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Industrial-policy objectives in South African competition policy

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Abstract

South African competition policy has long pursued industrial-policy objectives alongside its core competition mandate. Public-interest considerations were embedded in merger control from 1998, and the 2018 amendments gave them equal legal status with the competition assessment. These developments preceded the current European debate on using competition policy to advance innovation and other industrial policy objectives in the EU.

This paper examines how industrial-policy objectives have been pursued in South African competition policy over the past thirty years. In merger control, these are often advanced through conditions involving ESOPs, HDP ownership commitments, and supplier and enterprise-development funds, as well as through potential-competition theories of merger harm. They are also advanced by similar types of remedies following market inquiries and, increasingly, abuse and cartel investigations.

South Africa is a leading jurisdiction in integrating public-interest and industrial-policy objectives into competition enforcement. This creates an opportunity to build a coherent model supporting ownership transformation, value-chain upgrading and dynamic entry, but also a risk: that industrial-policy conditions become a disincentive to investment, or a residual instrument used without sufficient specificity, accountability or proof of durable effects.

To this end, the paper proposes a classification framework built around three questions: whether competition policy is the appropriate instrument compared with conventional industrial-policy tools; how an intervention should be designed in terms of target, mechanism, case specificity, scale and duration; and how it should be monitored and evaluated. The paper closes with a future research agenda.

Keywords: competition policy; industrial policy; merger control; public interest; ownership transformation; market inquiries; South Africa; potential competition

JEL classification: L40, K21, O25

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Executive Summary

Background and motivation

The relationship between industrial policy and competition policy has become a central policy question, visible in the European debate following the Draghi (2024) report. South Africa is not new to this debate. Its competition policy has pursued industrial-policy aims and other non-competition objectives since the modernisation of the regime in the 1990s. South African legislation has long required competition authorities to consider the effect of proposed mergers on industrial sectors or regions, on small businesses and historically disadvantaged persons (HDPs), and on the ability of national industries to compete internationally. The 2018 amendments to the Competition Act deepened this focus by giving explicit equal status to competition and public-interest assessments and by adding a stronger ownership-transformation provision.

Despite this long history, the pursuit of industrial-policy aims through competition policy remains controversial. Merger control, market inquiries and abuse-of-dominance provisions are legal tools executed within a formal adjudication process, and typically operating through case-specific remedies. A merger condition requiring a merged entity to support a supplier-development fund is not equivalent to a broad tax incentive or a public procurement programme affecting an entire sector. The paper asks whether, and how, these different types of instruments can be used to pursue industrial-policy aims.

Industrial policy is understood here as government intervention aimed at changing the allocation of resources, capabilities, ownership, production structures or technological trajectories in ways that would not arise from uncoordinated market outcomes. Competition policy, by contrast, is concerned with protecting the process of competition. The two fields are nonetheless complementary: industrial policy may need rivalry to discipline recipients of support and prevent rent-seeking, while competition policy may need industrial-policy instruments to address entry barriers and innovation incentives. The "developmental antitrust" literature argues that, in economies characterised by concentrated markets, exclusion and weak entry, competition law may have to do more than protect consumer welfare (Fox, 2016; Fox and Bakhoum, 2019; Lianos, 2020).

South Africa's approach is aligned with, but more expansive than, an emerging European approach. In the EU, industrial-policy concerns have historically entered competition law only indirectly, through state aid control, Article 21(4) of the Merger Regulation, and sectoral regulation. The EU's draft Merger Guidelines now explicitly recognise that mergers may affect innovation and dynamic competition, reflecting political pressure to use all available policy levers to enhance European competitiveness. South Africa differs in two respects: its competition law already contains explicit public-interest grounds and a long practice of transformation-related merger conditions, and its industrial-policy aims are directed less at building global scale than at changing participation, ownership and entry within domestic value chains. Empirical work (Changole and Boshoff, 2022; Morris and Boshoff, 2025) confirms that this is a structural shift: public-interest concerns, and particularly ownership and transformation concerns, have become stronger predictors of conditional merger approval over time, and the 2018 amendments materially raised the baseline probability of conditions being imposed.

Objectives and instruments

South African competition policy pursues three broad industrial-policy objectives: ownership transformation, value-chain transformation, and entry or dynamic competition. These objectives are pursued through five, sometimes overlapping, groups of instruments.

Market inquiries in South Africa historically operate as sector-wide diagnostic instruments, introduced in 1998 along the lines of the UK's market-investigation model. But their number has grown substantially, and their focus has shifted increasingly towards actively changing value chains and transforming sectors. Bonakele, Das Nair and Roberts (2022) show that South African inquiries span pure competition issues, “competition-plus” issues and broader public-policy concerns, further showing how they have moved from diagnosing market power to addressing structural problems. The Grocery Retail inquiry examined shopping-centre leases, buyer power and participation by independent and township retailers; the Data Services inquiry addressed mobile-data costs as an input into downstream entrepreneurship; the Online Intermediation Platforms inquiry imposed remedies on ranking, self-preferencing and platform access as a route to market for SMEs; and the Fresh Produce inquiry addressed concentration, municipal-market governance and participation in agricultural value chains. Their principal strength is breadth of coverage; their principal risk is that recommendations are often only weakly connected to measurable changes, particularly where implementation depends on actors outside the competition authority's control.

Ownership-transformation remedies use merger conditions to alter who owns and governs merging firms, typically through employee share-ownership plans (ESOPs) and HDP-ownership commitments. There has also been a notable shift towards preferring mergers to actively promote transformation, as is illustrated by cases such as *PepsiCo/Pioneer*, *ECP Africa/Burger King* and *Heineken/Distell*. Even so, the paper's central point is that the industrial-policy question is narrower than general worker welfare: it is whether ownership change alters firm governance and conduct in ways that affect value-chain participation, procurement and entry.

Value-chain transformation remedies use merger conditions, and increasingly cartel and abuse-of-dominance settlements, to support supplier development. *Walmart/Massmart* established the template; *AB InBev/SABMiller*, *PepsiCo/Pioneer* and *Heineken/Distell* scaled it into large, regularised supplier- and enterprise-development funds running into the hundreds of millions or billions of rand. The same logic now appears outside merger control, in the Unilever cartel settlement's R40 million enterprise and supplier-development fund and the Media and Advertising Economic Development Fund. A proposed government-wide Transformation Fund shows the policy space these remedies are moving into, raising the question of when a case-specific remedy is superior to channelling resources through a broader industrial-policy instrument. The key policy question, however, is whether such disbursement produces durable capability rather than short-term compliance.

Abuse-of-dominance and cartel-settlement remedies increasingly carry similar commitments. The 2018 amendments added buyer-power (section 8(4)) and price-discrimination (section 9) provisions targeted at SMEs and HDP-owned firms in designated sectors (grocery retail, agricultural processing, online intermediation). While formal enforcement of these provisions remains limited, settlements such as Pioneer Foods (2010), Unilever (2023) and Pailpac also increasingly embed supplier development and procurement obligations.

Finally, dynamic and potential-competition theories of harm use the competition assessment itself to advance industrial policy aimed at fostering independent entry. *MIH/WeBuyCars* is the leading South African precedent: the Tribunal prohibited the transaction on the basis that Naspers/MIH's own entry into the relevant market was sidelined by the merger – effectively a "reverse killer acquisition" (Boshoff and Stainton, 2026). But *Vodacom/Maziv* illustrates the challenges for this type of theory: the Competition Appeal Court overturned the Tribunal's inference that Vodacom would otherwise have built an independent fibre business, on grounds that the counterfactual was not plausible. Furthermore, merger control for industrial policy is taking a different direction in Europe, where the focus is on consolidation as a route to scale and innovation.

A framework for classification and evaluation

The paper proposes that, in competition policy, an industrial-policy-focused intervention should be tested against three questions.

The first is instrument fit: does the industrial-policy problem arise from market power, market structure or entry barriers in a way that gives competition policy a comparative advantage over conventional industrial-policy instruments (fiscal support, procurement policy, sector regulation)? Competition policy is best justified where a specific case creates or reveals the problem - a merger changes control, a platform controls access, a dominant buyer imposes participation barriers. It is poorly suited to problems rooted in skills, infrastructure or financing constraints that lie outside firms' control.

