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BIG BUSINESS AND THE WEALTH OF SOUTH AFRICA: POLICY ISSUES IN THE TRANSITION FROM APARTHEID

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The large-scale corporation is at the core of the process of introducing new technologies, developing new organizational and managerial methods, and commercializing new products and services – in plain English, of creating the wealth of nations (Chandler *et al.* 1997). The manner and extent to which corporations will promote a country's economic and social development depends largely on how well the institutions of the market, on the one hand, and of government, on the other, work together in that country. Modern history suggests that such firms emerged and evolved differently in various economic, political, and social settings. Many thought that trade opening, capital market liberalization, and the convergence in consumers tastes and economic ideologies would lead to a convergence in the forms of organizing, managing, and financing business activity. Nonetheless, even in OECD countries, globalization has not brought about the expected convergence of institutions towards a unique model of interrelations between business, governments, markets, and the society at large. This outcome strengthens the hand of those arguing that purely economic, technological, or legal explanations fail to explain the contours of big business and their behaviours. This is almost a truism in all countries, but it appears particularly challenging in analyzing changes in emerging countries undergoing a series of deep economic, political, and social transformations.

South Africa is certainly one such country. Resource endowment already had a tremendous impact in skewing corporate power in South Africa towards a handful of large-scale mining corporations. The apartheid system, in turn, gave rise to a peculiar business environment. On the one hand, firms were sheltered from the rigors of market forces throughout capital controls, external trade policies, and domestic impediments to competition; on the other hand, the strategy of economic self-sufficiency encouraged pervasive state ownership and concentration of financial wealth in the hands of few large-scale diversified economic conglomerates. Moreover, despite the country's relatively developed financial markets, corporate control was entrenched though an opaque ownership structure, that developed partly in response to South African peculiar history. The opening of the country's political system following the election of a government of national unity in 1994 has brought about important changes – privatization, regulatory reform, and financial liberalization – in the policy environment in which firms operate. Moreover, in view of the heritage of the past – most visibly the fact that South Africa disputes with Brazil the dubious distinction of the world's most unequal distribution of income and wealth, and that this closely follows racial lines – black empowerment has been a explicit policy objectives since 1994. Such changes, in turn, have led firms to adopt new strategies such as concentration on core business, demutualization, and primary listing on foreign exchanges (mainly London). As ownership becomes more diffuse, institutionalized, and foreign, South African firms are obliged to follow the new global management mantra of shareholder wealth maximization. The corporate governance code, based on the report of the King Committee in 1994, has made South Africa one of the world's earliest country dealing not only with general business, ethical and environmental standards, but also tackling critical social issues such as affirmative action.

This study explores the political economy of South Africa under apartheid, its legacy, and the policy stance taken by the new authorities (sections 1-3); analyzes the interaction between the broader transformation of the political economy of South Africa and the institutional, legal, and statutory changes affecting corporations, in particular as concerns ownership and competition policy (sections 4 and 5); studies how these factors percolate on financial markets and the functioning of the market for corporate control (sections 6 and 7); and provides some policy recommendations for tackling persisting policy shortcomings. A note on method. This exercise is

not driven by normative objectives, but rather tries to explain why the political transition of South Africa has so far produced the framework for big business which is depicted in this paper. However, the underlying hypothesis is that market failures were at the roots of the model of corporate ownership and industrial organization that had characterized South Africa until 1994, at least, and that recent trends must be assessed against the benchmark of finding an efficient solutions to such failures.

1. The political economy of big business in South Africa: an overview of pre-1994 developments

The history of big business in South (and Southern) Africa is inevitably and closely tied with the discovery of precious metals (Thompson 1995). The early development of the diamond industry was dominated by chaos, improvisation, and individualism, but the early, though gradual, introduction of more advanced techniques (steam traction and underground shafts) led to rapid concentration. It is indeed remarkable that by 1888 Cecil Rhodes's De Beers had achieved the amalgamation of the diamond production in the region through buying out minority investors in the Kimberley mine. This has remained to this day, by and large, the structure of the industry. Rhodes, younger son of an English parson, went on to become Prime Minister of the Cape Colony and to dominate South African politics at the end of the century. Gold, for its part, was discovered in the Witswatersrand region in 1886, and the use of the MacArthur-Forrest process to extract the precious metal from the complex conglomerate soon eliminated the individual digger and led to a fast process of consolidation in this industry too. Mining industrialists formed the Witswatersrand Chamber of Mine in 1889, an early attempt at presenting a common position on key policy issues while also at solving internal problems, such as recruitment, in a co-operative fashion. While still short of complete consolidation, by the end of the century control of the 124 gold companies, that accounted for more than a quarter of the world's total output, was firmly in the hands of less than ten British, French, and German groups.

Between 1910, following the end of the South African (Boer) War, and 1948, when the National Power (NP) came to power and institutionalized the apartheid system, the country experienced a period of rapid growth and progressive industrialization. In 1917 Ernest Oppenheimer founded Anglo American Corporation with capital from Britain, the US, and South Africa to exploit the gold mining potential of the East Rand. Knighted in 1921, Sir Oppenheimer made Anglo American the largest single shareholder in De Beers in 1924 and formally established the cross-holdings link between the two companies in 1929. One year later, in the midst of the Great Depression and with supply exceeding demand, the London-based Central Selling Organisation (CSO) was formed to facilitate more orderly marketing and greater stability in the diamond industry (Knight and Stevenson 1986). The CSO replaced the existing syndicate, formed in 1919, that had proved unstable as its stock accumulated owing to its members' uncooperative behavior. The CSO has been structured around a number of separate marketing institutions: the Diamond Corporation, setting quotas and buying from non-South African producers; the Diamond Producers Association, setting quotas and buying from South African producers and the Corporation; and the Diamond Trading Company, selling dealers the rough diamonds. Throughout the deep financial pockets of Anglo, the CSO has proved the world's most successful commodity cartel, and it is only in the 1990s, following the break-up of the Soviet Union, that De Beers has been compelled to look at new arrangements to keep it functioning. The (limited) backward linkages created by the mining industry and the demand for consumer goods generated by white wage earners provided a stimulus for industrial development. The large mining houses

saw the opportunity for diversification into related activities: Anglo, for example, established African Explosives and Chemical Industries (AECI) in 1924 in association with ICI of Britain, and Boart Products South Africa in 1936 to develop new techniques to use industrial diamonds in drilling equipment for gold mining. Rhodesian Anglo American Limited was established in 1924 to pioneer developments in the Zambian "Copperbelt".

In the third decade of the century, the NP, responsive to the needs of its Afrikaner constituency, created state-owned enterprises (SOEs) to develop a stable industrial base for white rule. In 1925 an explicit policy of protectionism was introduced for supporting fledging import-substitution industrialization (ISI). By raising the domestic price of importables, this policy was supposed to create new employment opportunities for the white minority, thereby alleviating the "poor white problem". One of the major well-springs of the "gesuiwerde" brand of Afrikaner nationalism fostered by both the Afrikaner Broederbond (AB) and the NP after 1934, was the fact that Afrikaans-speaking whites were excluded from the centres of power and influence in the South African economy. The development of Afrikaner business was the object of the October 1939 Ekonomiese Volkskongres (EVK) organised and run by the AB. The EVK chairman declared the aim as: "No longer to tolerate the destruction of the Afrikaner volk in an attempt to adapt to a foreign capitalist system, but to mobilise the volk to capture this foreign system and adapt it to our national character" (COSATU 1997). SOEs were assigned three main policy goals: offset the economic dominance of the gold mining industry, provide some autonomy from foreign producers, and create jobs for Afrikaner workers (Clark 1994). The Iron and Steel Corporation (ISCOR), in particular, was established by the Hertzog administration in 1928. The policy of "Afrikaner favouritism" also included direct assistance to private Afrikaner companies. Interlocking directorships with state corporations gave many Afrikaner undertakings a crucial inside edge. Government contracts and subsidies benefited particularly the Sanlam industrial investment subsidiary, Federale Volksbeleggings. In order to survive, however, the corporations had to depend on capital from the mining industry, forge marketing agreements, with foreign manufacturers, and hire cheaper African workers in place of whites – workers who became increasingly expensive to control and suppress. Through their struggles to balance the conflicting demands of the gold industry, the white political community, and the African workforce, the managers of the state corporations fashioned labor policies – the use of unskilled African labor and highly trained white technicians to oversee them – that were later borrowed by the architects of apartheid and that made the expansion of state-sanctioned racial discrimination economically feasible in the latter half of the century.

At the beginning of World War II, Afrikaner undertakings accounted for only 5% of the total turnover in the urban economy (and only 1% in the mining sector and 3% in manufacturing). By the end of the war, of the 117 undertakings with a capitalisation of more than £1 m, only one (Sanlam) was considered an Afrikaner company.[1] Despite a significant increase in Afrikaner-

[1] Sanlam was founded in 1918 on the slogan "Uit die volk gebore om die volk to dien" ("born out of the people, to serve the people"). It was formed and run until his death in 1953 by WA Hofmeyer, the man who had invited Dr D F Malan to leave his pulpit to edit *Die Burger* and lead the Cape National Party. A long list of NP leaders and ministers served on the board of Sanlam and the companies it controlled, including the official organ of the Cape NP, *Die Burger*. In 1934 the Broederbond formed the Volkskas bank, whose chairman was also the Broederbond chairman. The Bond secretary was the secretary of Volkskas and vacancies on the Volkskas board were filled by the Broederbond's executive council. Later, NP Cabinet Minister and founder of the Herstigte Nasionale Party, Albert Hertzog, was one of the original and long-serving members of the Volkskas board.

owned commerce during the war, by the time the NP took power in 1948, Afrikaner undertakings still only accounted for 1% of mining turnover, 6% of manufacturing, and 6% of finance. During the 1960s the South African economy grew at about 6% per annum, while total employment grew by nearly 3% per year (about the same rate as population growth). Prime minister Hendrik Frensch Verwoerd, in his message to the Afrikaanse Handelsinstituut in 1963, stated that the Afrikaner share of the financial sector had grown from 6% in 1948/9 to 13% by 1961/2, while by then Afrikaners controlled 9% of industrial production (compared to 6% in 1948/9) and 28% of commerce (25% in 1948/9). Sanlam seized upon the drop in share prices and flight of foreign capital following Sharpeville in 1960 as a golden opportunity to increase its shareholdings in a wide range of manufacturing and other companies.

By the 1960s, decelerating growth and increasing isolation on the international arena prompted the NP government into adopting a new set of seemingly contradictory policies. On the one hand, the ISI process was "deepened" to so-called sensitive and capital-intensive industries, such as steel, petrochemicals, and defense. In all these sectors SOEs took the lead was taken. In particular, the South African Oil and Gas Corporation Ltd. (SASOL) was established for strategic reasons to convert indigenous coal into import-substituting oil. The Sasol I plant, operational by the late-1960s, and the much larger II and III refineries, on-stream by the early 1980s, were the major investment in this period.[2] A key role in this period was played by the Armaments Development and Production Corporation (ARMSCOR) and DENEL, arms-producers established to counter the UN embargo on weapons trade. Outside of the SOE realm, the deepening process also concerned capital goods and consumer durables, notably the car industry where European and Japanese assemblers joined Ford and General Motors, which had been active in the country since the mid-1920s. On the other hand, in order to diversify foreign trade away from gold and mining and neutralize the anti-export bias created by protection, a new set of export incentives was introduced. However, the influential report of the 1971 Reynders Commission established to enquire the causes of the slowdown in manufacturing growth fell well short of making recommendations as to the liberalization of the import regime.

