

COMPETITION LAW - INTRODUCTION OUTLINE

1. Competition Law and policy

- 1.1. What is competition Policy
- 1.2. Brief history of Competition Policy in SA
- 1.3. The structure of the Competition Act
- 1.4. Objectives of competition policy

2. The Competition Commission

- 2.1. The organizational structure of the Commission
- 2.2. The role of the Competition Commission,
- 2.3. How to bring a matter to the attention of the Competition Commission

3. The role of the Adjudicative institutions

- 3.1. Competition Tribunal
- 3.2. Competition Appeal Court
- 3.3. Supreme Court of Appeal

4. Restrictive Practices

- 4.1. Horizontal Restraints
- 4.2. Vertical Restraints

5. Abuse of Dominance

6. Sanctions and Remedies

- 6.1. Administrative Penalty and consent orders
- 6.2. Leniency and whistleblowers

7. Mergers

- 7.1. Intermediate Mergers
- 7.2. Large Mergers

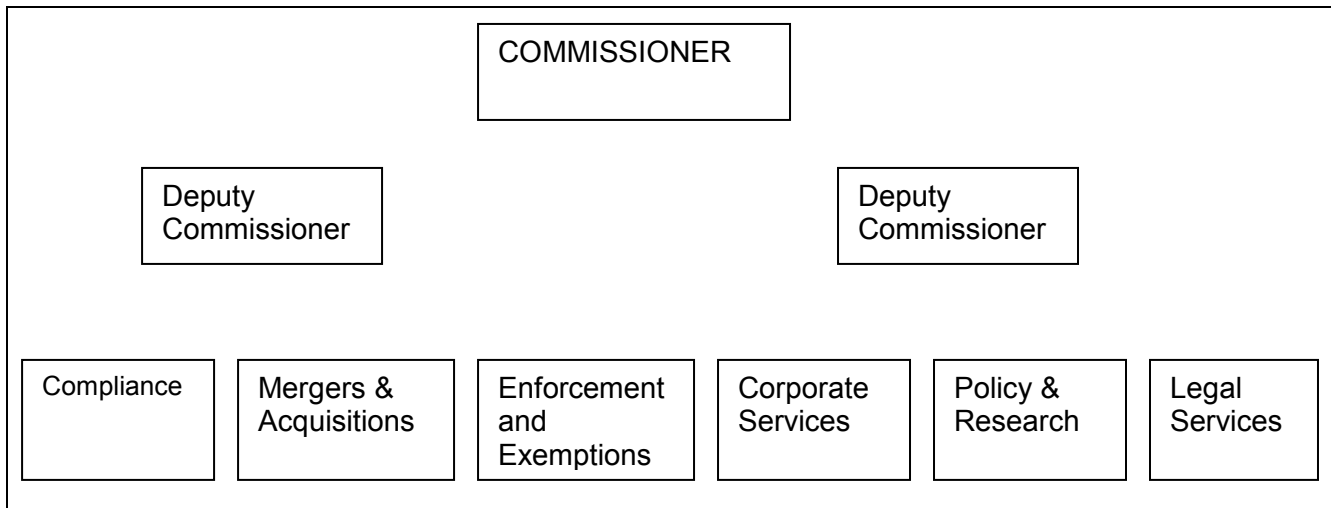
The **Preamble** to the Act states that:

“apartheid and other discriminatory laws and practices of the past resulted in excessive concentrations of ownership and control within the national economy, inadequate restraints against anti-competitive trade practices, and unjust restrictions on full and free participation in the economy by all South Africans.”¹

In terms of section 2 of the Act, “the purpose of the Act is to promote and maintain competition in the Republic in order-

- (a) to promote the efficiency, adaptability and development of the economy;
- (b) to provide consumers with competitive prices and product choices;
- (c) to promote employment and advance the social and economic welfare of South Africans;
- (d) to expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic;
- (e) to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and
- (f) to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons”.

The organizational structure of the Commission



¹ Competition Act of 1998, Preamble, at Pg 2.