The second is remedy design: if competition policy is used, what target, mechanism, case specificity, scale, duration and governance are justified? The paper argues that the further a remedy departs from a competition focus, the more it needs a properly defined beneficiary group and mechanism. A useful distinction is whether a remedy builds supply-side capability (training, ownership, etc) or creates demand-side access (procurement, platform visibility, etc). Commitments now often run five to ten years and amount to several hundred millions or billions of rand, which requires considering their proportionality against the relevant transaction size and attached conditions.

The third is evaluation and accountability: what evidence shows whether ownership, participation or innovation outcomes actually changed, as distinct from formal implementation? Competition authorities have well-developed ex ante merger and conduct analysis but a much weaker ex post evidence base for industrial-policy remedies. The paper argues that monetary scale should trigger assessment ex ante and public reporting ex post. It also sets out illustrative output, outcome and longer-run measures for some of the main types of remedies observed in practice.

Conclusion

The paper concludes that South Africa should be understood as a leading jurisdiction in integrating public-interest and industrial-policy objectives into competition enforcement. Even so, there are key risks. One is that industrial-policy conditions have become a real burden on firms and a disincentive to transact or invest. The second is that competition policy becomes a residual industrial-policy instrument - used when other instruments fail, without sufficient case specificity or proof of durable effects.

A systematic approach requires three critical commitments. Firstly, using competition policy where the problem is genuinely market-related and where competition authorities have comparative institutional competence. Second, designing industrial-policy remedies in competition cases with case specificity and measurable outcomes in mind. Thirdly, evaluating remedies in competition cases ex post, with results made public. The paper closes with a research agenda to further investigate these commitments and how they might take shape in South Africa.

1 Introduction

The relationship between industrial policy and competition policy has become a central question in international competition policy debates. This is particularly visible in the European debate following the Draghi (2024) report and in US debates about resilience and strategic sectors. South Africa is not new to this debate: our competition policy has pursued industrial policy aims and several other non-competition objectives since the modernisation of the 1990s. South African legislation has long required its competition authorities to consider the effect of proposed mergers on industrial sectors or regions, on small businesses and historically disadvantaged persons, and on the ability of national industries to compete internationally. The 2018 amendments to the Competition Act deepened this focus, by giving explicit equal status to competition and public-interest assessments and by adding a stronger ownership-transformation provision.

Despite this long history, the pursuit of industrial policy aims in South African competition policy remains controversial. One central issue is whether the instruments used in South African competition policy are suited to the industrial-policy objectives placed upon them. Merger control, market inquiries and abuse-of-dominance provisions differ from conventional industrial-policy tools. They are legal tools executed within a well-designed legal adjudication process, are usually triggered by a transaction, complaint or market inquiry, and they typically operate through case-specific remedies rather than sector-wide planning. For example, a merger condition requiring a specific merged entity to support a supplier-development fund or a procurement commitment is not equivalent to a broad tax incentive or a public procurement programme affecting the firms in a whole sector.

The paper starts by discussing the conceptual relationship between industrial policy and competition policy, comparing the South African approach to the European one. It then discusses the various instruments through which industrial-policy objectives enter South African competition policy. This is followed by a proposed framework for classification and evaluation of industrial-policy remedies. The final section concludes and sets out a future research agenda.

2 The incorporation of industrial policy into South African competition policy and its implications

Industrial policy is best understood as a set of government interventions aimed at changing the allocation of resources, capabilities, ownership, production structures or technological trajectories in ways that would not arise from uncoordinated market outcomes alone. The classical literature frames industrial policy around targeted support for sectors and activities with learning spillovers, coordination failures and comparative advantage (Hirschman, 1958; Johnson, 1982; Rodrik, 2004; Hausmann and Rodrik, 2003). More recent work broadens the focus to policy with a specific but cross-sectoral aim – climate transition, economic resilience and national security (Mazzucato, 2018; Juhasz, Lane and Rodrik, 2024; OECD, 2023). Industrial policy instruments are therefore quite varied and involve several types of interventions aimed at selected sectors broadly and seeking to coordinate stakeholders and policies.

Competition policy is different. Its principal concern is the protection and maintenance of the process of competition. It is concerned with markets rather than sectors, and importantly with firm conduct or transactions rather than with market-level production or expansion plans. It is also (at least traditionally) concerned with remedies that preserve competition, rather than remedies that might shape market structure or competition going forward.

The two fields are complementary. Industrial policy may require rivalry to discipline recipients of support, prevent rent seeking and promote productivity. Competition policy, in turn, may need industrial policy to address value-chain problems, the impact of entry barriers, and innovation incentives. Even so, they are traditionally separated in government policy-making. The developmental antitrust literature emphasises the need for integrating – or partially integrating – the two fields, arguing for a more expansive role for industrial-policy objectives in the competition policy of small and developing economies: this literature argues that, in economies characterised by concentrated markets, exclusion and weak entry, competition law may have to do more than protect consumer welfare (Fox, 2016; Fox and Bakhoum, 2019; Lianos, 2020). This broadened policy approach is related to – though more activist than – the view that the efficacy of competition policy is indeed dependent on the role of especially sectoral regulation. It is also related to the underlying theme of policy coordination, which has been flagged over several decades as a key growth constraint in South Africa. Leaving this aside, it is nevertheless clear that South African policymakers do take a broader view towards competition policy, as reflected by the pursuit of various non-competition objectives – including industrial policy – in our competition law.

2.1 Different interpretations of the interplay in South Africa and Europe

As noted, the South African approach to competition policy that allows for the pursuit of industrial policy goals is aligned with an emerging approach in the European Union. In the EU, industrial-policy concerns have historically entered competition law only indirectly: through state aid control, Article 21(4) of the EU Merger Regulation for selected non-competition interests, the internal-market project as a broader goal, and separate sectoral regulation. The EU's recent merger-guideline review marks a more explicit attempt to consider industrial policy objectives of competitiveness and innovation within merger assessment. DG Competition has recently published the draft text of the new Merger Guidelines for consultation (European Commission, 2026a; 2026b). The draft guidelines recognise more explicitly that mergers may affect innovation and dynamic competition, and that merger assessment may need to look beyond short-run price effects. The guidelines, of course, are first and foremost a policy response to the political pressure in the European Union to employ all possible policy avenues to enhance European competitiveness and its security. The draft guidelines also align with a large literature on innovation and merger control. Arrow (1962) and Gilbert and Newbery (1982) provide competing intuitions about monopoly and innovation incentives; more recent work shows that merger effects on R&D are theoretically ambiguous and highly context specific (Federico, Langus and Valletti, 2017; Motta and Tarantino, 2021; Valletti and Zenger, 2019). Empirical evidence in selected industries suggests that mergers can reduce innovation in some settings but that dynamic consolidation effects may also depend on the number of firms and the structure of R&D rivalry (Ornaghi, 2009; Haucap, Rasch and Stiebale, 2019; Igami and Uetake, 2020). More generally, there is now a lively European debate about the proper alignment between industrial policy and competition policy more generally, including the concept of 'competition-friendly' industrial policy (see, for example, Carballa-Smichowski and Lianos (2025) and Coyle (2025) on alternative forms of integration, Vickers (2025) offers a counter argument for avoiding the incorporation of industrial-policy objectives into competition policy).

South African competition policy differs in two important respects as far as its pursuit of industrial policy objectives is concerned. First, as will be discussed later in this paper, the South African approach is more expansive than the approach being championed in Europe, with various areas of South African competition law allowing for the pursuit of industrial policy goals. Indeed, South Africa already has explicit public-interest grounds in merger control and a long practice of imposing conditions that address employment, ownership, supplier development and local participation. Furthermore, the emphasis on non-competition objectives has intensified over the past twenty years.

In the early years of the modern regime, public-interest considerations dealing with industrial policy objectives were present in the statute but comparatively modest in enforcement practice. The major merger cases of the 2010s, including Walmart/Massmart and later PepsiCo/Pioneer, showed that public-interest commitments could become large, negotiated and forward-looking. The 2018 amendments then gave public-interest assessment equal legal status in merger control, and strengthened the focus on transformation and assisting small and HDP-owned firms. Empirical work confirms that the shift is not merely textual. Changole and Boshoff (2022) find that mergers raising public-interest concerns have become more likely to attract conditions and take longer to adjudicate. Morris and Boshoff (2025) further show, using more than 2,400 merger cases, that public-interest concerns are stronger predictors of conditional approval than conventional competition concerns, and that conditional approval increased after the amendments.

