

Use it or lose it

why labour must engage the Competition Commission

Imagine you are a worker at a large company that makes medicines - you have worked there for the past 15 years and you think your future is secure

One day you read in the newspaper that your company has been taken over by another company. Within one month, 50% of management of your company are retrenched. Soon after, you and hundreds of your comrades are also retrenched. What makes matters worse is that when you get sick and buy the medicines you used to make in your company, you pay double the price for the medicines and they are not even the ones you really want, because the company stopped producing those.

You too are now one of the millions of victims of companies driven by some of the rules of capitalism - expand markets, eliminate competition, rationalise where necessary to increase profits. Will this happen to even more workers in other South African companies? South Africa's new Competition Act suggests that the answer may be no.

The Competition Act

- The South African government published its new Competition Act in 1998. This was the result of months of negotiation in Nedlac by the social partners - government, business and labour. After much negotiation, the social partners agreed that the Act should be used to

Tanya van Meelis argues that Alistair Ruiters is constructing a Competition Commission that will take labour seriously. Labour should use the Competition Act to advance the interests of workers and the working class more broadly.

change the structure of the economy and the behaviour of firms in it. This is reflected in the purpose of the Act, which is to promote and maintain competition in South Africa in order to

- 'promote the efficiency, adaptability and development of the economy;
- provide consumers with competitive prices and product choices;
- promote employment and advance the social and economic welfare of South Africans;
- expand opportunities for South African participation in world markets and ensure the role of foreign competition in the Republic;
- ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy;
- promote a greater spread of ownership

in particular to increase the ownership stakes of historically disadvantaged persons'.

But how can the Competition Act be used to help in the story described above?

Stopping retrenchment

The first problem is that workers were not informed of the intended merger and the retrenchment of hundreds of workers was allowed to go ahead when the merger took place.

The new Competition Act states that big companies that intend merging must notify the Competition Commission (which is set up in terms of the Act and will be explained in more detail later). The Competition Commission will then notify the registered unions in the companies involved.

The unions could prepare and present a case as to why the merger should not take place - here they would focus on preventing job loss. The unions could draw on the purpose of the Act, which states that employment must be promoted. The Commission would have to consider the employment loss when deciding whether a merger should be allowed to go ahead or not.

By examining the effects a merger would have on employment, the Commission is examining and including social goals.

Restructuring the economy

A second problem the story highlights is that there are only a few very large companies in the country. This is what academics would call a high concentration of capital - ownership of companies is held in the hands of a few and controlled by a few.

The Competition Act aims to promote the existence of more companies owned by different people. It especially wants to

promote ownership by people who had been previously disadvantaged. If people who opposed the merger above could show that the merger would result in further concentration of capital and that this would not benefit broader society, the Competition Commission would prevent the merger from taking place.

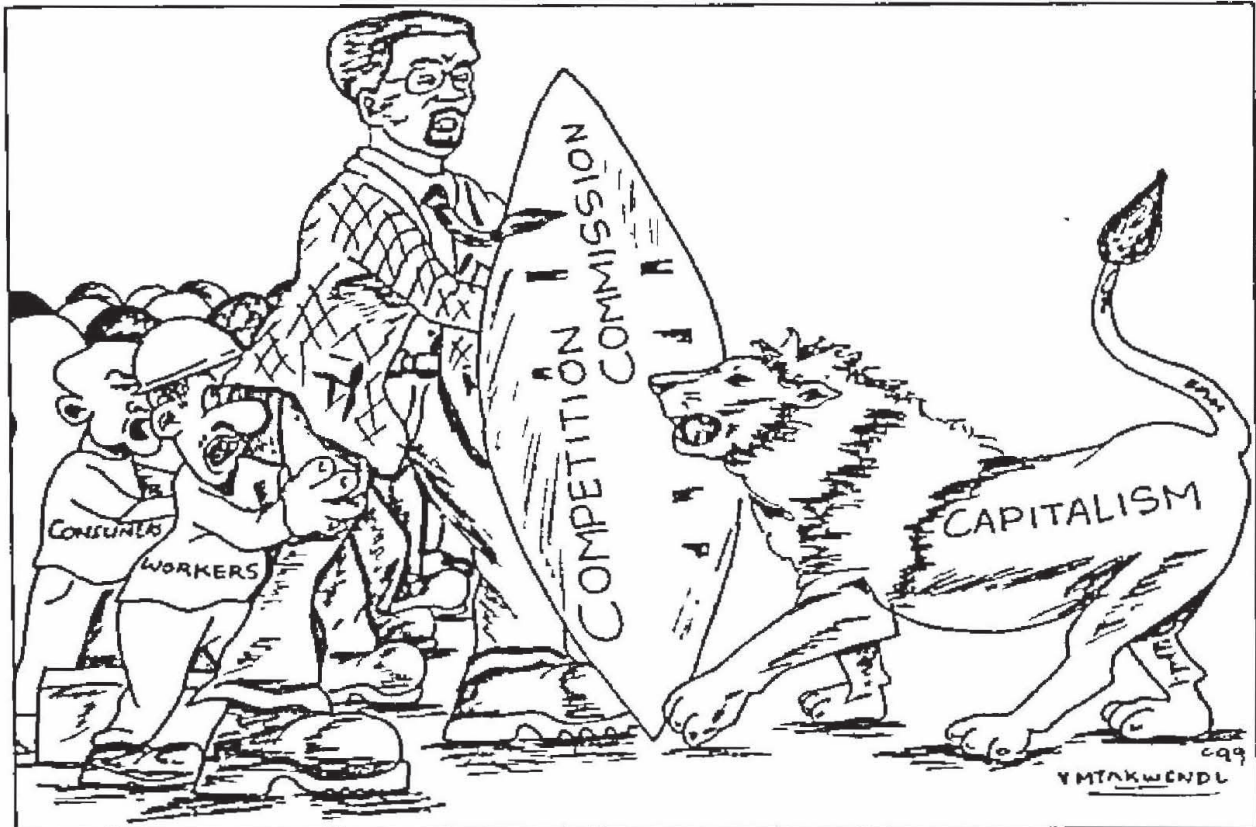
Because the Competition Commission would assess and change the structure of the economy, it can be regarded an 'instrument of industrial policy'. That is to say it can be used to change what the economy looks like.