How to bring a matter to the attention of the Competition Commission

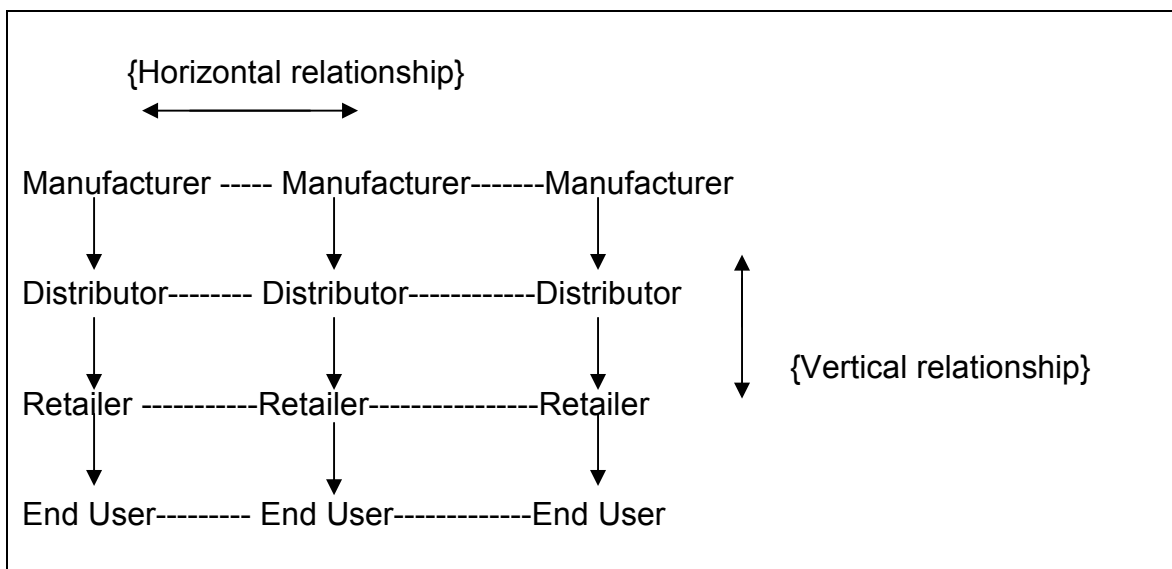
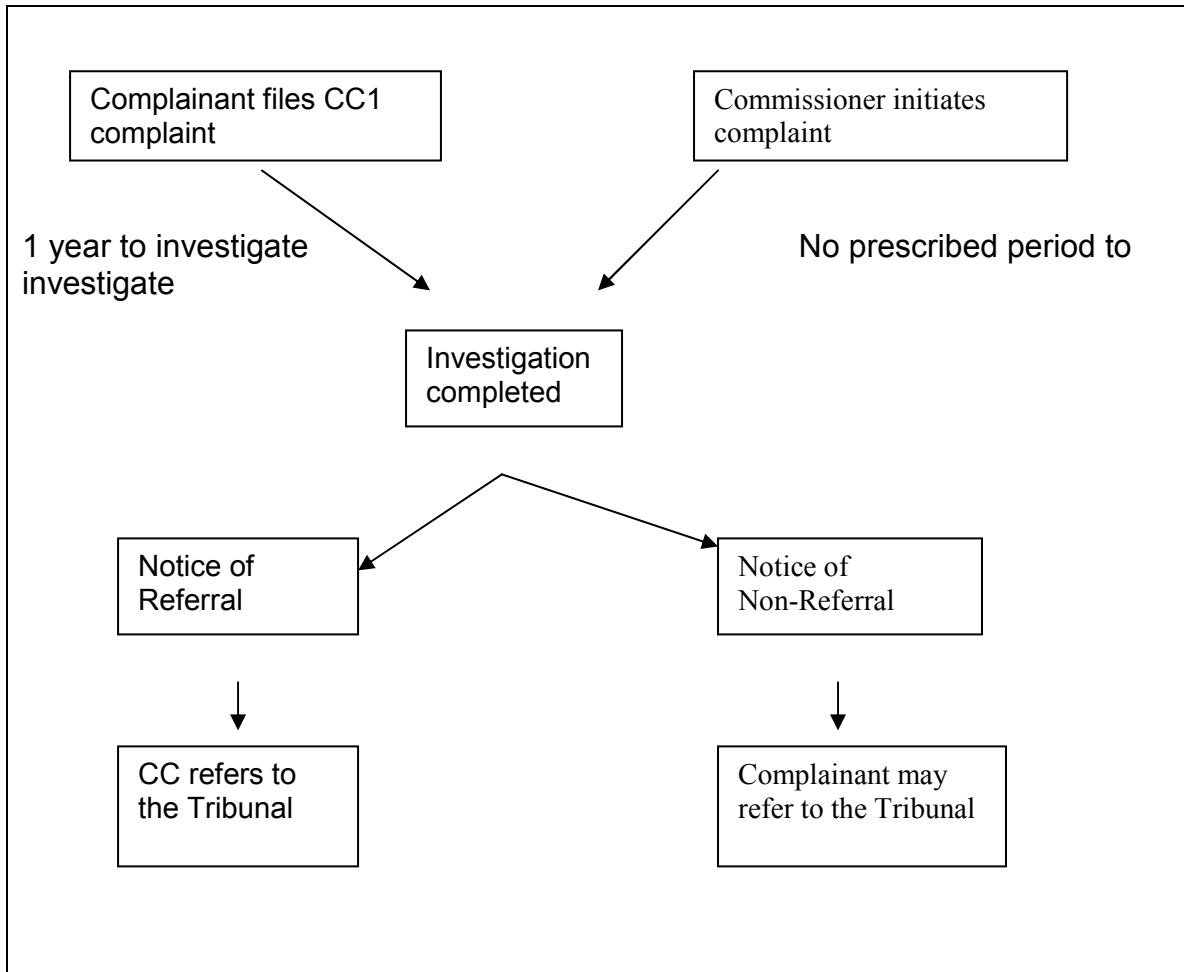


Figure 2: An example of a Supply Chain

MERGERS

Intermediate mergers:

Threshold:

Combined annual turnover or assets equal to or more than R200m but below R3.5billion *and* target firm assets/turnover equal to more than R30m.

Filing Fee: R75 000

Process:

The commission has 20 business days to investigate the merger to determine whether the merger substantially prevents or lessens competition. This amount of time can be extended to 40 business days. Once the Commission has made a final determination, they can either:

- Approve the merger
- Approve with Conditions- structural and or behavioural conditions
- Prohibit the merger

Parties have recourse to appeal to the Tribunal on decisions that have been approved with conditions or prohibited.

7.2 Large Mergers:

Threshold:

Combined annual turnover or assets equal to or more than R3.5billion and the target firm assets/turnover equal to or more than R100m.

Filing Fee: R250 000

The Commission has 40 business days to investigate a large merger. This time period can be extended at 10 business days at a time after an application has been made to the Tribunal. Usually parties consent to the extension, but in the Telkom/BCX case², the merging parties refused consent for another extension period. Extension was granted by the Tribunal under certain conditions.

Once the Commission has made a finding they refer their recommendation to the Tribunal. The Tribunal makes the final decision as to whether the merger should be approved, approved with conditions or prohibited.

² Case no: 51/LM/Jun06