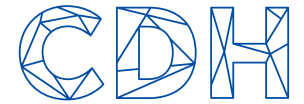


Competition Law

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In this issue

SOUTH AFRICA

- Competition Commission releases inaugural Cost of Living Report tracking price pressures on South African households
- Can a positive ESG story justify an anti-competitive ending?

For more insight into our
expertise and services



**COMPETITION LAW
ALERT**

Competition Commission releases inaugural Cost of Living Report tracking price pressures on South African households

The Competition Commission (Commission) recently published its first Cost of Living Report (Report), which provides insights into how changes in prices for essential goods and services affect South African households. Broadly, the Report finds that lower-income households continue to experience higher rates of inflation, reflecting their greater vulnerability to increases in the prices of basic goods and services.

A comprehensive view of household affordability

The Report builds on the Commission's Essential Food Price Monitoring Report published in 2020 and extends the analysis beyond food to cover a wider range of goods and services that determine household well-being. These include electricity and water, residential rental, healthcare services, transport, education, insurance and internet costs – categories that together account for over 78% of total household expenditure among the lowest-income groups.

Administered prices and household budgets

The Report notes that administered prices such as electricity and water tariffs have increased significantly in recent years, contributing to higher overall household expenditure. Over the past five years, electricity prices rose by 68% and water tariffs by 50%, both outpacing the general rate of inflation of 28%. The increases reflect ongoing efforts to recover operational and infrastructure costs related to the provision of these essential services. The Report highlights the importance of balancing cost recovery with continued access and affordability.

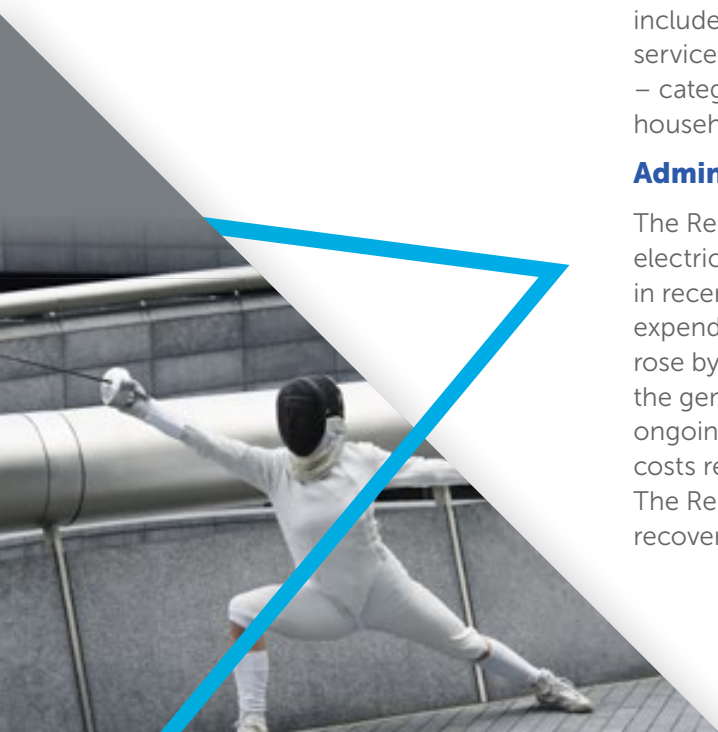
Interest rates and household finance

The Report also examines how rising interest rates have affected households. Over the past three years, average bond repayments increased by approximately 28%, placing additional pressure on household budgets. The Report notes that while interest rate increases were necessary to manage inflation, the effect on disposable income is notable, especially among households with debt obligations.

The Report observes that rental prices have grown moderately compared to overall inflation, by 12% between 2020 and 2025, suggesting relative stability in the housing market. In the healthcare sector, general practitioner consultation fees have increased by 33% over the same period, broadly in line with inflation, with a slightly higher increase of 6.6% in 2025. This may reflect adjustments in response to higher input costs and healthcare demand.

