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## **MERGERS:** Does public interest tip the scales?

Public interest considerations emerged as a key topic for debate at the Competition Law, Economics and Policy Conference held this month by the Competition Commission of South Africa.

It was clear from the discussions that public interest was important not only in South Africa but in other major jurisdictions in Africa.

Speakers recognised the importance of public interest considerations in merger assessments. How these should be incorporated and weighed against other competition and industrial policy objectives was less certain.

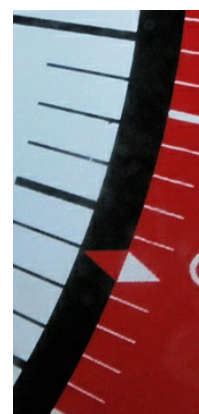
The assessment of a merger's impact on competition often involves robust, evidence-based economic analysis. However, this has not always been the case with public interest issues. The significance of public interest issues in South African mergers, and those of other major jurisdictions in Africa, makes it important for rigour and certainty to be incorporated in public interest assessments.



### **Economics can bring clarity and evidence-based analysis to public interest assessments in a number of areas.**

Public interest assessments require the determination of the effects of a merger on a number of relevant public interest criteria. These include the impact on employment, and on particular industrial sectors and firms. These impact assessments require evidence and analysis to determine if the effects are likely and what the quantum of the effects would be relative to the appropriate counterfactual. The quantitative exercise requires a consideration of the direct effects of the merger and also the indirect impact on the broader economy, and employment through backward linkages along the supply chain. Depending on the nature of the issue, this requires the application of a variety of economic tools drawn from international trade theory, labour economics and input-output analysis.

Where substantial negative public interest effects have been demonstrated, a remedy may be proposed to ameliorate the identified harmful effects. Remedies can take the form of funds established to develop local production along supply chains relevant to the merger. This requires robust analysis to ensure that the fund directly addresses the public interest concerns. The fund must also be adequate and proportional to the public interest issues identified. This, too, involves the quantification of the direct impact of the fund on local suppliers, employment and the multiplier effect this would have on the broader economy through the backward linkages.



In high-profile cases where Genesis was involved, including the seminal [Walmart/Massmart merger](#) and the recent Coca-Cola bottling restructuring, it was demonstrated that economists could bring useful tools to quantify and measure the effects on public interest variables. This greatly improves legal decision-making and the application of a broad set of public interest concepts.



**James Hodge**  
**Director and Managing Partner**  
Competition & Regulatory Economics