The conglomerates modified their strategies accordingly. Taking again Anglo as the best example, 1955 saw the creation of Union Acceptances Limited, South Africa's first merchant bank, to meet the need for a broadly based money market to speedily and efficiently mobilise short-term corporate funds. After succeeding his father as chairman of Anglo and De Beers, Harry Oppenheimer acquired an initial interest in the Hudson Bay Mining and Smelting Company of Canada in 1961, the first major investment outside Africa, and incorporated the major industrial and commercial interests of the group into Anglo American Industrial Corporation (AMIC) in 1963. Scaw Metals was acquired as a prelude to entering the steel industry on a large scale, through the development of the Highveld Process, a novel method of producing steel and separating vanadium from the same ore. The construction group LTA was formed in 1965, the Mondi group – Anglo's entry into the paper/timber industry – in 1967, and in 1971 Minerals and Resources Corporation (later Minorco), based in Bermuda, was formed, largely through funds released by the nationalization of the Zambian Copperbelt. In 1975, the Corporation's interests in coal mining combined to form Anglo American Coal Corporation (AMCOAL), and in 1976 phase

[2] The Organization of Petroleum Exporting Countries (OPEC) imposed an embargo on South Africa in 1973, although the scope of its enforcement was limited by the fact that Iran continued to supply the country at least until the fall of the Shah in 1979. The National Iranian Oil Company was indeed one of the founding shareholders of National Petroleum Refiners of South Africa (NATREF), alongside SASOL and Total of France, until 1989.

one of the Richards Bay Coal Terminal (in which AMCOAL has a significant stake) began. The development of a dedicated rail link to the Highveld made AMCOAL one of the world's principal coal exporters.

During the 1970s and 1980s, however, a serious slowdown occurred in the growth of both output and employment, while population growth continued at around 2% per year. Consequently, real per capita incomes declined during much of the 1980s, a marked degree of income inequality and widespread poverty persisted, and unemployment rose to high levels. The extent to which sanctions had any decisive consequences is a matter of controversy, although there is an emerging consensus that "the end of apartheid was overdetermined [and that sanctions] were among the many potential 'causes' linked to the single 'effect'" (Levy 1999, p. 415). The persistence or intensification of unrest, culminating with the July 1985 declaration of a state of emergency, drained (if not reverted) the capital inflows necessary to finance South Africa's burgeoning current-account deficit. Moreover, during the same period, a fall in real labour cost was not sufficient to offset the steady erosion of the economic viability of gold mining produced by rising costs, falling ore grades, and a stagnant price on the world market (Nattrass 1995). In this environment, Jansen (1999) shows how the inflation-adjusted return on assets of non-financial businesses fell dramatically from the late-1970 highs, turning negative around 1986, despite the much better conditions on world financial markets that South African corporations experienced (at least before the August 1985 debt crisis). Insofar as this trend reflected the contradictions of apartheid, it also explains the decision taken by a group of business people led by Gavin Relly, Anglo's first non-Oppenheimer chairman, to meet with Oliver Tambo, acting president-general of the African National Congress (ANC), in Lusaka in September 1985. The culmination of a long-term rapprochement between business and the ANC, this visit paved the way to a dialogue that was to lead to Nelson Mandela's release in February 1990 and ultimately to his election as President of South Africa on 10 May 1994.

2. The legacy of apartheid's economic policies

A heated debate has concerned the relationship between the apartheid system and South African conglomerates, and capitalism by extension. It is also well known that in South Africa poverty and inequality – of income, wealth, and opportunities – are rampant and deeply linked. Apartheid not only restricted labour and geographical mobility, while at the same time inducing urbanization by the lack of territorial development policies, but also made investment choices that perpetuated inequalities: a good example has been the limited investments made by ESKOM, the electricity SOE, in supplying rural areas and townships. Nonetheless, while apartheid secured a practically continuous flow of very cheap migrant black labor to white mines, farms, and factories, it artificially inflated the cost of (white) skilled labor. In a detailed analysis of the distribution of value added in 1948-81, Nattrass (1994a) indicates that the relationship was at a minimum an unstable one. While in absolute terms the rate of profit remained very high, and much higher than in Europe as expected given South Africa's much lower GDP per capita, the wage share rose steadily during the boom period. This despite official policies – such as the 1967 Physical Planning and Utilization of Resources Act, which limited black employment in certain industries and areas – which continued to skew salaries along racial lines to the advantage of white skilled workers. However, this changed between 1974-81, when the profit share recovered dramatically while "it was the erosion of *white* (and to a lesser extent colored/Indian) product wages that compensated for the rise on *black* product wages! The white share of the wage bill and the

white:black wage gap fell at their fastest pace during the post-war period" (Nattrass 1994a, p. 266, her emphasis). In a similar vein, both Knight (1988) and Lipton (1985) contend that the growth of the national economy increased the costs of the constraints and inefficiencies associated to apartheid, especially the shortage of skilled and educated labour, finally pushing the business community towards reform. With its segmented skilled/unskilled divide, apartheid provided labor markets appropriate to mass production and fordism. As this form of economic organization atrophied globally after the 1970s, so it became a fetter. To the eyes of big business, by the time of the first oil crisis the institutions of apartheid, rather than being functional to capitalist development, came to represent an obstacle to the generation of conditions conducive to adequate capital accumulation.

In a protected environment, economic concentration and conglomeration have been long-standing characteristics of corporate South Africa. The origins of competition policy in South Africa lie with the Regulation of Monopolistic Conditions Act, 1955. Already in 1977, the Mouton Commission alerted the general public to the high levels of concentration in the national economy. As a result, the Maintenance and Promotion of Competition Act, 1979 reinforced the principles of anti-trust and established the Competition Board. This legislation represented an enabling measure, and made no prohibition against any practice or market arrangement, although in practice the Board has taken a more structuralist approach, outlawing several forms of price restraints (Smith 1992, p. 471). The Act was amended in 1986 to give the Board further powers, including the ability to act not only against new concentrations of economic power but also existing monopolies and oligopolies.[3] Despite the amendments, however, the Board has been traditionally berated for its timidity to act decisively to combat market dominance by large firms. Moreover, at the end of the 1980s, South Africa had the most dispersed tariff system in the world, with many tariffs being effectively firm-specific since the number of producers in any one product market was limited.[4]

An influential contribution is that by Fourie (1996), not least because the author has been one of the drafters of the new Act (see below). The data set and analysis concerning industrial concentration levels and trends confirms a net increase in absolute concentration for the 1972-88 period.[5] Equally interesting is the finding that all industries tended to gravitate towards either of the two – low- and high-concentration – nodes, with the former attracting the largest number. The counterpart to this is that large firms account for a much higher proportion of industrial output than in most European and industrializing countries (Kaplinsky and Manning 1998, Table 3). Information at the industry level, although more anedoctical, reinforces the common view that concentration is indeed very high. In the case of beer, for example, Benson-Armer et al. (1999, exhibit 2) show that South African Breweries (SAB), a subsidiary of Anglo,[6] alone accounts for

[3] That legislation, however, did not address the extent of concentration of ownership nor market share; did not include provisions for vertical or conglomerate relations; there was little leverage to prevent (or even know in advance of) mergers and acquisitions which intensify concentration; and foresaw only relatively weak prohibitions of anti-competitive activity.

[4] I thank Raphael Kaplinsky for drawing my attention on this point.

[5] It should be noted, however, that Fourie's findings – and by implication his policy recommendations – have been challenged by Leach (1998), who finds no statistically significant increase in concentration for most indexes at either the 3- or the 5-digit level (see also Reekie 1999).

[6] SAB is now controlled by Bevcon, a holding company jointly controlled by Liberty Life Insurance and one of Anglo's sub-holding companies. In 1983 Anglo, JCI and Liberty Life had injected their SAB holdings into Premier, as part of a deal in which they bought control of Premier from divesting UK-based Associated British Foods. In a

98% of the domestic market: in countries at similar level of economic development such as Argentina, Brazil, and South Korea, to fall in the 90-to-98% range is the market share of the *three* largest breweries. SAB's dominance of the market (and of distribution channels) is such that major global players like Heineken and Guiness have chosen to license their local production, distribution, and marketing to SAB, rather than try to do business on their own.

There are various channels through which a high degree of industrial concentration impact on the real performance of the economy. First, various empirical studies have supported the hypothesis of a correlation between product market concentration and higher wages, which holds after controlling for other industry and workers characteristics (Smit 1999). Second, South Africa has been unique in upper middle economies in the degree of domestic ownership – for example, it was the only country in the world where Toyota, Nissan (until recently), and GM autos were built under franchise. Market dominance by a few major players is indeed one of the main reasons why foreign investors have avoided South Africa after the end of sanctions (UNCTAD 1997). Third, the findings of Leach (1992 and 1997) lend strong support to the view that high industry concentration is associated with dominance by a small set of efficient firms. The debate in South Africa on whether concentrated markets reflect or cause conduct and performance mirrors the central issue in the industrial economics literature. On the one hand, following the traditional structure-conduct-performance paradigm, the so-called structuralist school has argued that industrial concentration fosters collusion and, hence, monopoly pricing. On the other hand, the efficiency hypothesis suggests that an industry has a higher concentration when superior low-cost firms dominate it. Insofar as these results weaken the argument that monopoly power stems from industry concentration, they clash with the call for "deconglomeratization" that has been central to the anti-trust policy reform (see below).

Kaplinsky and Manning (1998), for their part, explain the poor performance of small- and medium-size enterprises (SMEs) in a relatively low-tech industry such as furniture in terms of concentration in the downstream retailing industry. They observe that the largest producer, AFCOL (controlled by SAB) accounts for a much larger market share than the largest firms in other countries, and that "retail concentration [has] taken an extreme form in South Africa" (p. 153). Moreover, Anglo owns controlling shares in three of the largest furniture retailers, with a combined market share in excess of 35%, and in the second-largest paper producer.[7] Sanlam holds similar controlling interests in the largest paper producer and furniture retailer, the latter with a further 35% of the market. While they do not report any conclusive evidence of collusive or predatory pricing, Kaplinsky and Manning argue that, in a country where consumer credit plays such an unusual role in financing furniture purchase, the wider access to finance enjoyed by retailers belonging to conglomerates has given them a distinctive advantage. In turn, as South African consumers do not seem to require a great deal of product differentiation, large retailers have tended to acquire mainly from large producers of standardized goods.

While seemingly specific to the furniture industry, these conclusions point to the importance of capital market imperfections. Indeed, the issue of the concentration of economy-wide power in the hands of a few conglomerates, much more than the debate about competition policy *per se*, has

1989 move to refocus on food and pharmaceuticals, Premier put the SAB holding into Bevcon. This was then unbundled to its shareholders, with the original three receiving the bulk of the shares by virtue of their majority holding in Premier.

[7] Mondi is owned by AMIC, Anglo, and De Beers, holding 51.7, 31.2, and 17.1%, respectively.

taken center stage of the policy debate immediately after the end of apartheid (Gerson 1993; Mangaliso 1996). In the early-1990s, capitalization and turnover on the Johannesburg Stock Exchange (JSE), the nation's only, were "dominated by a small set of very large companies whose principal assets are shares in other listed subsidiaries and associate companies" (Barr et al. 1995, p. 18). The six largest groups – Anglo, Rembrandt,[8] Sanlam, Old Mutual, Liberty Life Insurance, and Anglovaal – accounted for two thirds of market capitalization in 1983 and their importance grew further following the withdrawal of foreign investors caused by the Soweto riots. By the use of a pyramidal structure, ownership in the conglomerates' operating companies and subsidiaries is widely diffused, although control remains concentrated in the hands of the founding family – Oppenheimer, Rupert, Gordon, and Mennel and Hersov, respectively (Table 1). The exceptions are Sanlam and Old Mutual, which were until recently mutual organizations, owned by the holders of their insurance policies. Separation of ownership control of course is not peculiar to South Africa, it is indeed at the core of the development of modern business insofar as it allows to maximize the return from managerial labor, a scarce resource (Berle and Means 1932). What is in turn more specific to South Africa is that the dilution of voting powers has been traditionally obtained through the pyramid structure, since the issuance of non- and low-voting shares, a common device in Continental Europe, was prohibited until recently.