The Report highlights that minibus taxis remain the most widely used form of public transport, carrying more than 10 million passengers daily. While taxi fares remained stable during the pandemic, increases were observed from mid-2022 onwards, largely following higher fuel and maintenance costs. Over time, fares have started to align more closely with general inflation trends.

Education costs have risen faster than general inflation. Between 2020 and March 2025, primary school fees increased by 37% and secondary school fees by 42%, compared to a 28% rise in headline inflation. These trends are attributed to factors such as higher operating costs in schools and increased demand for financial assistance through fee exemptions.



COMPETITION LAW ALERT

Competition Commission releases inaugural Cost of Living Report tracking price pressures on South African households

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Access to the internet is increasingly recognised as an essential household service. Following the 2019 Data Services Market Inquiry, mobile data prices have stabilised, but wired internet costs (such as fibre) rose by 14% between 2022 and 2025, compared to only 1% for wireless connections. This difference may be linked to variations in infrastructure and pricing models across service providers.

Developments in essential food prices

The Report continues the Commission's monitoring of food prices across the value chain. The analysis demonstrates that:

- Canned pilchards have remained relatively affordable, supported by stable retail margins despite producer cost increases.
- Egg prices, which rose during the 2023 avian flu outbreak, have started to ease as supply recovers.
- Brown bread and sunflower oil prices have shown limited downward adjustment following earlier increases, while maize meal prices remain relatively high despite recent declines in maize input costs.

The Commission continues to monitor price transmission dynamics across the food value chain to promote transparency and competitiveness.

Key findings

- Essential goods and services continue to account for the majority of household expenditure, especially among lower-income groups.
- Administered prices and interest rates have been key contributors to rising household costs.
- Education and digital access are emerging areas of concern for household affordability.
- Price transparency and competition remain important for ensuring fair outcomes in essential food markets.

Conclusion

The Report underscores the complex and interlinked factors influencing the cost of living in South Africa. By tracking developments across both food and non-food categories, the Report provides an evidence-based foundation for ongoing policy discussions aimed at promoting affordability, competitiveness, and inclusive economic participation.

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**COMPETITION LAW
ALERT**

Can a positive ESG story justify an anti-competitive ending?

Environmental, social, and governance (ESG) considerations have evolved from toothless corporate catchphrases into key strategic imperatives. Globally, ESG principles now shape investment decisions, corporate conduct, and regulatory frameworks. In South Africa, companies and competition authorities are grappling with how to balance ESG considerations against their impact on competition.

ESG and competition law: A foreign perspective

In 2022, the Dutch Authority for Consumers and Markets (ACM) issued guidelines on sustainability agreements. The aim of these guidelines was to give companies an indication as to when sustainability co-operation agreements would contravene competition legislation and when these agreements would, because of the positive impact on the environment, be exempt from competition law scrutiny. The ACM's position shows a willingness to allow companies, even if competitors, to pursue legitimate sustainability initiatives, even if the conduct may be a technical contravention of competition law. The ACM has approved such sustainability initiatives in the CO2 storage, soft drinks, and floriculture sectors.

Across the Atlantic, and on the opposite end of the spectrum, there have been emerging tensions in the US between sustainability goals and competition law. In June 2024, the US House Judiciary Committee released an interim report alleging that a 'climate cartel' of institutional investors and shareholders colluded to pressure investment companies into reducing carbon emissions and, in the process, reducing output and increasing prices. The report triggered related investigations by the Federal Trade Commission (FTC) into whether ESG-driven investment decisions by groups of firms breached antitrust laws.

This scrutiny has prompted some US investors to reconsider participation in collaborative ESG initiatives. While collective action is often necessary to address global sustainability challenges, and is not inherently anti-competitive in and of itself, such co-ordination must be carefully reviewed and structured to avoid contravening competition law.

Competition risks, such as those currently under investigation by the FTC, arise when ESG collaborations have an impact on key parameters of competition, such as price, volume, customer choice, or quality. Examples of such conduct in the ESG context include:

- Green technologies/manufacturing processes are often more expensive than traditional equivalents, resulting in increased prices for consumers.
- Requiring environmentally friendly products may exclude non-compliant stakeholders from accessing the market and reduce consumer choice.
- Co-ordination on standard setting may be perceived by regulators as market division (i.e. agreements not to compete on certain product lines or for certain customers).