A second key difference with the European approach is that South African industrial-policy objectives aim less at building global scale and more at changing participation, ownership and entry within domestic value chains. This difference in emphasis matters. For example, a European discussion about scale, innovation and resilience may favour consolidation under certain conditions. In contrast, a South African discussion about industrial policy in competition law often emphasises SME participation, HDP ownership and local supplier development. Both discussions relate to industrial policy, but with quite different aims – and with important alternative implications for the enforcement of competition policy.

Despite the more limited approach to the pursuit of industrial-policy aims in European competition policy, it is noteworthy that the European Union nevertheless pursues some of these aims through non-competition avenues – notably support for smaller players. In respect of so-called 'unfair' bargaining and other commercial practices, the EU's 'Unfair Trade Practices' legislation in agricultural markets also responds to policy concerns with participation and 'fairness' towards small players in domestic value chains. Similarly, in the UK, sectoral regulators in the grocery industry, for example, have been provided with powers to enforce mandatory codes of conduct, which respond to factors that affect participation in the UK's grocery value chains. Therefore, an industrial policy focus on promoting smaller players is not unique to South Africa. What is different is the chosen policy path – that of intimately integrating industrial policy into competition policy enforcement. But even here it is important to note that there has been a broader debate, beyond South Africa, about how competition tools (and notably market inquiries) might be helpful in uncovering industrial-policy-related problems that can be subsequently addressed by other policy frameworks (Duso and Peitz, 2026; Coyle, 2024). In other words, there is a broader debate about the complementarity between competition policy and industrial policy.

2.2 How the interplay is accommodated in South African competition policy

South African competition policy arguably pursues three broad industrial policy aims: ownership transformation, value chain transformation and dynamism. Table 1 maps these three industrial-policy objectives against selected instruments, case examples, and flags selected benefits and costs. It shows that a specific industrial policy objective might be pursued through a variety of competition-law instruments. While ownership transformation is pursued primarily by means of merger-related remedies, value-chain transformation as well as the promotion of dynamism and greater entry is pursued via various channels, which also include market-inquiry-related remedies and abuse of dominance and cartel settlement agreements.

Table 1: Industrial-policy objectives and their competition-policy instruments in South Africa

Objective	Examples of competition policy instruments	Traditional industrial policy comparators	Case examples	Benefit of using competition policy	Cost of using competition policy
Ownership transformation	Merger-related public-interest conditions, including ESOPs and HDP ownership commitments	B-BBEE codes; procurement; industrial financing; equity-equivalent programmes	PepsiCo/Pioneer (LM108Sep19, Tribunal reasons, ownership and ESOP commitments); Burger King / Grand Foods Meat Plant (Commission prohibition later settled, 2021); Heineken/Distell (LM136Dec21, worker and HDP ownership package).	Creates enforceable transaction-linked commitments at moments of asset transfer; may alter governance and incentives inside large value-chain firms.	May impose ownership design without testing competitiveness effects; valuation, debt and dividend design may undermine beneficiaries or leave conduct unchanged.
Value-chain transformation	Merger-related supplier-development funds, procurement commitments and localisation remedies; Market-inquiry remedies; Buyer-power and price-discrimination provisions; Cartel and abuse of dominance settlements	Supplier-development programmes; localisation; public procurement; industrial master plans; development finance; SME support	Walmart/Massmart (LM073Nov10, supplier-development fund); AB InBev/SABMiller (LM211Jan16); Unilever settlement (2023, R40m ESD fund); Online Intermediation Platforms Market Inquiry (Final Report, 2023); Fresh Produce Market Inquiry (Final Report, 2025); buyer-power and price-discrimination regulations in designated sectors.	Targets bottlenecks created or revealed by merger, dominance or market structure; can bind firms with market power and route-to-market control.	Risks becoming a substitute for broader industrial and SME policy; monitoring of procurement quality, supplier independence and long-term sustainability is demanding.
Entry and dynamic competition	Merger theories of harm focused on potential competition; scrutiny of small mergers; Market-inquiry remedies aimed at promoting access and contestability	Innovation policy; start-up finance; data regulation; sector regulation; infrastructure planning	MIH/WeBuyCars (LM183Sep18, potential competition); Vodacom/Maziv (CAC 2025 dynamic infrastructure and fibre rollout issues); small-merger guidelines for digital markets (Commission, 2021).	Can protect entry paths before market tipping, foreclosure or consolidation becomes irreversible.	Counterfactual is uncertain; may over-deter acquisitions, reduce exit incentives for start-ups, or substitute prediction for rigorous evidence.

The possibility of pursuing industrial-policy objectives has three consequences for South African competition policy enforcement. First, it requires authorities to consider the conditions under which a competition-policy-led intervention is likely to be preferable to alternative industrial-policy interventions. Competition policy can be an appropriate industrial-policy lever where the problem is rooted in market structure and exercise of market power, entry barriers, or coordination failures within a market, or where a certain merger creates an opportunity to reshape control over assets. Second, competition-policy remedies require a clearer causal mechanism – i.e. merger or case specificity – than broader industrial-policy instruments. Such specificity requires authorities to establish how a merger or market feature creates, or provides a remedy opportunity for, an industrial-policy problem. Third, because these are imposed on private firms through legal orders and not implemented by a government department subject to oversight and set within structured budget processes, competition-policy interventions for industrial policy purposes must be monitored differently.

We explore these themes and consequences in the following section. To do so, we separately discuss the various types of competition-law instruments used in South Africa in the pursuit of industrial-policy aims. The classification will therefore be different from what was presented in Table 1, where the focus was on classifying all remedies in terms of their broad aim (ownership/value chain/dynamism).

3 Evaluating the various instruments for pursuing industrial policy in South African competition policy

South African competition law has four principal operational areas: merger control, enforcement against abuse of dominance, anti-cartel enforcement, and market inquiries. Industrial-policy objectives do not enter each of these areas in the same way. Anti-cartel enforcement may appear less accommodative of industrial-policy intervention. Its per se character of hard-core collusion leaves less room for case-specific restructuring objectives. Even so, market inquiries, merger analysis and investigations into abuse of dominance are informed by cartel cases and investigations. Also, recent remedies suggest that competition authorities have indeed focused on nurturing structural change especially in those sectors or markets experiencing collusion and cartel problems. Therefore, while cartel issues do not feature heavily or directly in this paper, they are a key motivation for several industrial-policy interventions in South African competition law.

The instruments for the pursuit of industrial policy aims in South African competition policy can be arranged into five groups. First, market inquiries operating as structural instruments: these allow authorities to diagnose transformation and value chain challenges, and may result in remedies without proof of discrete contraventions of the Competition Act. Second, ownership-transformation remedies involve merger conditions to alter the distribution of ownership and the institutional form through which workers and historically disadvantaged persons participate in firms. Third, value-chain transformation remedies that involve merger conditions to support entry, procurement access and local supply capability. Fourth, similar value-chain-focused remedies in abuse of dominance and cartel cases. Finally, fifth, theories of harm dealing with potential competition or focusing on dynamic and innovation effects rely on the competition assessment itself to reflect industrial policy preferences, such as new entry.

Three of the five types of instruments are strongly related to merger control: ownership remedies, remedies for value chain transformation and competition assessments emphasising potential-competition concerns are all related to merger control. Somewhat similarly, market inquiries constitute a separate group because these are not merely informational or advocacy exercises; they have become a key mechanism through which the authorities examine structural features across markets and value chains.

Accordingly, it is necessary to consider how the different instruments compare in their industrial-policy objectives, their functioning and their efficacy. A market inquiry and related remedies may be suitable when the industrial-policy problem is considered systemic and value-chain wide. In contrast, a merger condition may be suitable when the transaction creates the opportunity for bargaining and where the remedy is merger specific. A potential-competition theory may be suitable when the authority can identify a credible and welfare-relevant entry path that would otherwise be lost.