[8] The Rembrandt Group grew out of the Voorbrand Tobacco company formed in 1940 by the 23 year-old former editor of the pro-German student newspaper, *Wapenskou*, Anton Rupert, and two business associates. These three then formed Rembrandt in 1947, together with the Secretary of the Broederbond and a vociferous racist proponent of "total apartheid", D W R Hertzog. The Rembrandt Group ranked 8th in 1995 on the JSE in terms of market capitalisation, while its Swiss-registered sibling Compagnie Financiére Richemont ranked fourth on the JSE.

Table 1. South Africa's largest business groups in the 1980s

	Anglo	Sanlam	Old Mutual	Rembrandt	Liberty Life	Anglovaal
Controlling shareholder	Oppenheimer family	Policy-holders	Policy-holders	Rupert family	Gordon family	Mennel and Hersov families
Core business	Mining (De Beers, Minorco)	Insurance	Insurance	Tobacco (Rothmans)	Insurance	Mining
Other major interests:						
Consumer durables	Toyota SA		Caterpillar*			Grinaker
Financial services	First National	ABSA	Nedbank		Stanbic	
Industrial commodities	AECI, Highveld Steel, Mondi					Alpha
Mining	See above	Engen (oil)	Rand Mines*	Gencor, Goldsfields, Total SA (oil)		Anglovaal Mining, Rand Mines
Other consumer goods	South Africa Breweries and affiliated companies		CG Smith*	Malbak, Stellenbosch Farmers' Winery	South Africa Breweries and affiliated companies	Avtex, Irvin & Johnson, National Brands

* Owned by Barlows, in which Old Mutual holds a 23 per cent controlling stake

As mentioned, the South African group structure has been accompanied by high levels of industry concentration. For about 40 years South African companies profited from ISI, but capital controls also forced them to look inwards to invest their cash flows.[9] This brought about the creation of what all too often turned out to be unfocused conglomerates in which management was stretched to reconcile conflicting development strategies and, again all too often, failed to do so. SAB, which was itself part of the Anglo group, is a prime example. The process of diversification started in the mid-1960s and was driven by a desire to reduce SAB's reliance on a single-product business weakened by steep excise duties. Over the years it garnered two retail chains, a furniture retailer, a furniture manufacturer, a textile manufacturer, a glass and particle board business, a shoe manufacturer, and a match maker.[10] Many of these investments soured, but many absorbed valuable management time that could have been devoted to building the core business. It did have the alternative of not investing the capital derived from its brewing operations and, instead, providing a growing stream of dividend income to its shareholders. This would have been boring and also in contradiction to the accepted management philosophy of the 1960s, 1970s and early 1980s when conglomerate building was viewed as the way to the corporate pot of gold.[11]

A parallel criticism, more financial in nature, is that conglomeration reduces the value of controlled assets to shareholders. According to this view, capital controls have artificially inflated stock prices and thus, by raising the cost of solving managerial inefficiencies by control changes, contributed to the survival of the group structure. The results presented by Barr *et al.* (1995), on which the following discussion is based, seem to contradict this hypothesis. They show that, in the long run, the stock price performance of the five largest mining houses – all belonging to the conglomerates and which are themselves structured as groups – has been roughly in line with the JSE's All Share Index, and vastly superior to domestic inflation. Moreover, and more pertinent to the criticism leveled at the conglomerates, their calculation shows that the mining houses provided significantly higher returns than those that a small investor could have obtained by holding the same portfolio of individual listed shares.[12] They conclude by praising the South African group system as an efficient outcome of a voluntary competitive process to attract the large amount of contractual savings managed by domestic institutions – equal to R790 bn at mid-1997, split between pension funds (R278 bn) and insurance companies (R512 bn). Peculiar to South Africa, however, is high concentration in the financial sector, reflected not only in the dominance of a few

[9] The most important form of capital controls implemented with the 1985 Debt Standstill was the financial rand, a second-tier currency market for non-resident portfolio and direct investment transactions. The abolition of the financial rand in March 1995 amounted to a full lift of capital controls on non-residents, while some remain on residents, although they have been substantially eased over the last five years. By definition, by preventing net capital outflows they should increase the demand for domestically issued securities. Sceptic about the real effectiveness of exchange control, Barr et al. (1995) argue that the "institutionalisation" of household savings that occurred in South Africa after 1970 responded to a rise in the amount being placed in foreign banks, trusts, and mutual funds, as well as in the demand for so-called "pure rand hedges" – companies quoted on the JSE whose assets and earnings all came from abroad.

[10] Another example is Gencor. Originally used to foster Afrikaner aspirations of ownership in mining, it diversified into forest products (Sappi, 38.6% ownership stake), oil refining and distribution (Engen, 49.9%), investments and finance (Genbel, 49.9%) and consumer goods (Malbak, 69%).

[11] "I am (just) old enough to remember the conglomerate-building era of the 1960's, an era that ended so badly that many thought the word 'synergy' would be permanently banned from the business lexicon" (Krugman 2000).

[12] Nonetheless, in 1995 Anglo's shares were trading at 22% below the group's net asset value ("Not a golden titan, more a pig in a poke", *The Economist*, 7 October 1995).

large institutions, all belonging to the conglomerates, but also in the structure of domestic savings, of which a disproportionally high share is generated by the corporate sector (Leape 1995).[13]

A final feature of the South African economy has been its relatively high capital-output ratio. This was common to many industrializing countries, where ISI kept the currency overvalued and encouraged the installation of an excessive number of firms, therefore limiting the exploitation of scale economies, and government credits and fiscal subsidies subsidized large-scale investments. Nonetheless, this can be seen as a rather surprising result in view of the fact that the apartheid system *per se* artificially reduced the cost of labor. Kaplinsky (1995) argues that the economy-wide ratio actually masks important sector-level differences, and suggests that industrial policy's choices, and in particular the preference accorded to petrochemicals and basic metals, crowded out investment in (black) labor-intensive industries such as clothing, leather, and footwear. From a different perspective, Knight (1988) also finds that the quality, rather than the quantity, of investment is at fault, especially in the post-1970 period when the government substituted private business as the main driver of investment.

3. The ANC, the Government of National Unity, and big business

The ANC developed its basic policy statement in 1955. The core economic rights and freedoms included in the Freedom Charter reflected principles – such as equality before the law, the right to equal pay for equal work, a 40-hour work week, a minimum wage, annual leave, and unemployment benefits – current in Fabian and liberal circles in Europe or the United States (Thompson 1995, p. 208).[14] It also included the goal of nationalizing the "commanding heights" of the economy: underground mineral wealth, banks, and "monopoly industry". By the time of its unbanning, however, the ANC had not elaborated any thorough ideas concerning economic policy-making beyond such general statements, as other goals had been prioritized during the struggle period. Facing the challenge of promoting growth and job creation, reassuring investors, and appeasing its constituency and in particular the Congress of South African Trade Unions (COSATU), the ANC produced in 1990 the Discussion Document on Economic Policy (DDEP). Trying to inject "a radical flavour while avoiding compromising socialist rhetoric [the DDEP presents] an unclear (if not incoherent) vision of the role of the state" (Nattrass 1994b, p. 346). Implicit in the ANC's program was the reference to the kind of government intervention that has been identified as crucial to the East Asian miracle (Amsden 1989, Wade 1990). Nonetheless, finding an application of such lessons to the peculiar context of South Africa proved difficult. For example, while the nationalization of mining houses and utilities remained firmly in the agenda, as did breaking up the conglomerates, no indication was provided about the means for achieving this and the likely consequences. On the other hand, the DDEP endorsed the principle of corporatisation – i.e. tri-partite negotiation between government, business, and labor – a style of policy-making that had been conspicuously absent in East Asia but that has become central to the politics of South Africa's economic reform.

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[13] A related issue is whether bank conglomerates use their market power to overprice the stocks they sell to their own mutual funds (thus inflicting a cost on investors in those funds). Based on the analysis of a panel data set on Israeli banks, Yosha *et al.* (1999) could not reject this hypothesis.

[14] "Though the Freedom Charter is not a programme for socialism, it must, nevertheless, be distinguished from a conventional bourgeois-democratic programme" (ANC 1985).

With the economy falling in a prolonged recession, that lasted between early 1989 until 1993, it became clear that, regardless of the government in power, the balance of payments and the inflation danger would severely constrain any attempt to rapidly meet the expectations for the improvement of basic living needs. This progressively watered down the tone of ANC's declarations: for example the distinction between conglomeration – a structure of organizing business activity that was seen as inimical to the goals of redistribution – and large firms – that on the other hand were acknowledged as necessary for growth – was made explicit. Yet, two other principles persisted: the call for controls on financial institutions and subjecting any rolling back of the size of government intervention in the economy to the goal of empowering the historically disadvantaged. Interestingly enough, this shift towards more mainstream recommendations coincided with the formalization of the Triple Alliance between the ANC, the South African Communist Party, and COSATU.

In the run-up to the 1994 election, the Reconstruction and Development Programme (RDP) emerged as the centerpiece of the ANC's platform. Goals were incredibly ambitious: "embedding democracy; disentangling the costly and debilitating legacy of apartheid; accelerating economic growth and new opportunities; delivering affordable services equitably; and fundamentally transforming society, the economy and all spheres of government" (Goldin and Heymans 1999, p. 109). Nonetheless, as a policy framework document, the RDP was deliberately vague on ideological and technical considerations (including that referring to the choice between socialism or the free market), as they were considered "secondary to the overriding concern of meeting human needs, in a sustainable manner" (ANC 1997).[15] A dedicated ministry was created in the Office of the President to manage a supplementary RDP Fund. For a number of reasons – lack of capacity, political weakness, and concerns that the Fund could lead to a dual budgetary process – the RDP Office was closed in 1996. In the first quarter of that year, moreover, the rand suffered a speculative attack, and by late April the currency was 20% below, in nominal terms, its February levels (Aron and Elbadawi 1999).

The role of reduced policy credibility in stemming the reversal of capital flows, as well as calls from business and potential foreign investors, convinced the government of the need to adopt an explicit macroeconomic framework. Adopted in June 1996, GEAR (Growth, Employment and Redistribution) reiterated government's commitment to the existing economic policy framework, identified many of the structural weaknesses inhibiting economic growth and employment, and focused attention on market-based policies to address them. The strategy recognizes that a sustained reduction in inequality requires accelerated job creation, which in turn requires structural transformation to achieve higher and more labor-absorbing growth within the economy. Beyond and above its weaknesses, and especially the possible inconsistency of its assumptions (Michie and Padayachee 1998; Nattrass 1999), this document marks a watershed insofar as it heralds the ANC's full acceptance of the need for "a brisk expansion in private sector capital formation". Gone are all references to democratizing the economy, empowering the historically oppressed, curbing monopolies, and reverting the continued domination of the economy by a minority within the white minority (ANC 1992). Core elements of the integrated strategy for transforming the environment and behavior of both the private and the public sectors are restructuring of the public sector to increase the efficiency of both capital expenditure and service

[15] In the policy guidelines adopted at the 1992 National Conference, it was stated that the state "will be responsible for the provision of infrastructure […] as well as for the furnishing of utilities" (ANC 1992).

delivery, speeding up the restructuring of state assets to optimize investment resources, and accelerating the fiscal deficit reduction program to contain debt service obligations, counter inflation, and free resources for investment.