Price and choice of goods

The final problem from the story is that people would not have a wide choice of products (because the company stopped producing a variety of products). They would also pay more for the products they buy because the company raised the prices and there is no competition from another company to force it to lower prices.

The Competition Commission has to examine what will happen to choice and price of products when mergers take place. Its purpose is to ensure that consumers have a wide choice of products that are reasonably priced. The Act's promotion of consumers' interests is an innovation in competition policy. In the story above, the Competition Commission could prevent a merger from taking place on the basis that products were rationalised and became more expensive.

Here, the Competition Commission is looking after the interests of the consumer. Since all workers are consumers and the unemployed are also consumers, the Competition Act can be used as a tool to further the interests of the broad working class, particularly by placing an emphasis on the need for the cheap provision of basic goods.



Cartoon by V Makwenda

Progressive potential

Will the Competition Act be able to achieve its progressive potential of.

- restructuring the economy by, for example, preventing ownership in the hands of a few;
- influencing the behaviour of companies by, for example, examining the effect a merger will have on pricing, etc,
- advancing workers' interests by, for example, preventing job loss,
- advancing broad working class interests by, for example, ensuring affordable goods and a choice of products?

This will depend on the following:

- staffing of the commission;
- how effectively progressive forces engage with Competition Commission,
- the balance of forces in the commission and in Parliament.

Staffing the commission

If the commission is to work effectively it needs an adequate number of staff who

can do the work required. The first person appointed and the person who will head the commission is an example of the high calibre of staff the commission will attract - Parliament has appointed Alistair Ruiters as Commissioner of the Competition Commission.

Ruiters has already begun setting up the Competition Commission. He explained whom he has been looking for to fill some of the 70 posts in the commission: 'We looked for lawyers, economists and social scientists. The bulk of staff have masters degrees. Two people have PhDs. There are one or two people with MBAs. There are two to three people with a union background - I would like to have more.'

Ruiters is only employing lawyers who have graduated *cum laude* - with a first class pass. He has chosen to employ a high proportion of well-qualified lawyers because he is expecting legal battles: 'I'm constructing a commission geared for litigation. People will be looking for

precedent. I've got to have lawyers for that.'

Ruiters has chosen to employ economists and social scientists who can bring their economic and social understanding to bear on the issues confronting the commission. This should help the commission pursue the economic and social goals set out in the Competition Act.

Ruiters is currently focusing on three things while setting up the commission to ensure that it runs effectively:

- building infrastructure, for example setting up a case management system, preparing offices, etc;
- developing human resources, for example building capacity;
- developing internal procedures, for example drawing up guidelines, rules and forms.

Staff will initially undergo a three-month intensive training programme. This will include courses on competition policy, a political and social overview of the areas in which they are working, and hard skills such as writing reports and conducting telephonic interviews.

Staff not only have to be skilled and knowledgeable, they also need to have a deep understanding of the economy, society and interest groups such as unions, if the progressive potential of the Competition Act is to be realised. The appointment of Ruiters and his selection of a high number of people with a broad range of skills, including a sensitivity to the interests of labour, should be a step in the right direction.