The following subsections therefore review each type according to three questions: why the intervention can be considered an industrial policy intervention, what it entails in South African competition policy (including a summary of important cases and policy developments), and what is known - and not yet known - about its effects.

3.1 Market inquiries as structural industrial-policy tools

The relationship to industrial policy. A market inquiry allows South African competition authorities to investigate the structure and performance of a market or broader industry. It is also intended as a remedial instrument, with inquiries often leading to voluntary remedies adopted by industry. The legislation allows for remedies to be imposed, although such 'compulsory' remedies have not been tested extensively. The recent judgment by the Competition Appeals Court in African Rainbow Capital/Competition Commission has clarified that divestiture remedial powers lie with the Competition Tribunal. It also appears from that judgment that the Commission did not intend for the divestiture to be compulsory. Further case law will have to develop to clarify the extent of the authorities' powers to impose market-inquiry-based structural remedies in South Africa.

Even so, to the extent that the concerns raised during an inquiry may lead to further action by competition authorities against particular companies, the relevant firms may have the incentive to comply. Importantly, where a market inquiry addresses concentration, entry barriers or participation by SMEs and HDP-owned firms, it performs industrial-policy work: it seeks to shape the conditions under which firms enter, expand and upgrade within a value chain.

Key developments and seminal cases. The Competition Act of 1998 introduced market inquiries, in keeping with the UK approach to market investigations. What has changed is the practical importance of these inquiries and their remedial reach. Initially limited, the number of inquiries grew over time, and the focus of these inquiries turned increasingly to transformation and related developmental concerns.

Bonakele, Das Nair and Roberts (2022) study market inquiries as a distinctive South African competition instrument and their cross-inquiry overview shows that inquiries may address three overlapping categories: pure competition issues, "competition-plus" issues and broader public-policy concerns, including industrial policy. This categorisation explains why market inquiries are attractive in a developmental competition regime: the inquiry can move from identifying market power or exclusionary conduct to diagnosing structural industrial-policy type problems that are not reducible to a single contravention.

Various past market inquiries have featured industrial-policy concerns. As shown in Table 2, the Grocery Retail Market Inquiry examined the role of national supermarket chains, shopping-centre leases, spaza shops and buyer power, and recommended measures to improve participation by small and independent retailers. The Data Services Market Inquiry addressed pricing and access problems in mobile data markets, with implications for digital participation and downstream business models. The Online Intermediation Platforms Market Inquiry imposed remedies on ranking, self-preferencing, pricing parity, platform access and transformation because digital intermediation may affect the route to market for specifically SMEs. The Fresh Produce Market Inquiry examined concentration, municipal markets, buyer power, price transmission and participation in agricultural value chains. These inquiries differ in sectoral focus, but all appear to treat market structure as a barrier to entry, participation or upgrading rather than as a mere background condition. Even so, in other inquiries, including the recent Media and Digital Platform Markets Inquiry, the concern is more directly with competition and bargaining issues in digital news media, rather than broader concerns related to industrial policy.

Table 2: Market inquiries as industrial-policy instruments in South African competition policy

Market inquiry	Industrial policy focus	Selected remedies	Research questions
Grocery Retail Market Inquiry (2019)	Township and independent retail participation; access to retail space; buyer power in grocery value chains.	Restrictions on exclusive leases; attention to small and independent retailers; recommendations affecting shopping centres and procurement.	Did remedies increase entry and survival of independent retailers, or only change lease terms?
Data Services Market Inquiry (2019)	Digital access as input into downstream entrepreneurship and participation.	Price reductions, transparency, zero-rating and package reforms aimed at reducing data costs.	Did lower data costs materially improve SME digital participation and platform usage?
Online Intermediation Platforms Market Inquiry (2023)	Digital platform access as route-to-market for SMEs and HDP-owned firms.	Ranking transparency, anti-self-preferencing, fee and parity remedies, transformation commitments.	Do remedies change sales, visibility and entry outcomes for business users?
Fresh Produce Market Inquiry (2025)	Agricultural value-chain participation, municipal-market access, buyer power and transformation.	Recommendations and remedies for market governance, access, agents, pricing transparency and participation.	Do changes improve producer participation and reduce barriers in fresh-produce value chains?
Media and Digital Platforms Market Inquiry (provisional/final phase, 2025-2026)	Digital platforms as gateways to news, advertising, search, social media and generative-AI discovery; sustainability of local media as part of information and cultural infrastructure.	Remedies aimed at bargaining, transparency, referral traffic, monetisation and fair treatment of South African news publishers by large digital platforms.	Do remedies alter revenue flows and bargaining outcomes for local media, or mainly impose compliance costs on platforms without restoring sustainable journalism?

A comparison with similar competition-law tools in other jurisdictions is useful. The United Kingdom has long used market studies and market investigations to examine market features that may prevent, restrict or distort competition. Under the Enterprise Act 2002, a market investigation can lead to findings of an adverse effect on competition and to remedies intended to provide as comprehensive a solution as is reasonable and practicable (Enterprise Act 2002; CMA, 2026; OECD, 2025). This matters for the South African comparison, because the UK model is competition-centred. While South African market inquiries are institutionally similar, the policy focus is broader: as noted above, market inquiries increasingly address small and HDP participation, transformation, platform access and value-chain restructuring, rather than only the correction of adverse effects on competition in the narrower UK sense (Bonakele, Das Nair and Roberts, 2022).

Evidence on effects and efficacy. The main benefit of a market inquiry is its breadth of coverage. Market inquiries entail examination of value chains or platform ecosystems in ways not available to merger control or abuse investigations. A principal risk is not merely implementation; it is limited impact despite very significant resource requirements. Market inquiries are intensive institutional projects. They require specialist economic, legal and factual work, public hearings, extensive stakeholder engagement and, after publication, monitoring of complex remedies. This matters because a resource-intensive inquiry may generate recommendations that are but weakly connected to measurable changes in entry, survival, upgrading, ownership or productivity. The practical question is therefore whether the social return on the inquiry and its remedies exceeds the cost of the investigation, compliance and subsequent monitoring.

A further cross-inquiry lesson is that remedies often require coordination outside the competition authority. Grocery retail remedies depend on landlords, municipalities and retailers; data remedies depend on mobile-network operators and communications regulation; platform remedies depend on business-user data and platform compliance; agricultural remedies depend on market authorities, agents, buyers and logistics. The unknown is therefore not only whether firms comply, but whether the remedy changes the market mechanism that originally limited entry or participation. This is why ex post evaluation of market inquiries is so important. This receives further attention when setting out the proposed research agenda towards the end of this paper.

3.2 Merger remedies dealing with ownership transformation and ESOPs

The relationship to industrial policy. Ownership transformation is not industrial policy in the narrow sense of selecting sectors, but it is industrial policy in the broader developmental sense because it changes control over productive assets and the governance of firms that occupy important positions in value chains. The point is not merely redistribution after a transaction. Ownership change may affect board composition, incentive structures, procurement choices, investment priorities and the credibility of commitments to local participation. In concentrated value chains, changing who owns and governs dominant or strategically placed firms is therefore a mechanism for shaping conduct and market evolution in ways that better reflect the broader society.

Key developments and seminal cases. The original Act required authorities to consider the effect of a merger on the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive. The 2018 amendments expanded this into a stronger provision requiring authorities to consider the effect of a merger on the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market. The policy evolution is therefore arguably from a negative or protective test - whether the merger harms the ability of HDP-owned firms to compete - towards a positive requirement to promote ownership transformation through merger control.

The empirical evidence suggests that transformation concerns were present before 2018, but that they did not yet dominate in the way later practice suggests. Changole and Boshoff (2022: 378-379, 393) treat B-BBEE as a distinct pre-amendment public-interest variable and find that public-interest concerns generally increased the probability of conditional approval and lengthened merger duration, but the effect of B-BBEE was less stable than the effects of employment and small-business concerns. Morris and Boshoff (2025: 14-15), using a broader dataset that includes the post-amendment period, find that B-BBEE concerns are associated with a 12.7 percentage point increase in the probability of conditional approval, but remain less predictive than employment, small-business and national-industry concerns. The same study finds that the 2018 amendments themselves increased the baseline probability of conditional approval by about 10.9 percentage points. This is consistent with a structural shift: ownership transformation became less a residual factor and more a routinely available remedy category.