COMPETITION LAW
ALERT

Can a positive ESG story justify an anti-competitive ending?

CONTINUED

Therefore, even well-intentioned ESG initiatives can have an adverse impact on competition and may invite scrutiny from regulators. In many of these jurisdictions it is also not clear whether positive effects on ESG considerations, such as the environment, can justify any anti-competitive effects on a market, as this type of assessment goes far beyond traditional competition law assessment, which focuses on effects on consumer welfare (such as price paid by consumers) and not externalities such as environmental impact.

ESG and competition law: A South African perspective

In South Africa, the balancing act between ESG commitments and competition law compliance is becoming increasingly complex.

In the context of merger control, the competition authorities have a mandate, in terms of the Competition Act 89 of 1998 (Act), to consider the effect of a proposed transaction on five public interest grounds. These grounds go beyond aspects of competition and include considering the impact that a transaction may have on employment, the ability of South African businesses to compete internationally, small businesses (SMEs), a particular sector, and the spread of ownership by historically disadvantaged persons (HDPs). In assessing the effect that a transaction may have on a sector, the Competition Commission, in its Revised Public Interest Guidelines Relating to Merger Control, acknowledges that it would consider *"the effect of the merger on the environment (e.g. pollution, increased carbon emissions, etc.)"*.

Despite expressly acknowledging the transaction's impact on the environment as part of the public interest assessment, it is not clear that ESG considerations are part of the competition authorities' assessment processes. This is evidenced by the limited number of mergers that have been conditionally approved on environmental conditions. Most of the public interest conditions have been geared towards protecting employment, increasing market access to SMEs, and promoting HDP ownership.

However, this approach may change given international trends and South Africa's prominence in the G20 summit. If the pendulum does swing, the question then turns to whether potentially anti-competitive mergers can be justified on ESG grounds?

Although notionally section 12A(1) of the Act allows for mergers that will substantially lessen or prevent competition to be justified on the basis of substantial benefits to the public interest, in practice, these cases are hard to come by. Although the competition authorities seriously consider the public interest when assessing mergers, they are hesitant to clear an anti-competitive merger unless there are considerable public interest benefits that could outweigh this anti-competitive effect. This weigh-up is difficult given that these impacts may not necessarily be measured in comparable metrics.



COMPETITION LAW ALERT

Can a positive ESG story justify an anti-competitive ending?

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In the context of horizontal restrictive practices (i.e. cartels), competitors are prohibited, in terms of section 4(1)(b) of the Act, from entering into an agreement which would result in:

- A fixing of a price or other trading condition – e.g. includes agreeing to charge the same fee for a component of a service offering.
- Market allocation – e.g. agreeing to compete for certain customers or products and not others.
- Collusive tendering – e.g. rigging a bid through co-ordination between the tenderers.

These types of agreements are *per se* prohibited, meaning that they are prohibited in and of themselves, irrespective of the actual effect of the agreement on a market.

Due to the binary nature of these offences, it is conceivable that legitimate environmental co-operation agreements could fall into one of these categories and face competition law scrutiny. Unlike the merger control provisions, the Act does not allow for public interest benefits to justify the conclusion of such agreements. We are also unaware of any case where parties raised a "*characterisation*" point to argue that the object of such environmental agreements, despite meeting all the elements of a prohibited agreement, was not to harm competition and should be allowed.

Conclusion

ESG-aligned investments remain a key driver of long-term value, stakeholder trust, and regulatory goodwill. On the other hand, the legal landscape is shifting to combat greenwashing, and the margin for error is narrowing. In the South African context, in both merger control and restrictive horizontal practices, the position on whether positive ESG effects could justify any anti-competitive outcome is relatively untested and unclear.

As ESG considerations continue to shape the investment landscape, navigating its intersection with competition law will be critical. South African companies and investors must tread carefully, ensuring that sustainability ambitions are pursued within the bounds of legal compliance.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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