Political debate has been heated in South Africa as to whether embracing the so-called "Washington consensus" has meant condoning the principles of the RDP. What is sure is that, despite the fact that the Ministry of Finance declared non-negotiable the contents of GEAR, the social partnership process has not been affected. The National Development and Labour Council (NEDLAC) was launched in February 1995, following a unanimous parliamentary approval. NEDLAC is defined as the vehicle to seek quadri-partite (as the community constituency had been added) co-operation on economic, labor, and development issues. While other such institutional frameworks exist elsewhere, NEDLAC is *sui generis*. On the one hand its mandate is seemingly more restricted insofar as it does not encompass macroeconomic concertation like in Italy or Mexico; on the other hand its rather sophisticated organizational structure has allowed it to examine an unusually broad range of issues – including, as it will be shown below, competition policy – although the thrust of its activities has been on labor market and industrial relations issues.[16] NEDLAC so far has played a key role in allaying business fears about the risks of a populist derive, fears that were magnified in the aftermath of the 1994 elections by its relative lack of access to the new political leadership, the influence gained by many ex-COSATU leaders, and the reshuffling of the civil service (Lewis 1999; Webster 1998).

4. Ownership issues

4.1. Privatization

Years of inward-looking development under apartheid and sanctions left the new government with a huge portfolio of economic assets. A timid start of the privatization policy had taken place in the later phase of the apartheid regime, as divestiture "held out the prospect of removing the ownership and control of significant assets from the hands of a prospective democratic government" (Fine 1997, p. 402). SASOL became a private sector company in 1979 when SASOL LTD, the group's holding company, was listed on the JSE. SASOL bought the state's 50% share in Sasol II in 1983 and Sasol III's 50% share was acquired in July 1991. A South African pension fund manager, the Public Investment Commissioners, specializing in managing government employees' pensions, has a 12% holding in SASOL, while offshore investors hold 9% of shares.[17] ISCOR has also been privatized between 1989 and 1995, and foreign investors now collectively own 60% of shares.

Official data suggest that public authorities held a third of the country's total capital stock at end-1996 and public corporations a further fifth. Discounting public infrastructure such as schools,

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[16] NEDLAC has a three-tiered structure. The executive council meets every quarter to endorse the works of the councils; the management committee meets on a monthly basis to supervise and co-ordiante the activities of the chambers; and the latter, consisting of six representatives from each constituency, meet more frequently to elaborate policy reports and recommendations. NEDLAC convenes an annual national meeting, which must be chaired either by the President or Deputy President of South Africa.

[17] Finding the ownership structure of a local company is remarkably difficult as a result of the Companies Act, which until very recently allowed investors to hide behind nominee shareholders. "Govt pension fund Sasol's largest shareholder", *Electronic Mail & Guardian*, 10 September 1998.

hospitals, and roads, the value of privatizable enterprises and other assets liable to be transferred to private investors was estimated to hover around 25% of GDP.[18] At the time of the democratic transition in 1994, the major parastatals operated in monopolistic and sheltered environments and were unable to survive on their own without protection. SOEs were generally characterized by capital starvation, over-borrowing, bureaucratic inertia, and managerial stagnation as the goal of covering the pension schemes of those employed had taken preeminence over other strategic goals (Ministry for Public Enterprises 1999). In some cases the management style bordered on the authoritarian and some SOEs had become locked in the discriminatory policies of the past and found it impossible to adjust to the reality of servicing the entire population. The RDP did not explicitly mention privatization, although it saw receipts from state divestiture as a way to fund its objectives. On the other hand, some SOEs were assigned RDP commitments. ESKOM, in particular, undertook to electrify 1,750,000 homes between 1994 and 2000. By December 1998, ESKOM had electrified 1,451,503 homes since 1 January 1994, of which 280,977 in 1998 (against a target of 270,000).

In GEAR the scope for public sector restructuring program is much wider. The overall thrust of public sector restructuring is to reduce government spending by ensuring that government moves out of providing services that can be provided more efficiently by the private sector; that public-private partnerships are established to increase access to capital and new technologies and to increase efficiency; and that the funds raised from privatization are used to reduce the national debt.[19] In order to reduce political opposition to state divestiture, the government set up a National Empowerment Fund (NEF) in 1998, where a portion of the shares of each privatized enterprise will go. The NEF will buy shares in privatized utilities from government at a discount of up to 20% and starts out with R2 bn from residual stakes in TELKOM (10%), Sun Air (15%), and Airport Company of South Africa (ACSA) (10%). The NEF has three components: a business trust to provide venture and equity finance to Historically Disadvantaged Persons with proven records, a trust to hold shares until they can be sold to appropriate black groups, and a trust to widen shareownership at a later stage. Once the fund gains critical mass and a greater spread of assets, it will be rolled out to the public.

Only two deals of some global significance – the sale of equity stakes to strategic partners in TELKOM (30%) in 1997 and South African Airways (20%) in 1999 – have been completed so far.[20] Relative to other emerging markets, state assets' divestiture was not given a high ranking. A comparison with Argentina and Brazil (Goldstein 1998, 1999a) highlights that no wide-ranging policy document exists which states policy goals; no law was issued to regulate policy-making procedures and *ex post* monitoring; and no agency or specialized ministerial unit has been created, often leaving responsibilites to management, whose agenda usually differs from that of shareholders. Citing the need not to make itself hostage to fortune, the government does not even include in the Budget a projection of the precise timing or amounts to be raised. While the lack of

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[18] "South African privatization: slow but real", *JPMorgan Emerging Markets Data Watch*, 14 November 1997.

[19] Within the context of government policy and in accordance with the procedures agreed in the National Framework Agreement with organised labour, the process of restructuring state assets was tabled in NEDLAC for noting. The Minister of Public Enterprises provided an update on progress with restructuring to the February 1997 Executive Council. This briefing outlined the position with regard to the state-owned enterprises which were at an advanced stage of being restructured. Following the briefing, it was decided that the issue would be removed from the agenda of NEDLAC's Management Committee, but that any party was free to raise it again at any time.

[20] See Goldstein (1999b) for more details on regulatory reform in air transport.

a policy framework has not been conducive to corruption, it has slowed down the process of divestiture, as timetables have not been binding on government, and especially on the Ministry of Public Enterprises.[21] In 1998 a Presidential Review Committee recommended to scrap the Ministry and transfer responsibility to the Ministry of Finance.

With the Mbeki government, in power since mid-1999, privatization has attained a higher policy priority and a new Public Enterprises Minister was appointed. Concessions, or joint-venture partnerships, will be introduced to strategic businesses such as SPOORNET, commuter rail operator METRORAIL, and PORTNET, while an equity or joint venture partner will be found for PETRONET. TRANSNET's privatization, however, remains hampered by its crippling debt and pension fund deficit. While government and TRANSNET have agreed to hive off the R12 bn pension and medical aid deficit into a separate legal entity, the huge debt burden of around R23 bn against equity of R12 bn is still blocking the privatization process.[22] For other SOEs, the need to settle land claims amicably has stood on the way of faster assets disposal. In October 1999 the future sale of the abattoir parastatal, ABAKOR, as well as several non-core businesses of DENEL,[23] and half of the government shares in the catalyst manufacturer SYNCAT, was announced. The ESKOM Amendment Bill was also passed, aiming to convert the electricity utility into a limited liability, tax- and dividend-paying company.[24] Plans are also discussed to float TELKOM in 2001 and to sell off a 5% stake to a black-owned partner and company employees.[25] Moreover, the Public Finance Management Act, 1999 imposes restrictions on the capacity to contract for the borrowing of money, the issuing of guarantees, and the performance of certain other financial commitments. Finally, the 2000 Budget includes an estimate of privatization proceeds.

4.2. Black empowerment

It would be disingenuous to evaluate the results of South Africa's privatization policy solely in terms of receipts. As Goldin and Heymans (1999) tellingly put it, "South Africa's political culture over the past decades, and specifically the institutional fabric that emerged from the struggle against apartheid, cannot be accommodated merely with conventional representative structures"

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[21] "Many of the delays related to [Minister of Public Enterprises Stella] Sigcau's assets could have been avoided and they have cost companies like Safcol, Alexkor and SAA dearly. Several foreign and local investors lost patience and drifted off. The three sales falling under Sigcau's wing, Aventura, Sun Air and Denel subsidiary Sybase SA, have also been plagued by controversy" ("Privatisation: Undoing 100 Years of Toil, *Financial Mail*, 4 December 1998). As regards the sale of Aventura, the highest bidder instructed attorneys to force Minister of Public Enterprises Stella Sigcau to back down from her decision to choose the buyer before a parliamentary debate on the sale. Parliament's public enterprises portfolio committee accused Sigcau of "pre-empting the activities of Parliament" and misreading the 1993 Act governing the state asset, which requires a resolution of Parliament to sanction the decision. In April 1999 the sale was cancelled because the company had failed to meet its payment obligation. "Sigcau under fire for Aventura sale" , *Electronic Mail & Guardian*, 5 June 1998 and "Govt stops Aventura sale", *ibidem*, 16 April 1999.

[22] The pension problem surfaced when the former SA Transport Services (SATS) was hived off as a separate entity in 1990. At that time the pension fund for SATS employees was only about 22% funded.

[23] DENEL, which reported a R 882-million loss in the 1997/98 financial year, has been hit by reduced defence budgets and cancellations of some arms contracts. DENEL's losses are widely expected to exceed R 500-million in the 1998/99 financial. However, further losses are expected to be stemmed by the R 21.3-billion arms procurement package approved in 1999 (*Mail & Guardian*, 21 October 1999).

[24] In terms of the ESKOM Act of 1987, the company was governed by the electricity council and the management board, made up of the utility's executive managers. The two bodies fulfilled the role of the board of directors but were not subject to the sanctions of the Companies Act.

[25] "Telkom to list in 2001", *Electronic Mail & Guardian*, 1 December 1999.

(p. 119). The restructuring program for parastatals was formulated within the RDP's objectives of creating a "democratic, non-racial, non-sexist and prosperous society", within which SOEs should promote the economic empowerment of historically disadvantaged communities. Section 9(2) of the Constitution, in particular, provides that:

> "Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination, may be taken."

The emergence of a black middle class, let alone of an indigenous industrial elite, was curtailed by the apartheid state, in particular through the reservation of certain jobs for the white minority and rules that prevented the majority from owning property in most areas. Nonetheless, in those businesses where blacks were allowed to operate, though on strictly separated racial lines, such as small commerce and, in particular, taxis, a fledging entrepreneurial class took off from the 1960s, creating the condition for the formation of the National Federation of African Chamber of Commerce (NAFCOC). A complex political game developed, in which the state tried to cajole NAFCOC to buy some kind of socio-political peace, and the latter hesitated between accepting collaboration to obtain the lifting of certain trade restrictions and to gain easier access to credit, and the defense of black townships' markets from white businesspeople (Maseko 1999). In this setting some black entrepreneurs progressively expanded their operations, either horizontally by catering to different markets in small-scale commerce, or vertically in the homelands. At any rate, and taking into account that all forms of liberalization were belated at best, the common problems of lack of access to financial intermediation remained particularly severe for small black South African businesses. Building on the tradition of Stokvels – savings clubs whose origins can be traced back to the latter part of the 19th century, when they were mainly burial societies, established to help blacks face high costs of funerals – formal loan schemes were launched in the mid-1980s to serve the needs of the emerging black business class. African Bank, a black-owned institution registered in July 1975, with major mainstream banks holding 25% and the balance held by NAFCOC and about five thousand individual shareholders, also played a major role in early efforts to empower black entrepreneurs.

In other sections of this paper, references are made to the relevant policy actions with respect to black economic empowerment taken in the framework of the legislation governing privatization and competition. It is also important to remind the 1996 Labour Ministry's Green Paper, that required companies to adopt government-sanctioned employment equity plans, subjecting offenders to fines and penalties such as the exclusion from government contracts and subsidies. The new procurement policy for government contracts, for its part, requires consortia to make 40% of equity available to black partners and to subcontract 25% of work to emerging businesses. Another important regulatory change has been the JSE's listings requirements, reviewed in July 1995 in order to harmonize them with international best practice and take account of RDP requirements and the need to promote broader economic empowerment. The threshold requirements for redevelopment entities and the venture capital markets have been reduced, while the requirement that rights offers should be fully underwritten has been removed.[26] The new listing requirements have been criticized for retaining the ability to list first-tier pyramid companies and low voting instruments.