The Burger King case represents a clear course change. The Commission initially prohibited ECP Africa's acquisition of Burger King South Africa and Grand Foods because the transaction would have reduced HDP ownership in the target firms from a substantial level under Grand Parade Investments to zero under the acquiring private-equity structure. The settlement converted prohibition into conditional approval. The merged entity was required, among other things, to establish an ESOP giving workers an effective 5% interest in Burger King South Africa within 36 months, to undertake local-procurement and supplier-development commitments, and to dispose of the meat plant subject to conditions (ECP Africa/Burger King, IM053Aug21, conditions, clauses 4 and 5). The case signals that ownership transformation can now determine merger approval, even where competition concerns are limited.

Ownership transformation now takes several forms. Some remedies require a specified percentage of equity to be held by HDP investors; others create employee share-ownership plans or worker trusts; and the larger transactions increasingly combine worker ownership, HDP ownership and supplier-development commitments. An ESOP is a vehicle through which employees acquire a beneficial interest in shares, often through a trust or special-purpose structure, with value delivered through dividends, capital appreciation, governance rights or a combination of these. Table 3 summarises the main message from recent cases: ownership transformation has become a recognisable remedial template, often expressed as a 5% worker interest, but with variation in the size of the HDP package, the funding method and whether ownership is linked to broader value-chain commitments.

Table 3: Selected ownership-transformation and ESOP remedies in South African merger control

Case / transaction	Ownership or ESOP remedy	Signal for industrial-policy analysis
PepsiCo / Pioneer (LM108Sep19)	Employees to receive shares worth approximately R1.6 billion to finance a 13% stake; separate B-BBEE ownership and development commitments.	Ownership remedy seeks to create a worker/HDP governance stake in a large food value-chain firm, not merely a compensatory redistribution remedy.
ECP Africa / Burger King South Africa and Grand Foods (IM053Aug21)	Initial prohibition linked to reduction in HDP ownership; settlement included commitments that restored transformation value, including an ESOP with an effective 5% interest for workers.	Public-interest concerns can convert an initially prohibited merger into a conditional approval and signal a positive ownership-transformation requirement.
Heineken / Distell (LM136Dec21)	Workers trust to hold a 6% stake in Heineken Beverages South Africa; separate HDP ownership transaction and large supplier-development commitments.	Ownership remedies are paired with local-capacity and value-chain commitments, linking firm governance to broader market transformation.

Case / transaction	Ownership or ESOP remedy	Signal for industrial-policy analysis
DP World / Imperial Logistics (LM174Nov21)	ESOP through which South African employees would hold an effective 5% interest in the South African business.	The 5% worker-interest remedy has become a recognisable template in large merger approvals.
Barloworld / Newco (LM015Apr25)	HDP transaction to reach a collective 13.5% of issued shares, including employee and HDP components.	Recent practice suggests more elaborate ownership packages combining worker ownership, HDP investment and post-transaction governance commitments.

The recent Competition Commission ESOP impact study, published in 2026 under the title Employee Share Ownership Plans: An Analysis of Key Design Principles to Create Value for Beneficiaries and Firms, is important because it shifts attention from the formal availability of ESOPs to their design and economic operation. The study emphasises trustee governance, worker training, duration, dividend ratios, share class, placement of the ESOP in the corporate structure, and good-leaver/bad-leaver rules (Competition Commission, 2026: 4-6). It also identifies the financing model as a central risk: where ESOPs are funded by debt, especially notional vendor finance, dividends may be split between debt service and beneficiary payments, and workers may receive little or no dividend benefit if debt accumulates (Competition Commission, 2026: 4, 29).

The study recommends that interest should not be charged on notional vendor finance debt and that ESOPs should receive appropriate discounts on the purchase price of shares, including minority, marketability and B-BBEE discounts (Competition Commission, 2026: 29-31). For the purposes of this paper, the more important point is that the study only partially answers the industrial-policy question. It provides useful evidence on design, beneficiary value and governance, but less direct evidence on whether ESOPs change the strategic conduct of firms, their supplier choices, their entry support, or their broader role in transforming value chains.

Evidence on effects and efficacy. The literature suggests potential benefits from ownership transformation, but the industrial-policy question is narrower than general worker welfare or wealth distribution. The relevant issue is whether ownership transformation changes the governance and conduct of firms in ways that alter value-chain participation, procurement, entry, product strategies or investment priorities. In that sense, the causal channel runs from ownership design to firm governance, from governance to firm conduct, and from conduct to the structure and dynamism of the relevant market.

The principal industrial-policy question is therefore whether merger-created ESOPs and HDP ownership packages make markets more reflective of the broader population and more dynamic: whether they support new entrants, new suppliers or new ventures by the existing firms. A further research agenda must ask whether these ownership remedies also alter firm behaviour and value-chain transformation in a measurable way. While ownership remedies may not have as their principal focus greater competition, it is important to explore how such remedies may well be connected to industrial policy or, more broadly, competitive outcomes. That would also help inform debate about the appropriate role of such remedies within South African competition policy.

3.3 Merger remedies dealing with value-chain commitments

The relationship to industrial policy. Supplier, enterprise-development and value-chain commitments are arguably the closest competition-policy equivalent to value-chain industrial policy, at least in terms of aims. They seek to alter procurement relationships, access to routes to market, supplier capability, distribution structures and the ability of smaller or HDP-owned firms to participate beyond the transaction itself. The objective is not simply to compensate for a merger. It is to use a transaction, settlement or market inquiry to reshape a value chain that is concentrated, exclusionary or weak in local supplier capability.

The previous subsection dealt with competition interventions aiming at firm-level transformation: who owns the merged firm and whether this changes governance and potentially competitive behaviour. This subsection deals with value-chain transformation: who supplies, distributes, receives market access, obtains finance, upgrades capability and survives as an independent participant. Ownership transformation may affect the firm internally; while supplier and enterprise-development remedies are aimed at the external production and procurement value chains or ecosystem around the firm.

Key developments and seminal cases. In merger control, these commitments initially appeared as transaction-specific undertakings linked to local procurement and supplier development. Walmart/Massmart represented a key early case in South Africa: the policy concern was not only employment, but also the effect of the transaction on local suppliers exposed to the procurement practices of a large multinational retailer. Later matters, including AB InBev/SABMiller, Coca-Cola Beverages Africa, PepsiCo/Pioneer and Heineken/Distell, turned the supplier-development fund into a more regularised remedy. The evolution has therefore been from case-specific protection of affected suppliers towards broader enterprise-development and value-chain upgrading commitments. These look increasingly like industrial-policy programmes administered through merger orders. Table 4 provides a summary of these merger cases, setting out the financial size of the commitments involved and the underlying industrial-policy mechanism implicit in the remedy.

Table 4: Selected supplier, enterprise-development and value-chain transformation remedies from headline merger cases

Case	Remedy	Financial size of commitment	Industrial-policy mechanism	Source
Walmart / Massmart	Supplier development fund following CAC proceedings	R240 million supplier-development fund	Support local suppliers exposed to import displacement and route-to-market risks	Competition Appeal Court / government statement; ex post evaluation of Walmart-Massmart remedies
AB InBev / SABMiller	Investment and supplier/enterprise-development commitments	At least R1 billion public-interest investment package; reported supplier-development commitments within the package	Agricultural, enterprise-development and supplier upgrading commitments in beer and agricultural value chains	Tribunal conditions and later commentary on SAB-related supplier-development funds
PepsiCo / Pioneer	Development fund, investment and ownership commitments	R600 million development fund; R6.5 billion investment commitment	Agricultural, SMME, enterprise-development, education and ownership-related transformation	DTIC and PepsiCo/Tribunal public statements on conditions
Heineken / Distell	Capital expenditure, brewery/maltery investment, supplier fund and ESOP	R10 billion capex; R3.8 billion brewery; R1.7 billion maltery; R400 million supplier fund	Local productive capacity, supplier development, localisation and worker ownership	Tribunal approval notice and Heineken/Distell merger conditions

A similar remedial approach is notable in cartel cases. The Unilever settlement in 2023, confirmed by the Tribunal, required an Enterprise and Supplier Development Fund of R40 million, alongside procurement commitments, in a non-merger enforcement context. The Media and Advertising Economic Development Fund is another example: it originated in consent agreements following cartel investigations and was designed to support black-owned, women-led and rural-based media and advertising enterprises, with approximately R39.1 million capitalised and 37 beneficiaries selected (Ally and Motaung, 2025).

