

SOUTH AFRICA			
COMPETITION FRAMEWORK			
Competition Law	The first Regulation of Monopolistic Conditions Act was enacted in 1955 (Act no. 24 of 1955). Updated competition policy was enacted in November 1998, (“Competition Act”).		
Competition Authority	Competition Commission Website: http://www.compcom.co.za/ Competition Tribunal of South Africa Website: http://www.comptrib.co.za/ started November 1998, <i>see</i> section 26 of the Competition Act.		
STATUS OF THE COMPETITION AUTHORITY			
Accountability			
Does the Competition Authority have obligations before the executive?	Yes	X	Obligations to report to the executive on on-going investigations upon request.
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.
		X	The Competition Authority has to report on an annual basis to the executive.
Does the Competition Authority have obligations before the legislature?	No	X	Obligation to publish an annual report on its activities.
		X	Obligation to stand before parliament and to respond to congressmen on an annual basis.
		X	Its activities are monitored by an independent auditor or by oversight committees.
Does the Competition Authority have obligations before the judiciary?	Yes	√	Decisions from the Competition Authority are subject to judicial review. <i>See</i> Competition Act, section 36(1)(a), the Competition Appeal Court—created by the Competition Act—is a “is a court contemplated in section 166(e) of the Constitution with a status similar to that of a High Court.”
Independence			
Are the criteria for appointment and removal of the head/board members clear and transparent?	Yes	<i>See</i> Competition Act, section 22(6).	
Does the executive have powers to decide on specific cases based on public interest?	No		
Does the executive retain decision-making powers over the Competition Authority?	No		
Is the Competition Authority obliged to publish its reasoned decisions to ensure transparency?	Yes	<i>See</i> Competition Act, section 31(4), “[t]he decision of a panel on a matter to it must be in writing and include reasons for that decision.”	
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes	<i>See</i> Competition Act, section 31(1), “[t]he minister, in consultation with the minister of Finance, may determine the remuneration, allowances, and other benefits.”	
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	Yes	<i>See</i> Competition Act, section 40.	
GOVERNANCE OF THE COMPETITION AUTHORITY			
Is the Competition Authority governed by a single chairman or by a collegiate body?	Chairman		
Does a minister appoint the heads?	Yes	<i>See</i> Competition Act, section 22(1).	
Do representatives of more than one government branch appoint the heads?	No		
Is there a fixed period during which removal is prohibited?	No		
Is the tenure of the heads renewable?	Yes	<i>See</i> Competition Act, section 22(2).	
Are the heads required to have certain minimum qualifications (degree in law or economics, age, experience)?	No	However, section 22(1) of the Competition Act calls for “a person with suitable qualifications and experience in economics, law, commerce, industry, or public affairs.”	
ARCHITECTURE			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a minister?	Stand-alone agency	77 Meintjies Street, Pretoria 0002, South Africa.	
POLICY-MAKING AGENTS -DIVERSIFICATION-			
How many agencies are responsible for competition enforcement?	Yes	Competition Commission have signed Memoranda of Understanding with Postal Regulator, Independent Communications Authority (“ICASA”), National Electricity Regulator (“NERSA”), National Consumer Commission (“NCC”) and the National Gambling Board.	
What is the scope of the mandate on competition policy enforcement for each of the agencies?	Horizontal Agreements	No	
	Vertical Restraints	No	

	Abuse of Dominance	No	
	Merger Control	Yes	NERSA, National Gambling Board, ICASA.
	Other	Yes	Defined generally as a “complaint about a practice”: NERSA, National Gambling Board, and ICASA (ICASA’s complaints specified as: “Contravention of telecommunications/broadcast license conditions/legislation”).
Do sector regulators have competition policy enforcement mandate?	Horizontal Agreements	No	
	Vertical Restraints	No	
	Abuse of Dominance	No	
	Merger Control	Yes	
	Other	Yes	
Have the Competition Authority and other agencies signed protocols or memoranda of understanding?	Yes	Competition Commission may enter into Memorandum of Understanding (“MoU”) when there is concurrent jurisdiction with a particular industry.	
	Telecommunications regulator	Yes	MoU with the ICASA published in Government Gazette—September 20, 2002.
	Energy regulator	Yes	MoU with the NERSA published in Government Gazette—November 29, 2002.
	Transport regulator	No	South Africa in process of creating single transport regulator. <i>See</i> http://newspoint.co.za/story/411/51-new-transport-regulator-have-more-investment
POLICY DUTIES			
The Competition Authority has exclusive mandate on competition or multiple mandates	Exclusive Mandate	X	Concurrent consumer protection mandate.
		X	Concurrent IP mandate.
		Other mandates: Yes, <i>see</i> Competition Act, section 3(1)(A) (“another regulatory agency”).	
PORTFOLIO INSTRUMENTS			
Law Enforcement			
Does the Competition Authority have powers to investigate cartels?	Yes	<i>See</i> Competition Act, section 4.	
Does the Competition Authority have powers to conduct dawn raids at premises?	Yes	<i>See</i> Competition Act, section 46 providing that the Competition Authority cannot enter and search a “private dwelling” without warrant.	
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	<i>See</i> Competition Act, sections 7-8 introducing definitions of “dominant firm” by virtue of market power percentage).	
Does the Competition Authority have powers to accept leniency applications?	Yes	Leniency only for Cartels. <i>See</i> Corporate Leniency Policy (“CLP”) at 5.1.	
Does the Competition Authority have powers to seek criminal punishment?	No		
Advocacy			
Can the Competition Authority issue opinions on draft legislation?	Yes	The opinions are not binding.	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact competition?	No		
Rulemaking			
Can the Competition Authority issue guidelines or other type of secondary legislation?	Yes	X	Guidelines on the calculation of fines.
		X	Guidelines on merger control.
		X	Guidelines on the economic analysis of abuse of dominance cases.
		Other comments/notes: <i>See</i> Competition Act, section 79. The Competition Tribunal decides fines on a case-by-case basis. <i>See</i> Competition Act, section 11, “[t]he Minister in consultation with the Competition Commission must determine the threshold of turnover or assets and method for calculation. Also, public notice and comment method required.”	
Research & Reporting			
Can the Competition Authority carry out market studies?	Yes	<i>See</i> Competition Act, section 21(1).	
Can the Competition Authority report to the legislature on the results of market studies?	Yes	<i>See</i> Competition Act, section 21(3), “[t]he Minister must table in the National Assembly any report submitted in terms of subsection.”	
DECISION-MAKING FUNCTIONS			
Aggregated Functions			

Does the Competition Authority make the decision to investigate and to prosecute cases?	No	
Does the Competition Authority make guilty findings?	No	
Does the Competition Authority impose punishments?	No	
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	No	
Can the Competition Authority's decisions be appealed to a court?	No	
Disaggregated Functions—Prosecutorial Model		
Are there different authorities that make the decision to investigate and to prosecute cases?	Yes	Competition Commission investigates, Competition Tribunal and Competition Appeal Court act judicially.
Are disputes presented for decision to a separate entity/tribunal?	Yes	