[26] Offers which are not underwritten however, are required to be conditional upon obtaining a specific level of acceptance.

Black capital's participation in ownership has been facilitated by the introduction of special purpose vehicles (SPVs), whereby financial institutions provided funding to black entrepreneurs, who in turn offered as collateral preference equity capital in the companies acquired. Such shares are paid a dividend which is linked to the prime lending rate: any difference between the dividend income received by the SPV and the one payable on the preference shares is rolled over and paid when the latter are redeemed. Many black acquisitions are "ring-fenced": that is, profits from good investments need not be used to cover losses on dud ones, which further reduces the investors' risk. The SPVs gave black entrepreneurs a conditional form of ownership through a mix of preference and ordinary shares. More than half of black ownership on the JSE was created via SPVs. It is estimated that 74% of these transactions are out-of-the-money, defined as below the break-even price (the transaction price of the deal plus estimated accrued holding costs) of the SPV.[27]

Finally, and possibly even more importantly, South African conglomerates, and Anglo in particular, have pursued an aggressive strategy of voluntary unbundling and refocusing on core business. While the latter element has followed from the need to insure competitiveness against the background of the opening of the domestic economy to world competition and weaker gold and commodity prices, voluntary unbundling has been an expedient strategy to appease the possible rise of nationalization sentiments. In order to build up a black capitalist constituency, it was important to conclude highly visible and large-scale deals.[28] The first such deal was Sanlam's sale of Metropolitan Life (METLIFE), an insurance company, to New Africa Investment Ltd (NAIL).[29] In 1996 Anglo broke up its majority-owned sub-holding JCI (Johannesburg Consolidated Investment) into platinum (Anglo American Platinum, AMPLATS[30]), a homonymous mining subsidiary, and an industrial arm, Johnnic. The National Empowerment Consortium – which included 15 trade unions and METLIFE among the 23 partners[31] – bought a 39.5% stake in Johnnic. NAIL's bid for JCI was defeated by the offer from Mzi Khumalo and African Mining, which then proved unable to secure enough finance. SAFLIFE stepped in with a rescue plan to buy 30%, while African Mining was given a one-year option to buy the remaining 4.9%.

The results of black economic empowerment have been *prima facie* encouraging, although certainly not staggering. As far as listed companies are concerned, black capital share in total ownership has risen from 0.6% in 1995 to 9.3% in 1997 (Table 2). In terms of price-earnings ratios, black firms such as Capital Alliance, NAIL, and Real Africa Investment (RAIL) have typically performed favorably in their sectors.[32] Moreover, of the 29 black-controlled listed firms

[27] "Economic transfer remains elusive", *Financial Times*, 20 September 1999.

[28] "This has nothing to do with conventional corporate strategies such as unlocking shareholder value or releasing entrepreneurs from top-heavy management. It has everything to do with guilt and politics" ("Dancing partners", *The Economist*, 27 April 1996).

[29] Sanlam has also unloaded its stake in Engen, an oil company, and part of its interest in a mining house.

[30] Anglo's original investments in the unlisted diamond trading companies were included in the package. Subsequently, De Beers bought out JCI's equity holdings in the diamond trading companies. Ownership of AMPLATS was retained by Anglo to make it the world's principal producer of platinum.

[31] NAIL has a 53% stake in AMB, whose subsidiary AMB Private Equity Partners has a minority shareholding in empowerment groups Kensani (15.5%), Nozala (5.9%) and Siphumelele (7.5%). Siphumelele and Nozala obtained conditional funding from Metlife for their investments in Johnnic through SPVs.

[32] "South Africa's black empowerment", *JPMorgan Emerging Markets Data Watch*, 2 January 1998.

that have been trading for more than a year, about half outperformed the JSE in 1998.[33] Nonetheless, many argue that the characteristics of the black business community that has been emerging since the early 1990s do not respond to the country's needs.

[33] "Paper lions", *The Economist*, 17 April 1999.

Table 2. History of group control of companies listed on the JSE

	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Anglo	52.5	54.1	53.6	54.1	60.1	49.5	45.3	44.2	42.4	33.7	38.2	43.3	37.1	28.3	22.6
Sanlam	9.4	10.7	12.2	11.3	10.7	10.8	9.5	13.2	13.2	15.6	12.0	10.5	12.4	11.0	10.6
Rembrandt	2.1	2.8	3.8	4.4	4.3	7.6	16.1	13.6	15.2	14.6	15.5	13.0	7.8	10.6	9.9
Old Mutual	0.6	2.7	10.6	10.9	8.0	9.8	9.8	10.2	10.4	14.2	10.7	9.7	11.2	10.2	11.4
Liberty	1.1	2.1	2.0	2.3	2.0	2.6	3.4	2.6	3.7	4.7	6.2	7.2	7.3	11.1	11.9
Anglovaal	1.7	1.7	2.1	2.1	2.1	2.4	2.2	2.2	2.5	2.9	3.4	3.6	2.9	3.0	1.5
Foreign control	5.4	5.7	5.9	6.1	4.1	5.1	3.6	2.1	1.9	2.2	2.4	2.2	4.1	4.1	4.0
Mgm’t control	4.1	5.1	3.0	3.5	3.7	6.9	4.9	5.0	6.2	6.8	7.7	7.0	7.5	6.6	7.4
Black control	..	..	..	..	..	..	..	..	..	..	..	..	0.6	6.3	9.3
Other groups	..	..	..	..	..	..	..	..	..	..	..	..	3.4	4.1	6.1
Joint control	..	..	..	..	..	..	..	..	..	..	..	..	2.4	1.5	1.3
Unallocated	19.9	12.8	4.0	1.2	1.8	2.8	1.3	3.2	3.9	5.0	3.5	3.4	3.9	3.2	4.0
Memorandum															
Cumulated share by top 5	65.7	72.4	82.2	83.0	85.1	81.2	80.3	83.8	84.9	82.8	82.6	83.7	82.3	78.2	66.4

Source: McGregor’s (various years), *Who Owns Who in South Africa*.

First, it is important to note that "the accumulation paths of those that operated under apartheid are different from those who have emerged in recent years" (Randall 1996, p. 664). This reflects the lack of legitimacy of those that were, more or less accurately of course, treated as collaborators of the *ancien régime*. In contrast, the new black business elite is mostly composed of people with strong political credentials, usually acquired through stints in prison or in exile, who may have sometimes supplemented these personal assets with education and working experience abroad. Nthatho Motlana, chairman of NAIL and METLIFE, for example, was Nelson Mandela's personal physician.[34] Former ANC secretary-general Cyril Ramaphosa became the chairman of Johnnic and a NAIL director. Mzi Khumalo spent 12 years incarcerated on Robben Island with Nelson Mandela. As they basically bring political capital, rather than managerial skills, black managers are very often sidelined in business structures, and find themselves confined to non-operational, public relations positions.[35] So far at least, there is little evidence of black-owned firms that have thrived on the exploitation of otherwise uncaterred for market niches.

Second, the re-creation of industrial conglomerates, albeit under a different racial ownership, does not seem to make sense following the opening of the South African economy. In taking control of Johnnic in 1996, for example, NAIL bought a portfolio comprising minority stakes in SAB,[36] Premier (a food-and-drinks group), Toyota SA, and Times Media. The financial technique behind the SPVs, moreover, is such that it is successful in financing empowerment only if share prices have risen sufficiently to enable the buyer to repay its borrowings and still retain business control. Trading at a discount to net assets value, as it became common for most black conglomerates, makes SPVs fragile and has contributed to the fall of black control of JSE companies in 1999.[37] In line with trends elsewhere, groups have chosen to adopt a much more focused strategy to unlock their "true" value. Johnnic, for example, is focusing on telecoms (the MTN cellular network), media (Omni Media Corporation), and entertainment.[38]

Third, corporate governance in some of the major companies taken over by black empowerment groups has been defective. The mishandlings at NAIL – by far the largest black group with a market capitalization of about R7 bn – received wide coverage worldwide. The company has a seven-layered pyramid structure that ultimately invests ownership with Corporate Africa, a company with four shareholders – Motlana, Ramaphosa, Dikgang Moseneke, and Jonty Sandler, a white businessman – who combines 55% of voting shares. In April 1999 it emerged that they had awarded themselves share options and restrain of payments for R130 m in African Merchant Bank Holdings, a subsidiary, without informing the board and without clarifying the conditions for exercising the call. The proposal was withdrawn, although the management refused to respond to

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[34] Motlana rise began in 1993 when, under pressure from the ANC, the de Klerk government gave a cellular-phone licence to Mobile Telecommunications Network (MTN), a consortium in which black interests had a large minority share. Motlana's private company, Corporate Africa, owns only 7.1% of MTN, but a complicated pyramid gives him control of 20%. By selling a stake in the holding company of MTN, Motlana was able to buy a share of *The Sowetan*, a black newspaper. He borrowed against that to buy a 10% share of METLIFE, later increased to 30%. "A blacker shade of pale", *The Economist*, 24 June 1995.

[35] An example is African Life Insurance, one of the largest black empowerment deals, owned by RAIL, in which Don Ncube is also the chairman. Despite its core target market being black, the company does not have any African executive or non-executive director other than Ncube, and the only black ever to briefly sit on the board was Wendy Luhabe, wife of Gauteng premier Mbhazima Shilowa.

[36] Johnnic and Liberty Life have agreed that one party cannot sell without first offering its shares to the other.

[37] "Black control of S African companies falls", *Financial Times*, 22 November 1999.

[38] "The fine art of moving and shaking", *Leadership*, vol. 18, no. 3.

questions at the annual general meeting.[39] Motlana and Sandler eventually resigned in May, although NAIL failed to disclose how much they received in severance pay or how much they were being paid for part of their personal stakes in the company.[40] In August NAIL decided to change its name to New Africa Capital, fully enfranchise holders of low-voting N-shares within 12 months, unbundle its media interests, and become a retail financial services group centered on METLIFE, develop a new empowerment model, and introduce a new set of corporate governance principles in line with the British Cadbury and Greenbury codes. Once the N-shares are converted, the largest shareholders will be institutions, led by Hollard and BoE, which will each own about 18%.

The government has instituted a Black Empowerment Commission, chaired by Ramaphosa, to present a policy blueprint on the subject. It is understood that it will recommend to impose prescribe asset allocations in black economic empowerment companies to investment funds.[41] Seemingly moving in the opposite policy direction, in late 1999, the South African Telecommunications Regulatory Authority (SATRA) decided not to require a minimum black shareholding in groups bidding for the third cellular phone license and limited the weigh of empowerment in its evaluation criteria to 25%, against 44% for the bidder's business plan.

4.3. De-mutualization

In common with the United Kingdom, mutual societies have developed into key players of South African finance. The law traditionally prevented them from entering the commercial banking sector, confining them to the issuance of insurance policies and housing loans. Pursuant to the recommendations of the De Kock Commission to liberalize financial services, the 1986 Building Societies Act provided for their conversion from mutual- to equity-based institutions. This had important consequences for the whole financial sector: in particular, United Bank, formed through the merger of United Building Society and Rembrand-controlled Volkskas Bank, subsequently took over Allied Bank to create the Amalgamated Bank of South Africa (ABSA), the country's largest. Sanlam owns 23% of ABSA, of which 13% is held by shareholders and 10% by the policyholders. Standard Bank Investment Corporation (STANBIC) controls Liberty Life, which in turn held a 27.4% stake in the bank, which was largely disposed of in 1999. Liberty Asset Management's remaining 10% interest in held for Liberty Life's policyholders. Old Mutual, for its part, owns 54% of NEDCOR, as well as about ¼ of STANBIC.