A further development is the proposed broad Transformation Fund, floated in early 2025. The DTIC concept document proposed a large fund to consolidate and channel enterprise and supplier development resources towards black-owned businesses, with public comments received during 2025 (DTIC, 2025). This is not a competition-law remedy, but it matters for this paper because it shows the policy space into which competition remedies are moving. If merger and settlement funds begin to resemble a decentralised version of a national transformation fund, competition authorities must ask when a case-specific remedy is superior to channelling resources through broader industrial-policy instruments.

The academic and policy literature on supplier-development funds in South Africa remains thin relative to the size of the commitments. Even so, the literature suggests that financial disbursement is an output, not an outcome. The central policy question is whether funds produce sustainable and net benefits.

Evidence on effects and efficacy. Supplier-development remedies are attractive, as they can be tailored to the transaction, sector or value chain. The key unknown is sustainability: whether the remedy leads to long-term improvements in capacity rather than short-term compliance, whether supported firms gain customers beyond the remedy sponsor, and whether procurement commitments alter the structure of the value chain after the reporting period ends.

A further risk is that the size of some commitments may undermine investment incentives if they become a quasi-tax on merger activity rather than a proportionate response to transaction-linked public-interest concerns. This does not mean that large funds are necessarily inappropriate. But it does require competition authorities to report the size, duration, beneficiaries and outcomes of these funds in a transparent way. For industrial policy purposes, it also requires authorities to distinguish capacity-building and access-to-demand from other redistributive aims of such a remedy. Furthermore, the timely and independent assessment of impact remains critical. We return to this matter in the proposed research agenda.

3.4 Abuse of dominance and cartel remedies involving value-chain commitments

The relationship to industrial policy. The 2018 amendments did not only expand public-interest merger control. They also entailed new provisions on abuse of dominance, with specific focus on the impact of dominant firm conduct on the ability of small or HDP-owned firms to enter and participate in value chains. Specifically, they entail prohibitions on conduct by dominant or powerful firms. Small and HDP-owned firms may face discriminatory access to inputs, route-to-market infrastructure, data, platform visibility, procurement opportunities or payment terms. When those barriers are imposed by a dominant firm, ordinary industrial-policy tools may be too slow or too remote from the bottleneck. These rules are therefore industrial-policy-adjacent, as they seek to change the terms on which such businesses participate in markets.

Apart from these formal amendments introducing additional objectives in other areas of South African competition policy, it is also noteworthy that South African competition authorities have relied on settlement agreements (in response to abuse of dominance and cartel investigations and complaints) to advance industrial policy objectives. This enforcement approach is likely of greater consequence than the formal introduction of the buyer power and price discrimination provisions, as several settlements feature value-chain commitments.

Key developments and seminal cases. The first set of provisions concerns buyer power. Section 8(4) prohibits a dominant firm in a sector designated by the Minister from imposing unfair prices or trading conditions on SMEs or firms owned or controlled by historically disadvantaged persons. The second concerns price discrimination. Section 9 prohibits dominant sellers from discriminating in ways that impede the effective participation of SMEs and HDP-owned firms. The Minister designated the grocery retail sector, the agricultural processing sector and the online intermediation-services sector for these provisions (Price Discrimination and Buyer Power Regulations, 2020; Competition Commission Buyer Power Guidelines, 2020). The choice of sectors shows a policy position that large buyers or platforms can shape the terms on which smaller producers, suppliers and business users participate.

The designation of these sectors gives the provisions a clear industrial-policy character. Grocery retail and agricultural processing are central to food value chains, local procurement and agricultural participation, while online intermediation services are increasingly the route to market for SMEs in accommodation, food delivery, e-commerce and other digital services. The regulations therefore do not merely prohibit discriminatory treatment in the abstract. They select sectors in which bargaining power, scale and access conditions are thought to affect broader participation and transformation objectives.

There has not yet been decided enforcement in relation to these provisions, as in merger control and market inquiries. That is not surprising: abuse cases are slower, more fact-intensive and more vulnerable to evidentiary disputes. The comparative EU debate is also relevant here. EU competition law has historically been cautious about focusing on 'unfairness' in competition policy, but recent digital regulation has moved in that direction through the Platform-to-Business Regulation, the Digital Markets Act and wider debates about unfair trading practices and bargaining power. The South African provisions are more explicitly developmental: our competition policy identifies SMEs and HDP-owned firms as protected groups and connects the legal standard to effective participation.

Even so, key settlement agreements in respect of cartel and abuse-of-dominance concerns have come to feature remedies aimed at supporting broader value chain development, and specifically to support SMEs and HDP-owned firms.

This approach was already established in the 2010 Pioneer Foods cartel settlement in relation to collusion in maize and wheat milling, baking, poultry and eggs. The settlement included an agreement to contribute to a R250 million Agro-processing Competitiveness Fund, administered through the IDC, aimed at supporting small players in food value chains in South Africa. The 2023 Unilever/Competition Commission settlement further illustrates a shift from conventional cartel remedies towards value-chain-oriented remedial design. The settlement includes two value-chain remedies: first, a R40 million enterprise and supplier development fund providing interest-free business loans to HDP firms in manufacturing, logistics and wholesale, including start-up funding for entry into logistics, wholesale and distribution; and, second, a commitment to increase local procurement from South African entities by at least R340 million over four years. These obligations do not punish past collusive conduct: they are aimed at creating favourable participation conditions in the value chains related to the market where the cartel concerns arose. This represents a significant policy expansion: supplier-development and localisation remedies are no longer confined to merger control, but are increasingly utilised as value-chain remedies for broader competition-law enforcement.

Another recent example, in respect of abuse-of-dominance concerns, is the Pailpac consent agreement. It relates to alleged exclusive or near-exclusive agreements in the paint industry. Pailpac undertook, over five years, to procure waste material from SMMEs, historically disadvantaged persons and informal waste collectors. This is a value-chain remedy, using an abuse-of-dominance settlement to create upstream procurement opportunities and participation in the value chain, rather than merely addressing the immediate exclusionary practice.

Evidence on effects and efficacy. Participation-based abuse enforcement can reduce access barriers and improve the bargaining position of targeted firms. It may also create uncertainty, if dominant firms cannot predict what prices, rebates, payment terms or procurement practices will be treated as unfair. The mediating factors are the clarity of designated sectors, the evidentiary standard for effective participation, the identification of an appropriate comparator, and the extent to which remedies improve capability rather than merely reallocating surplus. A research agenda should ask whether these provisions lead to measurable entry and expansion by SMEs and HDP-owned firms, and whether they complement or duplicate other industrial policy initiatives.

A further research question relates to the relative benefit of abuse of dominance enforcement and market inquiries, especially where it concerns addressing buyer power concerns. Where the focus is on the advancement of small suppliers and protecting such suppliers from the abuse of buyer power, mandatory or voluntary codes of conduct are a form of remedy that has been employed in several market inquiries in the UK, Australia, New Zealand and Kenya. Such market-wide interventions raise the question of the extent to which case-based abuse interventions may be the more appropriate competition policy tool, where the aim is the advancement of smaller players.

3.5 Merger remedies dealing with dynamism and entry

The relationship to industrial policy. A theory of merger harm relates how a merger is expected to harm the competitive process; it explains why the changed market structure following a merger is likely to reduce rivalry, worsen prices and/or quality, innovation, consumer choice, or otherwise impede effective competition. In conventional merger analysis, these theories are classified by reference to the types of competitive effect: unilateral effects, coordinated effects, vertical effects, or conglomerate effects.

One theory of harm that has become more prominent internationally is harm to “potential” competition. In this theory, the concern is not that the merging parties currently compete in the same market, but that one of them is a likely future entrant. The loss due to a merger may involve the target firm, as in the classic “killer acquisition” narrative where an incumbent buys a nascent rival, or it may involve the acquiring firm, where the acquirer would have entered independently but instead buys the incumbent. The prohibited MIH/WeBuyCars merger falls into this latter category.

