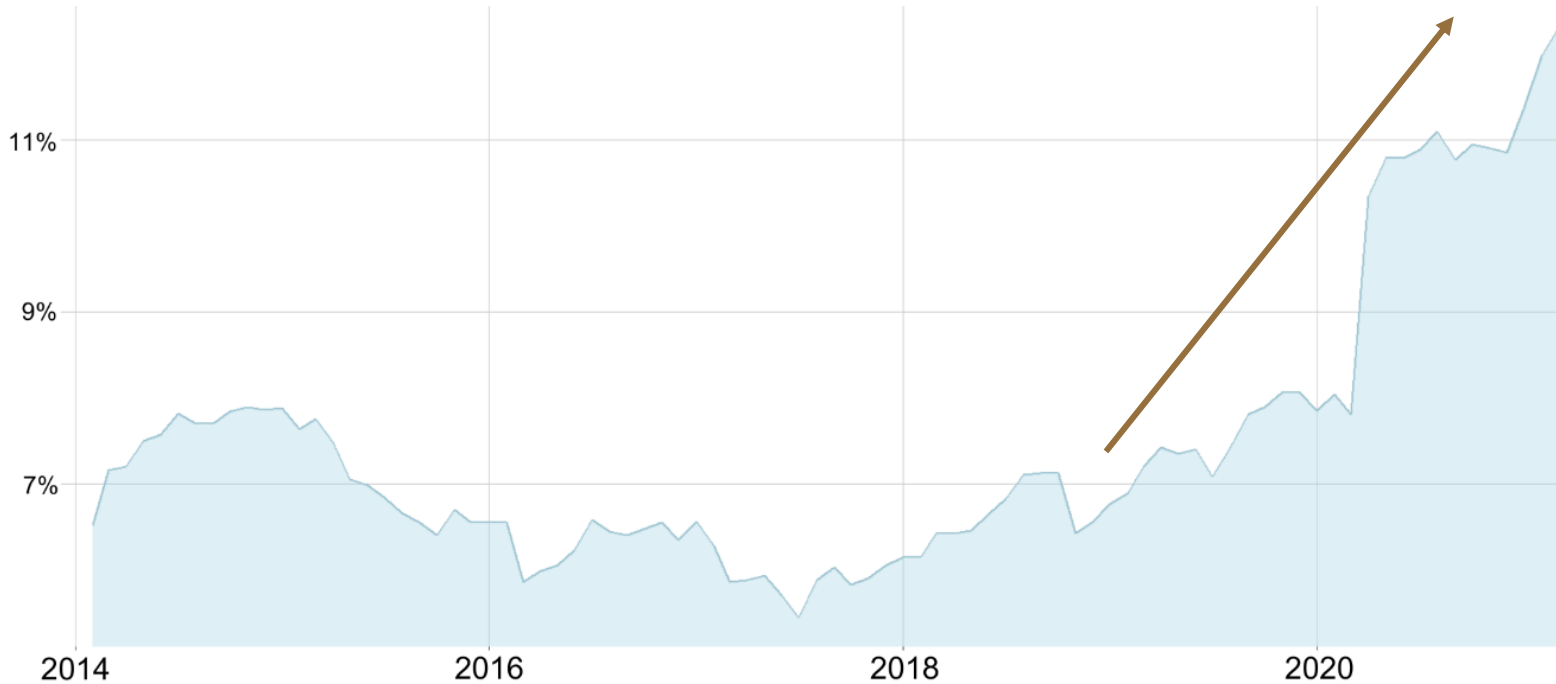
Regional /
industry
impacts

National
competitiveness

- Initially, non-competition leg secondary
- But from 2010 *Walmart* gradually changed
- Amendment Act in 2018 'equal' footing for the two legs

Non-competition objectives

% of merger cases attracting intervention, 3-year MA, 2014-2021



Morris and Boshoff (2025)

...and the duration of merger approval has increased (Changole 2022; Changole and Boshoff 2021)

Non-competition objectives – proposals

- Departure point: growth-focused merger control can have ancillary objectives that also serve to advance competition and growth
- International debate and policy appetite for **industrial policy** objectives in merger control
- SA framework enjoys advantages over those in other, even leading, jurisdictions

Non-competition objectives – proposals

- But the EU debate is not necessarily pursuing formally adding industrial policy as an objective in competition law
- Suggestion
 - Systematic evaluation of benefits and costs of PI-based merger conditions;
 - Identify industries / base technologies / infrastructures that may be deserving of additional ‘support’ in merger control;
 - Let us work on dynamic competition focus.

Reclaiming competition as rivalry

- The duality in SA merger control has implicitly altered how competition is interpreted;
- *Mediclinic* ConCourt: harm to a subset of “vulnerable” consumers implies unacceptable harm to competition;
- Merger effects, especially on the poor, are clearly important, but their assessment is conventionally based on proportionality;
- Even on different interpretations, we must consider how far merger control must go in altering transactions that have limited negative effects.

The path forward

- We need to heed the Tinbergen rule in policymaking
- Merger control should protect and advance competition and dynamism in an unencumbered fashion
- Such reforms can build on, and expand, the considerable success against anti-competitive behaviour

Thank you