The effects of demutualization have been largest in insurance. "Free reserves" (profits made on policyholders' funds over the years, typically from the surrender of policies or policies which lapse when policyholders fail to remit premium payments) are R34 bn for Old Mutual and R10 bn for Sanlam, i.e. a combined 6% of GDP. Old Mutual and Sanlam have an estimated seven million policyholders with life policies, unit trusts, or pension policies, or are involved in investment schemes offered by the life insurers. In September 1998 the National Council of Provinces approved a bill allowing the two groups to hold shares in their own holding companies and another authorizing a one-off levy of 2.5% of their free reserves on listing to be used for the Umsobomvu fund, investing in training and development programs for young people. COSATU

[39] "Nail moves spawn outrage at AGM", *Business Day*, 22 April 1999 and "Nail raises corporate governance issues", *Financial Mail*, 30 April 1999.
[40] "Two founders quit South Africa's black flagship", *Financial Times*, 7 May 1999.
[41] "Govt may be asked to regulate empowerment", *Business Day*, 10 September 1999.

opposed the demutualization, arguing that no proper analysis had been made of its implications on the broader question of transforming the South African economy. In particular, the system whereby one policyholder has the same vote as a fund which represent more policyholders was criticized on the grounds that it weakens the potential for policyholders to assert a collective influence over a significant portion of retirement resources while also further entrenching the power of the management.

In November 1998, Sanlam demutualized and more than 2 million policyholders became shareholders. Finding the demutualisation scheme fair, commercially sound, and attentive to the need to safeguard the interests of policyholders, in February 1999 the Cape High Court gave Old Mutual the go ahead to list. The 3.2 million policyholders could sell the free shares and pocket the cash, sit tight and hold on to the stock, or buy more in terms of a pre-listing offer subject to a minimum investment of R10,000. Old Mutual sidestep what had emerged as a clear mistake in Sanlam's listing in offering policyholders additional discounted shares. This cut out the inevitable "stagging" that allowed policyholders to make instantaneous profits by selling almost immediately, while flooding the market with the stock. About 840-million existing shares were issued to shareholders at R11.25. While at the lower end of markets' expectations, the £1.32 listing price for Old Mutual in London valued it at US$6.69 bn.

There are two major international examples of demutualization: the building societies in the United Kingdom and the insurance companies in Australia.[42] In those cases the policyholders in the core business received either share allocations or were allowed to participate at preferential rates. The UK example has not always been happy. Share prices fell soon after the listings as many private investors tried to sell their shares and take the cash, and there have been fights by mutual building societies to retain their status against "carpet-baggers", who put money into building societies and then voted to change them to banks to get the windfall shares or money. Up to 40% of British shareholders in former mutual companies sold their shares within 6 months, and up to a quarter preferred cash from the beginning. It is estimated that about a quarter of demutualization proceeds have gone to consumer spending and very little (around 2%) to debt reduction, with the remainder being saved.[43] On the other hand, the demutualization of the Australian Mutual Provident Society alone added an estimated couple of tenths of 1% to annual GDP through increased household spending.

In South Africa, the economic impact of demutualization is still unclear. Sanlam's share performance has not been inspiring since floating, although it is estimated that about 25% of the private investors and policyholders sold their shares rapidly. Nonetheless, heavy indebtedness levels may have meant that a larger share of the wealth windfall was used to repay debt rather than spent.[44] The corporate governance impact is also unclear. On the one hand, given that after 1995 the mutuals have issued more new policies to black than to white customers, listing created more black shareholders than any of the high-profile black empowerment asset transfers. On the

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[42] "Demutualisation loses its buzz", *Electronic Mail & Guardian*, 18 September 18 1998 and "Demutualisation in Australia", Reserve Bank of Australia *Bulletin*, January 1999.

[43] "Data Watch: South Africa", *JPMorgan Global Data Watch*, 11 September 1998.

[44] South African savings rates have been rather inelastic to interest rates in the 1990s. Voluntary savings by high-income groups have probably declined on account of the quality deterioration of public goods such as education and protection, so that on an aggregate level households savings are close to zero. Corporate savings also declined following the rise of personal disposable incomes' GDP share.

other hand, insofar as other financial institutions, on whose behalf the mutuals manage huge portfolios, are now major shareholders, the management has buttressed even further its hold on the control levers.

4.4. Off-shore primary listing

A parallel development has been the rise in the number of South African companies present on foreign stock markets. Some South African shares have been internationally traded for a long time, but their rating has been battered by the weakness of the rand. International investors will only buy emerging markets' shares if they are satisfied that, when they do so, they enjoy a substantial premium for currency risk. For management, the weak share price, especially in comparison with their global competitors, puts the company at risk of being a relatively easy takeover target. The way to overcome the problems is to establish a domicile for the company, say, in London or New York. The share price is then valued in a hard currency and there is then no risk premium for changes in the value of the rand. If the company's rand income stream is significant, then the exercise of shifting domicile could be ineffective and the risk premium will still be demanded. Of course, it is different if the company concerned earns most of its income in hard currencies already, such as mining companies that export the bulk of their production, or if its move to a foreign domicile gives it the capacity to generate hard currency earnings.

The first important issue was by Billiton, the world's second largest commodities group, which was listed by Gencor on the London Stock Exchange in 1997 to improve its expansion capability. SAB followed in early 1999, and has subsequently taken advantage of its larger liquidity by acquiring Pilsner Urquell, thus becoming Central Europe's largest brewer and the world's fourth largest. The third, and by far largest and most evocative listing, was Anglo's. In October 1998 Anglo launched an agreed takeover bid for Minorco, in which Anglo, De Beers, and the Oppenheimer family already had a combined ¾ stake, and simplified its highly complex ownership structure. Anglo now comprises of six operational divisions and three big listed companies focused on gold (AngloGold), diamonds (De Beers), and platinum (AMPLATS). The restructuring left De Beers with only two main areas of interest: diamond mining and marketing, plus a 40% stake in Anglo, which in turn holds 33% of De Beers. The Oppenheimer family's 9% stake in Anglo allows it to maintain control over both companies. Following the London listing in May 1999, Anglo joined Billiton and SAB in the FTSE 100 index, and is now the world's largest non-oil mining company in terms of capitalization. Anglo has continued its divestiture strategy in South Africa, disposing of its stakes in Premier Group and in Bevcon, while increasing country diversification by acquiring the Australian gold producer, Acacia Resources, the UK building material company, Tarmac, and the Zambian copper mines. Non-mining companies include two infotech companies, PQ Holdings and Datatec, as well as insurance companies Old Mutual (see above) and Liberty Life. Sappi, through still with a primary JSE listing, has secondary listing in 4 foreign stock exchanges, 52% of shareholders and ¾ of assets abroad, and 85% of earnings in hard currency.[45]

At an initial stage the government has taken a positive attitude, on the grounds that the change of listing of major South Africa companies could portend an increasing incoming revenue stream of dividend income and easier terms to fund new developments in the home country. At an initial

[45] "Sappi boosted by paper market recovery", *Financial Times*, 3 December 1999.

stage the government took a positive attitude, on the grounds that the change of listing of major South Africa companies could portend an increasing incoming revenue stream of dividend income and easier terms to fund new developments in the home country. In February 2000 the government published its criteria for the future.[46] Consideration will be given in cases where:

- foreign expansion is necessary and integral to the company;
- the company is in effect an international concern, deriving a significant proportion of revenue from outside South Africa;
- there are clear monetary and balance of payments benefits; and
- a substantial advantage can be demonstrated over alternative approaches to raising the required capital.

SASOL is reportedly considering moving its primary listing to London, while Didata has proposed the Ministry of Finance to organize a dual primary listing in Johannesburg and overseas.[47]

5. Regulatory reform and the new Competition Law

The 1992 ANC's Policy Guidelines for a Democratic South Africa heralded the intention to introduce "anti-monopoly, anti-trust and merger policies in accordance with international norms and practices, to curb monopolies and continued domination of the economy by a minority within the white minority, and to promote greater efficiency in the private sector". This mandate was made explicit by the RDP, which also mentions the systematic discouragement of the system of pyramids where they lead to over-concentration of economic power and interlocking directorships.

The government presented its proposals in 1997, on the understanding that a uniquely South African approach to competition policy was required to provide a consistent framework conducive to the parallel goals of pursuing competitiveness and efficiency, and ensuring access to many more people previously denied an equal opportunity to participate in the economy (Department of Trade and Industry 1997). A NEDLAC competition policy task team then examined the issue, attempting to reach an agreement on the underlying principles (NEDLAC 1998). There was a consensus on the opportunity of including wider ownership among the objectives of competition policy, alongside more traditional ones such as promoting economy-wide efficiency and adaptability or protecting consumers, as well as on considering export promotion, SME development, and the protection of declining industries as bases for granting a conditional or unconditional exemption for an agreement or category of restrictive horizontal or vertical agreements. On three key issues, on the other hand, the government found itself at loggerheads with the social partners. The proposal of granting the Minister of Trade and Industry the power to review the decisions on mergers on a number of public interest grounds (effect on a particular region or industry, on employment, on black empowerment) was opposed by business, as was the proposal of entitling the tribunal to order divestiture when a prohibited practice by a dominant firm cannot otherwise be remedied, or where a firm repeats a previously prohibited conduct. On both issues, labor asked for a strengthening of the government's powers. Finally, business representatives took exception with the treatment of interlocking shareholding and group relations in the government's proposal, and in particular on the principle that the former represents a

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[46] Budget Speech, 23 February 2000.

[47] "Sasol pursues its international goals", *Financial Times*, 12 October 1999 and "Didata to buy Coparex network arm in Europe", *ibidem*, 17 November 1999.

presumptuous proof of the existence of a collusive behavior between two companies irrespective of the presence of an interlocking directorate.

The Competition Act No 89 of 1998 was signed into law on 20 October 1998, although it only came into effect on 1 September 1999.[48] The Act applies to all economic activity within or having an effect within South Africa, excluding collective bargaining and agreements in the employment context; the rules of professional associations which apply for and obtain exemption on the basis that they are necessary to maintain standards or the function of the profession; conduct having non-commercial socioeconomic objectives; and acts subject to or authorized by public regulation. A three-tiered institutional framework is established: the Competition Commission, acting as the primary interface with the public and dealing in the first instance with all complaints and applications; the Competition Tribunal, dealing with appeals made to the Commission's decisions on less serious matters, as well as with serious matters that are referred directly to the Tribunal; and the Competition Appeal Court, to hear appeals against and reviews of decisions of the Tribunal.[49]

The potential ambit of the prohibitions against restrictive horizontal practices is extremely broad, given the broad definitions of agreement (which includes a contract, arrangement or understanding, whether or not legally enforceable) and concerted practice (which means co-operative or co-ordinated conduct between firms, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an agreement) used in the Act. Confirming the early government stance, firms having a director or substantial (unspecified) shareholder in common which engage in any restrictive horizontal practice are presumed to have agreed to engage therein. This presumption also applies where one of the firms engaging in the restrictive horizontal practice has a substantial shareholder in another of them.[50] Concerning the abuse of dominant position (the power of a firm to control prices, to exclude competition or to behave to an appreciable extent independently of its competitors, customers or suppliers), the onus to prove the non-existence of market power therefore switches to the firm accused of being dominant once it is found to have 35% or more of a market. The Act seemingly embraces an interventionist approach based on traditional US lines, in terms of which three core practices are outlawed – monopolization, attempts to monopolize, and conspiracies to monopolize[51] – instead of European models, where the central focus is on restrictive practices and abuses of dominance. The Act also creates a merger control mechanism. Two thresholds are to be determined by the Minister of Trade and Industry as soon as possible, and thereafter at intervals of not less than five years. If the Commission approves a merger subject to conditions or prohibits an intermediate

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[48] The following is partly based on DTI (1997) and Driver and Van Der Merwe (1998).