The relationship with industrial policy lies in the implied preference for a certain development path for the market, that of independent entry and future rivalry, over another path – that of consolidation, integration or acquisition-led scaling.

Key developments and seminal cases. Historically, potential-competition theories were not employed extensively in South African merger control. Changole (2022) shows that conventional theories of harm in South African merger prohibitions up to 2021 were more often concerned with the removal of an effective competitor and vertical foreclosure, while coordinated effects featured less prominently. In terms of his quantitative analysis of conditional merger approvals prior to 2018, potential competition concerns rarely feature. This suggests that, although dynamic characteristics and the removal of an effective competitor were part of the competition assessment, potential competition was not yet a prominent route through which South African merger control might pursue dynamic or industrial-policy objectives.

MIH/WeBuyCars is therefore a leading potential-competition precedent. In 2020, the Tribunal prohibited Naspers/MIH's acquisition of control over WeBuyCars even though there was no current horizontal overlap between Naspers' existing South African operations and WeBuyCars. The concern was that Naspers controlled FCG, an international digital car-buying platform, and that FCG would have entered South Africa independently but for the transaction. Boshoff and Stainton (2026) characterise the case as a reverse killer acquisition: the acquirer, rather than the target, is the potential competitor whose independent entry is foreclosed.

The industrial-policy view implicit in MIH/WeBuyCars is a preference for separate entry rather than consolidation. The Tribunal's concern was not that the merger would remove an existing overlap. It was that the transaction would replace (what it judged to be) a likely future challenger with ownership integration into the incumbent digital ecosystem. This approach contrasts with the strand of European policy debate that is more sympathetic to consolidation where scale is considered likely supportive of innovation, competitiveness and investment. The EU draft merger-guidelines review expressly seeks to modernise merger assessment in light of the need for industrial scale and global competitiveness, while retaining the core mission of preserving competitive markets. South African potential-competition enforcement, at least in MIH/WeBuyCars, points in the opposite direction: entry by a separate rival is treated as the preferred innovation path.

Vodacom/Maziv illustrates the challenge of establishing potential competition – with the risk of erroneous industrial policy action. The transaction involved Vodacom acquiring 30%, with an option to increase to 34.95%, in Maziv. The relevant assets were not simply a mobile operator and a fibre network being combined: Maziv comprised DFA and Vumatel, while Vodacom would obtain joint control and transfer fibre assets. Some of the relevant theories of harm included whether Vodacom would otherwise become a large fibre player, whether its investment in a fibre player would reduce its incentive to roll out 5G fixed-wireless access, and whether there would be a removal of potential competition in metro fibre and fibre-to-the-business markets.

The potential-competition lesson from Vodacom/Maziv is that the counterfactual must be established with credible evidence. The South African Competition Appeal Court criticised the Tribunal's inference that Vodacom would have developed its own independent fibre business. The CAC's approach is consistent with a high evidentiary threshold for potential competition: future entry or expansion must be likely and sufficiently proximate, not merely plausible.

The case also shows why potential-competition theories intersect with industrial policy. One counterfactual favours consolidation plus commitments to accelerate fibre deployment, including in low-income communities. Another favours preserving Vodacom as an independent potential fibre entrant. These are different market-development paths, not only different predictions about short-run prices. The appropriate competition question is whether the evidence supports the loss of a likely independent constraint; the broader industrial-policy question is whether the chosen remedy path promotes investment, access and long-run rivalry.

The EU comparison reinforces this point, especially in digital markets. Digital and technology merger cases in Europe have featured a range of theories of harm - horizontal loss of competition, vertical foreclosure, conglomerate leverage, data-related advantages, ecosystem effects, and innovation concerns - rather than relying mainly on potential competition. Potential-competition theories are less commonly decisive because they require a demanding counterfactual: the authority must identify the future market, the likely entrant, the timing of entry, the commercial incentive to enter, and the competitive constraint that would have been imposed absent the merger. In digital markets, ecosystem effects and data-related foreclosure may therefore be easier to frame than a pure potential-entrant case, even though the policy concern is often similarly forward-looking (Robertson, 2022; 2024).

The rise of dynamic-competition theories is closely related to this debate. Dynamic competition treats rivalry as a process of experimentation, innovation, capability building and technological change rather than only as a static comparison of prices and shares. Petit and Teece (2021) argue that digital competition requires greater attention to dynamic capabilities and innovation trajectories. Petit, Schrepel and Heiden (2025), writing from the Dynamic Competition Initiative, similarly frame dynamic competition as an innovation-oriented, empirical and interdisciplinary approach to antitrust. Recent work by Motta and Peitz (2021) emphasises the economics basis for merger control concerned with advancing so-called innovation rivalry. Peitz (2026) suggests situating the analysis of start-up acquisitions within a broader innovation framework: the assessment should ask whether the transaction inter alia removes a future product or technology path or weakens the competitive pressure that would otherwise discipline an incumbent. This literature raises the evidentiary bar for potential-competition cases: authorities must identify capabilities, incentives, technological paths and likely constraints, not merely invoke dynamism as a policy preference.

Evidence on effects and efficacy. The benefit of pursuing potential-competition enforcement for industrial policy purposes lies with the possibility of early intervention before market tipping, entry foreclosure or loss of innovation rivalry becomes irreversible. Even so, authorities must predict entry that has not yet occurred. This requires significant additional analytical effort, including the need to judge incentives and firm capabilities. Boshoff and Stainton's analysis of MIH/WeBuyCars argues that capability and intention are not sufficient if the competition authority has not also established a current commercial incentive to enter independently. A disciplined dynamic-competition case should therefore identify the future rival, the time horizon, the mechanism of harm, the evidence of incentive and the probability that independent entry would occur absent the merger. It is critical that future research consider the appropriate economic and legal standards for South African potential-competition cases and whether prohibitions or conditions preserve or encourage entry or whether these discourage investment and innovation.

4 An evaluation framework for industrial-policy remedies in South African competition policy

The instruments reviewed above show that industrial-policy objectives enter South African competition policy through different routes: market inquiries, merger public-interest conditions, participation-based conduct rules, and dynamic theories of harm. As argued earlier, an industrial-policy-inspired intervention in a particular competition policy matter (or market inquiry) must be tested against three linked questions. First, does the industrial-policy problem arise from market power, market structure or entry barriers in a way that gives competition policy a comparative advantage over ordinary industrial-policy instruments? Second, if competition policy is the preferred industrial-policy route, is the remedy sufficiently linked to the case or market feature, and is its scale, duration and governance proportionate? Third, what evidence will show whether the remedy significantly altered ownership, value-chain participation and entry of small or HDP firms, and innovation and industry dynamism, rather than merely producing formal compliance? We consider each question below.

4.1 Instrument fit: why use competition policy?

The first question is instrument fit: is the industrial-policy problem sufficiently linked to market power, merger effects, exclusion, entry barriers, platform intermediation, buyer power or structural market features to justify using competition policy? If so, competition policy may offer comparative advantages to policymakers: access to firm-specific information, the prospect of remedies, (where relevant) transaction leverage, as well as market-wide investigatory powers. If the problem is instead underinvestment, skills shortages, infrastructure deficits or macroeconomic uncertainty, competition policy is likely a weak substitute for industrial finance, procurement, infrastructure or skills policies.

Table 5: Instrument fit questions for competition-policy industrial policy

Classification question	High-fit examples	Low-fit examples
Is the problem caused or worsened by a particular case?	Loss of supplier access; decline in HDP ownership; reduced entry path.	General transformation deficit unrelated to transaction.
Is the problem structural across a market?	Platform self-preferencing; exclusive leases; market access bottlenecks.	Economy-wide SME finance constraints.
Is the remedy within firm control?	Procurement targets; ranking transparency; ESOP funding design.	Electricity supply, transport infrastructure or education deficits.

Table 5 shows that competition policy is most defensible as an industrial-policy instrument when the problem is created or revealed by the relevant case: a merger changes control, a platform controls access, a dominant buyer imposes participation barriers, or a market inquiry reveals structural impediments to entry. Where the problem lies outside the market mechanism - for example with skills, infrastructure or financing constraints - competition policy may still allow identifying the problem, but it should not be used as the primary policy instrument.