Engaging the commission

The commission will look at economic goals (such as efficiency) and social goals (such as employment). In theory, it is difficult to pursue all these goals at once, since many seem to contradict each other. How does one balance the interests of capital, labour,

consumers and other interested parties when the interests may be very different in each case? For example, how does one promote efficiency and maintain jobs? How does one ensure businesses have enough money to develop and at the same time ensure that they produce affordable goods?

Ruiters stresses the importance of examining social goals: 'The Act puts forward a number of social objectives. In many instances we may find ourselves in a predicament where we might say that while there is a definite argument for competition, there is also certainly a public interest argument here. We would have to weigh up the competition argument against the public interest argument. If I said that we were entirely driven by competition I might be fooling myself or misleading the public into believing that public interest issues have a lesser importance in this commission. In terms of our history, public interest issues will be one of the overriding concerns that would occupy our minds each time we investigate a case.'

One way for labour to deal with the contradictory goals set out in the Act, is to ensure that trade unions engage strongly and put forward convincing arguments to persuade the commission that the social goals set out in the Act should be achieved. If trade unions and other progressive forces do not do this, space will be left for the commission to move in a more conservative direction.

Even the most enlightened person in the commission will not be able to justify strongly advancing social goals if labour or other parties could not even make a case for this. Ruiters also stresses that companies will have to show how the merger will have social benefits.

Unions will have the opportunity to engage with the commission. Ruiters is very proud of the provision that when the



'You have a commission with a sympathy for the interests of labour. We will engage labour.' Alistair Ruiters, commissioner of the Competition Commission.

commission is notified of an intention to merge, it must automatically notify the relevant trade unions in the companies effected 'In most mergers, the biggest loser is labour. Companies take mergers as an opportunity to cut back, retrench and rationalise. I think we have a strong Act because it gives us the opportunity to inform labour at a very early stage of, let's call it, negotiations on the issue.'

Interested parties will be able to make representation to the commission and challenge the commission in a public forum. This is an innovation in competition policy. Labour will thus have the opportunity to present its position on a merger, and advance social goals: 'The new provisions also allow you to stand before a tribunal and make your own case. You can take on the commission in a public forum. Members of the public and media can attend and hear what you have got to say. I think that that puts labour in a

very strong position. Granted, that you have good legal people to stand and fight the lawyers employed by business or the commission. The process allows active participation, not just in the adjudication but also in the public debate. I am very excited about that.'

Unionists will have to draw on organisers, legal officers, other officials, office bearers and workers with strong negotiating skills to contest issues in this new terrain. However, no matter how good a negotiator one is, one needs to have information to argue a persuasive case. This means research departments within unions will have to learn to provide the kind of information needed here. Another, though more costly alternative, is to hire lawyers to assist and represent the union.

Ruiters is prepared to assist labour in building its capacity to engage. 'The process allows labour to participate actively. My only fear is that labour will not



have sufficient resources – the same that business and government are able to muster. But let me say that the commission is independent and will certainly want to work with groups out there and find ways in which we can strengthen the role that different parties can play in this process. So after the commission opens, I will host a meeting with the general secretaries of all the unions to explain the Competition Act and what resources we can offer.'

Balance of forces

The direction in which the Competition Commission moves will also be a result of the balance of forces within the commission. Much depends on the direction given by the commissioner and

'The new Competition Act needs to be understood in the context of South Africa's history. Apartheid resulted in concentrations of ownership and control in the economy. There was not free participation in the economy. Competition law is a way to create transparency. It can address entry barriers into an economy and look at the practices employed by a company. It can help us understand industry and industry performance as well as the conduct of people within an industry.' (Ruiters)

tribunal members who are appointed by the minister and President. In this sense, the direction of the Competition Commission will also be determined by the balance of forces within Parliament. It is therefore vital that progressive forces participate actively in political activity in Parliament and try and ensure that progressive commissioners and tribunal members are appointed.

Parliament also has to continue to give the commission the funding it requires – this year Parliament has granted the commission and tribunal a budget of R60- to R80-million: 'This is what we need. We will also charge users fees for the parties (the companies) involved in mergers,' Ruiters said.

Conclusion

The new Competition Act and the direction being taken by Ruiters provide a unique opportunity for labour. It provides the opportunity to minimise the negative consequences of globalisation. It provides the opportunity to hold back the greed of some companies that will destroy in order to maximise profits. It provides the opportunity to advance the interests of workers and the working class as a whole.

Labour needs to build its capacity and take advantage of this golden opportunity. It needs to engage the commission. It also needs to continue to contest the balance of forces in Parliament to ensure progressive commissioners and tribunal members are appointed. If this is not done, capital will march triumphant through the door opened by the progressive negotiators of the Act. In Ruiters' words: 'Labour is either a beneficiary or a loser. The stakes are high – use it or lose it.' ★

Thanks to Kenneth Creamer for his useful comments.