[49] The Competition Commission consists of a Commissioner and one or more Deputy Commissioners. The Competition Tribunal consists of a Chairperson and three to 10 other persons appointed by the President on the recommendation of the Minister of Trade and Industry; the Chairperson must assign each matter referred to the Tribunal to a panel composed of any three members of the Tribunal. The Competition Appeal Court has a status similar to that of a High Court, with a minimum of 5 members appointed by the President. At least three of them must be judges of the High Court.

[50] In a concession to the many objections to the proposed inclusion of this presumption in the Act, section 4(3) states that this presumption may be rebutted if the firm, director or shareholder concerned establishes that a reasonable basis exists to conclude that the restrictive horizontal practice was a normal commercial response to prevailing market conditions.

[51] In the US a person does not violate antitrust legislation by securing a dominant position in a particular market if such dominance is a consequence of a "superior product, business acumen or historical accident".

merger, any party thereto may request the Tribunal to consider the conditions or prohibition. Any decision by the Tribunal in relation to a merger may be appealed by any party to the merger to the Appeal Court. This right of appeal from the Tribunal is also given to employee representatives (although the Act does not mention any right of employee representatives to appeal a decision of the Commission on an intermediate merger to the Tribunal). The Act does not provide, as did the Competition Bill, for further consideration of the merger by the Minister of Trade and Industry. Instead, the Minister is given the right to participate as a party in any merger consideration procedures before the Commission, the Tribunal or the Appeal Court.

The consideration of the desirability of mergers is required to follow a two-stage process. A decision must first be taken as to whether or not the merger is likely to substantially prevent or lessen competition by assessing the strength of competition in the relevant market and the probability that the firms in the market after the merger will behave competitively or co-operatively. An anti-competitive merger can be condoned when there are some compelling technological or efficiency gains which would be greater than, or off-set, the effects of any lessening of competition.[52] A merger is in any event justifiable on substantial public interest grounds by assessing the effect that the merger will have on a particular industrial sector or region, employment, the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive, and the ability of national industries to compete in international markets. If a merger is implemented in contravention of the Act, the Tribunal may exercise the power to order a party to sell any shares, interest or assets that it owns. Divestiture may also be ordered where a dominant firm contravenes a prohibition on abuse of dominance and such contravention either cannot adequately be remedied in terms of another provision of the Act, or is substantially a repeat by the dominant firm of conduct previously found by the Tribunal to be a prohibited practice. This provision is borrowed from the US Sherman Act. No divestiture order made by the Tribunal will be of any force or effect until confirmed by the Appeal Court.

While the South African competition policy framework is consistent with international thinking and practice on the subject, the country's particular history charges it with *sui generis* social objectives, and has therefore raised controversial issues. On the one hand, the business community has criticized the inclusion of social goals in the Act; the underlying hostility towards conglomerates and cross-shareholdings; the fact that the onus is on the applicant to prove that a pro-competitive advantage will result from horizontal or vertical agreements; the granting of discretionary review powers over merger decisions to the Minister; and the vague criteria for the appointment of the Commission's officials (Lacey 1998; Norton 1998). In an analysis strongly influenced by the Chicago school's view of competition policy, Reekie (1999) also criticizes the new Act for taking "a prescriptive, structural, or behavioralist *per se* prohibitive stance" (pp. 284-5). On the other hand, the trade unions have argued that the Act "simply promotes competition for its own stake" and does not go far enough in associating it with clearly stated developmental goals; that in attempting primarily to prevent anti-competitive conduct it does not explicitly introduce tools aimed at breaking up inherited patterns of concentrated ownership and control; that the scope of ministerial review discretion should be widened to intermediate mergers; and that the powers of the Commission and related institutions must be reinforced, for instance as

[52] In rejecting the Sasol/AECI merger, the Competition Board had already made clear that efficiency gains are judged on their overall welfare-enhancing attributes, rather than on purely enterprise-centric pecuniary or managerial economies.

concerns search and seizure (COSATU 1998; Creamer 1999). Too little time has elapsed from the passing of the Act, however, and the jury is still out to judge whether it is the best possible legal framework to address the structural problems of South Africa's industrial organization while also assuring the conditions for employment-boosting investment.

As concerns regulatory reform in public services, progress has been far more limited. The apartheid regime left Telkom as "a virtual monopoly [that] answers no one" (Horwitz 1994, p. 385), in severe financial straits, providing services along racial lines, and losing its grip over the most lucrative market segments. After an extensive public debate on the form that the new telecommunications regime in South Africa should take, which included Green and White Paper processes as well as a National Colloquium, the Telecommunications Act was promulgated in 1996 (SATRA 1999). The Act lays out no less than 17 objects, which can best be summarized by placing them in four broad categories: (a) promotion of universal service and protection of consumer interests;[53] (b) ensuring technical standardization, type approval and efficient use of frequency spectrum; (c) empowerment of historically disadvantaged persons; and (d) the promotion of competition and economic development. Composed of 6 councilors appointed by the President, SATRA was established in order to effectively regulate the telecommunications sector and to address the broad and comprehensive mandate prescribed in the Act.[54] However, the Act does not put specific dates to the process of liberalization, so that key decisions are left to the discretion of the Minister.

In the 1997-99 period, SATRA issued TELKOM the first PSTN license, granting a fixed network monopoly to provide a full range of domestic and international services,[55] and 18 Private Telecommunications Network (PTN) licenses. The latter permit large corporations and state utilities to set up their own internal telecommunications network across their branches and offices. The only condition is that they should not carry telecommunications traffic outside their corporate environments. Eighty-eight Value Added Network Services (VANS) licenses were also issued, mainly to Internet providers and banks, for carrying data. Their condition is that they should not carry voice traffic and must also only use TELKOM leased lines. Competition is unrestricted in the supply of customer premises equipment (CPE), which includes telephone sets, PABXs, and cellular phones. A cellular duopoly exists between MTN and Vodacom. South Africa has seen phenomenal growth in the industry of around 50% per annum, and by the end of 1998 there were an estimated 2.1 million subscribers, providing industry revenues of roughly R4 billion per annum. This makes South Africa the largest GSM technology network outside of Europe and is the fourth fastest growing GSM market in the world (Hodge 1999).

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[53] In an effort to promote Universal Service and to protect the interests of the public in general, and consumers in specific, the Act prescribes, in Section 65, the Establishment of a Universal Service Fund, geared at addressing the inequitable provision of telecommunications services and promoting the universal and affordable provision of those services. Specifically, it is used to subsidise needy people and communities (through Telecentres).

[54] The National Electricity Regulator (NER) was established in March 1995, although its mandate is much more limited in view of the even less liberal regulatory regime. NER came under severe pressures in 1998, when the government decided to investigate human resources practices and alleged financial irregularities within the agency. Future options for the electricity sector are discussed in depth in Hansen (1999).

[55] The licence conditions included rolling out 2.81million new lines over the exclusivity period. There are financial penalties for failing to reach these targets (R450 per line for the first 100,000 and R900 per line for each extra line missed). TELKOM wins an extra year of exclusivity if by the end of the fourth year it has achieved a roll-out of 90% of its cumulative 5-year total line target and 80% of its 5-year under-serviced line target. This will be granted if TELKOM accepts a new 5-year total of 3 million new lines and a proportionate increase in its under-serviced line target.

The TELKOM exclusivity, which expires in May 2002, with a possible extension to 2003, is rather long by international standards. The main reason is that the company is required to provide new lines, mostly in rural areas, and to improve its consumer service levels. It must also be noted that, possibly alone among sizeable operators, TELKOM has so far refrained from retrenching staff, despite lines/employees ratios well below the international norm.[56] Faced with uncompetitive phone rates and the inability of the monopolist to meet all SATRA semi-annual targets, big business circles have shown mounting frustration at the timidity of government's policies. In preparation for liberalization, interconnection guidelines were issued in June 1999, while a project for the new numbering plan is currently underway. Following a complain from the South African VANS Association, SATRA recently investigated alleged anti-competitive behaviour by TELKOM, and found that statements TELKOM representatives made regarding VANS has created instability in the industry. In the first showing of regulatory muscles, in September 1999 SATRA directed TELKOM to immediately cease and refrain from making statements to customers regarding the legal status of VANS operators and from implying that other VANS operators are under investigation and that their services will be terminated. In addition, TELKOM was instructed to cease with threats to terminate the existing facilities and services of VANS operators. There is also a legal battle over the provision of Internet services. TELKOM has argued that Internet services constitute a basic service and as such fall under its monopoly. SATRA has ruled in favor of the Internet Service Providers, but TELKOM has taken the battle to the Supreme Court.

6. Financial markets and corporate governance

The literature on law and finance advances the hypothesis that common law countries generally have the best legal protections of investors, and that concentration of ownership of shares in the largest public companies is negatively related to investor protections. This in turn is consistent with the hypothesis that small, diversified shareholders are unlikely to be important in countries that fail to protect their rights (La Porta *et al.* 1996). In the analysis of shareholder rights, South Africa scores are in line with those of other common law countries, and the JSE is indeed by far Africa's largest and most sophisticated equity market. In 1998 it was the third largest emerging markets in terms of capitalization, although in terms of turnover it only ranked 24th due to low trading in closely-held blue chips (IFC 1999). Foreign participation has increased sharply since 1994, and non-residents now own about 9% of the market and account for about 30% of trading.[57] Foreign brokers were invited to the JSE in late 1995 and electronic trading was introduced in March 1996. Also in line with the Anglo-Saxon tradition, banks remain marginal equity investors, as shares represent around 2% of their assets, and by international standards are much smaller than non-financial firms.[58] In contrast, ownership concentration in the largest companies is relatively high, as explained above in greater details.

The substantial relaxation of exchange control has highlighted the critical importance of upgrading financial markets' institutional, technological, and legal infrastructure. Domestic institutions are now allowed to invest up to 15% of their balance sheet assets offshore through the

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[56] The government reckons 10,000 jobs need to be lost at Telkom ("The painful privatisation of South Africa", *The Economist*, 11 September 1999).
[57] "Foreign portfolio holdings in South Africa", *JPMorgan Global Data Watch*, 11 September 1998.
[58] As compared to South Korea, for example, in South Africa much less reliance has been placed on loan finance and much more on equity finance (Kantor 1998).

asset swap mechanism. First, the adequacy of the 1973 law on, which subjected insider trading to criminal prosecution, provided guilty be proved "beyond reasonable doubt", was put in doubt by the fact that not a single person was ever convicted. The Insider Trading Act, 1998 came into force in January 1999. It is enforced by the Financial Services Board (FSB), assisted by an Insider Trading Directorate created for the purpose and on which the securities industry is represented. The FSB has been given wide investigative powers and access to surveillance information, as well as the right to prosecute for offences under the Act where the State declines to prosecute. Crucially, under the new law the state is able to pursue civil actions against suspected insider dealers, so that the burden of proof is only a "balance of probability". Since May 1999, South Africa's insider-trading directorate has collected 2.2m rand ($360,000) in settlements from six cases, and is pursuing 30 others. Second, the 1999 Companies Amendment Bill introduced other changes, including the possibility of share buy-backs, mentioning the need to combat the "negative action" and "indiscriminate market activities" of international speculators and to avert hostile take-overs among the rationales for this legislation.[59] The Bill also obliges any person registered as the holder of securities to disclose to the issuer the identity of each person having a beneficial interest in the securities registered in its name and the extent of such beneficial interest every three months. The resort to nominees made it impossible to detect insider trading and changes of control – prejudicing minority shareholders if a new controlling shareholder is an asset-stripper or somebody in whom they do not have confidence, and impeding the board and shareholders from a defense to hostile takeovers. Competition legislation was also almost impossible to administer. Issuers of securities are now obliged to maintain a register of disclosures of beneficial interests and to publish in their annual financial statements a list of the persons who hold beneficial interests equal to or in excess of 5% of the total number of securities of that class issued by the issuer, together with the extent of those beneficial interests.[60] The other amendments require the appointment by public companies of company secretaries and the disclosure of directors' emoluments. While details of all benefits must be disclosed, they need not be disclosed in relation to each individual director. Instead, the information is required to be furnished in two separate categories, the first relating to executive directors and the second relating to non-executive directors. This is the result of the Bill's avowed intention to balance the individual director's need for privacy with the need for greater disclosure. Third, South Africa has been at the forefront of the debate concerning corporate governance. The King Report, released in November 1994, contains a Code of corporate practices and conduct (based largely on a similar Code produced by the Cadbury Committee in the United Kingdom) which is intended to apply to all companies on the main board of the JSE, to major public entities, and to large unlisted

[59] A company is now permitted to acquire shares issued by it if authorised to do so by its articles of association and a special resolution passed at a general meeting of its shareholders. However, no company may make any payment to acquire its own shares if there are reasonable grounds for believing that the company is, or would after the payment be, insolvent (in the sense that the fair value of its assets would be less than its liabilities) or unable to pay its debts as they become due in the ordinary course of business. Upon the acquisition by a company of its own shares those shares will be cancelled and restored to the status of authorised but unissued share capital. The company will therefore not become a member of itself and its share capital accounts will be reduced accordingly. subsidiaries shall be entitled to acquire not more than 10% of the issued share capital of their holding companies and other subsidiaries of their holding companies. A company cannot give financial assistance for the purchase of its shares. In September 1999 South African Breweries announced its intention to buy back 10% of its shares from three companies that control 26.6% of its equity. Liberty Life, Anglo American, and Johnnic will unbundle the shares they own through Bevcon, a listed South African company, and sell the 10% back to SAB.