Table 5 also highlights that competition policy may be an appropriate tool for industrial-policy-related remedies where it addresses a structural market or value chain problem. Competition policy could act as a supply-side instrument if the particular case allows for the shaping of broader industry developments and capabilities. For example, recent UK examples highlight a potential role for competition policy in developing supply-side capabilities (see, for example, Coyle (2026)). The South African approach towards using value chain commitments to develop supply-side capabilities is also relevant here. Even so, an important consideration (for further research) would be the extent to which such developmental remedies are to be applicable beyond very large transactions: is it reasonable to expect structural change from remedies imposed on smaller players, if such remedies impose a burden on particular market players and not others (see the next section)?

4.2 Remedy design: merger specificity, scale, duration and governance

The second question is remedy design: if competition policy is used as an industrial policy tool, what remedy form, scale, duration, target beneficiary group, and governance structure are justified? Table 6 describes selected dimensions of remedy design relevant to interventions seeking industrial-policy aims. It shows remedy design should make the mechanism of expected change explicit. Ownership remedies, supplier-development funds, procurement commitments and potential-competition conditions operate through different channels and should not be evaluated as if they were interchangeable. The stronger the remedy departs from ordinary competition relief, the more important it becomes to state the beneficiary group, the value-chain mechanism, the duration, the governance arrangement and the review point.

Scale and duration matter. The appropriate size of a remedy should be assessed against the size of the transaction, the scale of the identified public-interest concern, the expected incremental effect of the remedy and the cost imposed on the merged firm. Some commitments now run for five to ten years and involve hundreds of millions or billions of rand. Longer duration can be justified where the objective is capability building, worker ownership or productive investment, because these mechanisms require time. Yet duration also increases the risk of changed market conditions and compliance without economic effect. A good remedy should specify milestones, review opportunities and exit conditions.

Table 6: Remedy design dimensions for competition-policy industrial-policy remedies

Dimension	Design question	Examples	Risk	Potential policy response
Focus	Which market, value chain or beneficiary group?	ESOPs; HDP ownership; SME procurement; platform visibility.	Overbroad beneficiary definition.	Define affected market/value chain and beneficiary eligibility.
Supply or demand side	Does remedy build capability or create demand/access?	Training funds (supply); procurement/offtake (demand); platform ranking (access).	Training without market access.	Pair capability-building with demand-side access.
Duration	How long should obligation last?	2-5 year moratoria; 5-10 year ESOPs; multi-year funds.	Short-term compliance without durability.	Specify milestones and post-remedy sustainability tests.
Monetary scale	Is amount proportional to transaction and objective?	Development funds; investment commitments; ESOP funding.	Over- or under-sized commitments that distort incentives or fail to meet the objective.	Assess proportionality to transaction value and objective; use staged disbursement where appropriate.
Governance	Who controls remedy and reports performance?	Monitoring trustees; fund administrators; board committees.	Conflicts and weak verification.	Independent monitoring and public reporting.

4.3 Evaluation and accountability

The third question is evaluation and accountability: what evidence will show whether the intervention improved industrial-policy-related measures such as ownership, participation, or innovation? Competition authorities have become sophisticated at ex ante analysis of mergers and conduct. They now need a comparable ex post evidence base for industrial-policy remedies.

Monitoring should clearly distinguish implementation from effectiveness. A firm may spend the committed amount or create the required ESOP, but the relevant question is whether the intervention improved ownership value, supplier capability, or other value-chain outcomes. The EU antitrust-remedy evaluation literature similarly distinguishes implementation from effectiveness and emphasises monitoring trustees, remedy design and measurable outcomes (European Commission, 2025).

Accountability is therefore not a secondary issue; ensuring it is a key part of remedy design for industrial policy purposes. Traditional industrial policy has a budget holder, policy objective, implementing agency and evaluation framework. Competition-policy remedies often have a legal order, a reporting obligation and sometimes a monitoring trustee, but much weaker public evaluation. That gap is especially problematic for large commitments, as a remedy may be implemented formally without producing the intended participation, productivity or ownership effect. Monetary scale should trigger proportionality assessment ex ante and public outcome reporting ex post.

Table 7: Evaluation metrics for competition-policy industrial-policy remedies

Intervention	Output measures	Outcome measures	Longer-run measures	Sources
ESOP / ownership	Shares transferred; funding terms; beneficiaries.	Dividend/value received; governance participation.	Worker wealth, retention, productivity and ownership durability.	ESOP reports; company accounts; worker surveys.
Supplier development	Spend, number of suppliers, training events.	Sales to merged firm; certification; quality upgrading.	Independent customer base, productivity, survival and exports.	Procurement data; supplier tax/admin data.
Market inquiry platform remedy	Change in ranking rules, fees or access terms.	Visibility, conversion rates and sales for SMEs.	Entry and growth of SME/HDP platform businesses.	Platform data; surveys; matched business data.
Potential competition remedy	Entry preserved or acquisition blocked.	Entrant launches and grows independently.	Market structure, innovation and consumer outcomes.	Market data; firm accounts; platform usage.

Table 7 shows that evaluation must move beyond confirming that funds have been expended or that a condition was formally implemented. The relevant evidence is whether the intervention changed market outcomes: whether workers received durable ownership value, suppliers acquired independent capability and expanded sales, or how merger remedies preserved or supported post-merger rivalry and innovation.

5 Conclusion and research agenda

South African competition policy uses several instruments to pursue industrial-policy objectives: market inquiries, ownership and ESOP remedies, supplier and value-chain commitments, participation-based abuse provisions, and potential-competition theories of harm. The question is how to ensure that the pursuit of such industrial policy objectives in our competition policy is balanced, so that it promotes broader industry dynamism and transformation without unduly undermining competition and corporate incentives.

There is indeed a significant literature that argues that developing economies cannot simply import narrow consumer-welfare models of competition policy, which are designed for advanced economies with deeper capital markets, lower entry barriers and stronger state capacity. This literature argues that South Africa’s structural problems of concentration, exclusion and racially skewed ownership justify a broader conception of competition policy. On the other hand, there is also a significant literature arguing that multi-objective competition policy increases uncertainty and invites remedies whose effects are unclear. The task may not be to choose between “pure” competition policy and developmental competition policy. A balanced approach is required, which should involve a systematic approach to industrial policy matters in South African competition policy.

A systematic approach to pursuing industrial policy aims in competition policy requires three commitments. First, competition policy should be used where the industrial-policy problem is market-related, and where the competition authorities enjoy a comparative institutional competence. Second, industrial-policy remedies should be designed with merger specificity, proportionality, duration, governance and measurable outcomes in mind. Third, and perhaps most important, large public-interest and industrial-policy remedies should be evaluated ex post and the results made public. These commitments would significantly improve the predictability, legitimacy and effectiveness of South African competition policy.

Across the instruments surveyed in this paper, the unknowns are similar: whether interventions have effects beyond implementation, whether the scale and duration of commitments are proportionate, and whether dynamic or developmental theories are supported by evidence. The paper translates those unknowns into three organising questions: instrument fit, remedy design, and evaluation/accountability. Yet much remains unknown and this paper proposes a research agenda that covers at least the following:

- What is the size, duration and trajectory of financial commitments imposed through merger public-interest remedies, and how do these compare to conventional industrial-policy programmes?
- Do ESOPs created through merger control generate real worker value after debt, valuation and dividend dynamics are considered?
- Do supplier-development and procurement commitments create sustainable independent suppliers, or do they generate temporary compliance relationships?
- Do market-inquiry remedies improve entry, sales and growth for SMEs and HDP-owned firms in platform, retail, data and agricultural value chains?
- What evidentiary standards should apply to potential-competition and dynamic-effects cases in South Africa, especially in digital markets?

- Which competition-policy interventions are complements to industrial policy, and which are substitutes for missing instruments better supplied by departments, regulators or development-finance institutions?

These questions are perhaps best suited to impact-assessment studies. Such studies – and related papers – can form the basis for a ‘synthesis’ policy paper, which combines the new findings with the positions in this paper.

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