[60] The Trade and Industry Ministry was understood to prefer a 10% disclosure requirement ("Disclosure law to kick in at 5%", *Business Day*, 23 March 1998).

companies. The Code considers that a unitary board structure, rather than a management and a supervisory board structure, is appropriate in South Africa; that boards of directors should not have less than two non-executive directors of standing; that the chairman of the board should be a non-executive director and should not also be the chief executive;[61] that the board should establish a remuneration committee; and that directors' fees should be separately and fully itemized and disclosed. The listings requirements introduced in 1995 require listed companies to disclose, in their annual financial statements, the extent of their compliance or non-compliance with the Code. The government also prepared a protocol on corporate governance of all state entities, which includes the formulation of dividend policies, together with clear indications of the objectives and performance appraisal norms for all agencies.

Yet, notwithstanding the contribution of all such measures to make financial markets more transparent and business behaviors more attentive to ethics, corporate governance remains a problem, as shown by black empowerment scandals and the recent bankruptcy of Macmed, the country's largest so far.[62] The outcome of the forensic audit will determine whether the company's demise came about due to gross mismanagement or suspected fraud. Nonetheless, various elements already point to the severe lack of transparency, including in the liquidation procedures. Under South African law, the liquidators are appointed by the master of the local high court, who is required to give preference to liquidators put forward by the group representing the highest number of creditors and value owed. The decision of the Pretoria court to choose an unwieldy six-strong panel, rejecting two of the creditors' nominees and adding four other names, came under the spotlight when the Office for Serious Economic Offences decided to raid the residences of court officials and liquidators alike, as part of a probe into long-standing allegations over the discretionary appointment of liquidators. The raids followed the appointment of a ministerial committee of inquiry into the manner in which liquidators are appointed to cases of insolvency on a discretionary basis by the courts.[63] Moreover, the official commission of inquiry that is working to uncover the truth behind the failure is being held behind closed doors. Section 417 of the Companies Act creates the means for liquidators trying to unravel the facts in a corporate liquidation. However, subsection 7 says any examination or inquiry (under sections 417-418) and any application therefore shall be private and confidential, even if it allows the master of the court to use discretion in declaring the hearings open to particular people or the general public. Shareholders may attend the hearings, as may creditors, liquidators, forensic auditors and witnesses and their legal counsel. But the media and the public at large (including offshore investors, sector workers and shareholders in other companies in the same industry) are generally excluded. Only one such inquiry, the Tollgate case, has been open to the public in the

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[61] In three major foreign-listed South African blue chips (Anglo, Billiton, and Old Mutual), however, the same individual still combines both roles.

[62] Macmed was one of South African biggest and supposedly most dynamic health-care groups. According to court papers submitted in support of the application for liquidation, the irregularities ranged from hidden subsidiaries to preferential financing arrangements for Macmed equipment and mismanagement of funds provided to subsidiaries which were meant to build or operate hospitals, most of which were unprofitable. Moreover, in May 1999 several directors received a restraint of trade payment, binding for three to five years, of up to R3 m each, more than 70 times the amount usually granted to Macmed management. Macmed owed 16 banks about US$160 m, and it appeared that some institutes had exceeded the 10% ceiling of capital base at risk to any one creditor. In response to a liquidity squeeze, one such institution, black-managed FBC Fidelity Bank, was put into curatorship in November 1999 together with sister company Thebe Financial Services.

[63] One liquidator said discretionary appointees often appeared from nowhere on numerous occasions in large insolvency cases ("Dawn Raid on Master of High Court", *Business Day*, 25 October 1999).

past five years. More in general, the Macmed case highlighted the gap between the wide-ranging transparency guidelines contained in the King code and the lack of enforceability mechanisms. The Open Democracy Bill currently under discussion at the parliamentary committee level, is an attempt to legislate transparency in the public and private sectors. The section dealing with the private sector may include clauses allowing members of the public to request company information if they could prove it vital for them to exercise or protect a right, possibly including disclosure of things such as directors salaries.

7. The market for corporate control

In the context of trade opening, unbundling, privatization, and development of capital markets, the market for corporate control has been buoyant in the second half of the 1990s. Of the twenty largest South African deals reported in 1992-98, 75% corresponds to the simplification of the corporate structure of traditional conglomerates; 10% to consolidation in the financial industry; 10% to foreign acquisitions by Sappi, a paper and pulp manufacturer; and only one deal – Trans Natal's acquisition of Rand Coal to form Ingwe Coal in 1994 – is a "genuine" South African merger. The fact that South African conglomerates have made practically no large acquisitions in their own country is indeed remarkable. This holds true also for those sectors, like the utilities and Internet-related investments, where family-controlled business groups in OECD countries have been active even while they refocused their portfolios on the core business.[64]

Notwithstanding its Anglo-Saxon business culture, South Africa, however, has historically experienced little in the way of hostile take-overs, and those attempted have generally failed. Investor's attempt to take over Board of Executors in the late 1980s was an early and isolated example. More recently, African Life's bid for Nourish Holdings also failed, but pointed to the possibility of contested bids becoming a more frequent occurrence. In 1998 Dimension Data succeeded in a hotly contested battle with rival bidder Spescom Electronics for Plessey Corporation, after increasing its initial bid. Of far greater consequence is the unsolicited offer made by NEDCOR, the banking group, in November 1999 to acquire at least 50.1% of STANBIC.[65] The take-over would place the merged bank amongst the top 150 banks internationally. STANBIC remained defiant to the bid, saying NEDCOR had underestimated the difficulties of a merger and should offer a higher cash alternative. On the contrary, Old Mutual, which controls NEDCOR and is the single largest STANBIC's investor, came out in favor of a merger, threatening to dump STANBIC shares if the deal did not succeed.

Insofar as it is the first large-scale hostile takeover in the history of the South Africa market for corporate control, the deal provides a case study of the attitude of authorities.[66] Nedcor first asked the Reserve Bank to review its application, but STANBIC, which claims the Competition Commission should have a say in the matter, said it will go to the high court to seek an order on

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[64] The best example are the Swedish Wallenberg and Italian Agnelli dynasties.

[65] Technically there is no offer document on the table as the raider is waiting for regulatory approval. Shareholders are offered an exchange ratio of one Nedcor share for every 5 ½ Stanbic shares, valuing Stanbic at about R 29.2-billion. Although Nedcor wants eventually to buy 100% of Stanbic, it has structured the intial transaction as a partial 50.1% bid. This is because some of the Stanbic stock is held within the group, which might make it impossible to reach the 90% acceptance level needed to force a sale by remaining minority shareholders.

[66] "Competition Board to rule first on merger", *Electronic Mail & Guardian*, 8 December 1999 and "Manuel dragged into merger fray", *ibidem*, 13 December 1999.

what body should rule. Reserve Bank Governor Tito Mboweni then stepped into the fray urging the two banks to cool a war of words he said was tarnishing the sector's reputation. This was interpreted by the target as an inappropriate intervention. STANBIC also dragged Finance minister Trevor Manuel into the battle, presenting a court affidavit arguing that he, not the registrar of banks, must consent to the bid. The Pretoria High Court ruled that the Minister of Finance has the final say about the proposed the hostile takeover, although he has to consult the Competition Commission. The ruling may speed up the process as it means that Nedcor's bid will not have to drag through a full scrutiny of the Competition Board as well as banking authorities. STANBIC counterattacked by appointing to the board former Reserve Bank governor Chris Stals and Transnet managing director Saki Macozoma, a senior ANC member.

While it could be argued that private economic agents have pulled public authorities into the arena, what seems clear is that the latter have not shied away from intervening. In view of the significant market-share erosion and labor redundancies that are likely to be created by putting two large banks together, it is not surprising that political authorities are being involved in such restructuring. More interesting is to note that the NEDCOR-STANBIC saga has implicitly highlighted the inconsistency between two key objectives of the authorities, deconcentrating the economy, on the one hand, and supporting the creation of national champions, on the other. Despite all the debate about the impact of globalization on the state, the recent experience of various European countries in industries as diverse as aerospace, banking, and telecoms show that governments still vocally claim their role in carving up economic power. Thus South Africa is no exception.

8. Some conclusions

In all countries, the debate on concentration, competition, ownership, and corporate governance is embedded in the political economy, with concerns about economic power and social or economic justice predominant. This last section of the paper attempts to answer three major questions. How does the situation and role of big business in South Africa in the year 2000 compare to that prevailing during the apartheid regime? How succesful is the current regulatory framework in maximizing big business's contribution to the wealth of South Africa? And finally, to what extent the transition of South Africa from a race-based political system to a democracy has influenced the parallel transformation of a closed economy into a full-fledged participant to the world trading system?

Over the last ten years, South Africa has adapted its institutional and regulatory framework to the post-apartheid reality, thus remaining one of the world's most sophisticated emerging economies, but that more should be done to increase productivity growth and create new wealth and more jobs. While the perception that the country is still in transition is widely shared, the direction of changes and the shortcomings of the present state are much more a matter of controversy. On the one corner sit those that argue that, as the ANC has been unable to breach the boundaries of change erected by the elites, the hopes generated by the transition to democracy are yielding to the grimmer realities of thwarted change (Marais 1999). For example, Michie and Padayachee (1998) argue that "the specific interests of conglomerates have been allowed to dictate the government's policy agenda, including, for example, the successive abandonment of controls on capital movements" (p. 625). In other words, the Washington consensus came to South Africa and did not deliver. On the other corner there are those arguing that, far from following standard orthodox and conservative economic policies, when in government the ANC has not been able to completely

get rid of its interventionist tradition, a situation made worse by the accumulation of legitimate pent-up demands during the apartheid regime. In assessing its achievements, for example, *The Economist* compared the Mandela administration's success in turning South Africa peacefully into a majority-ruled democracy with its shortcomings elsewhere – passing labor laws that make it expensive to hire and almost impossible to fire, letting "privatisation creeps along like a salted slug [and allowing] cronyism and crookedness pervade the lower and middle levels of the ANC".[67]

The evidence provided in this paper allows a more nuanced assessment. The lifting of residual exchange controls, the sale of state-held enterprises (albeit slow), the lowering of external trade tariffs have all contributed to shake up South Africa' s cosy corporate world. The first major industry that was affected by restructuring was mining, because it was most closely engaged in the global economy. The great Transvaal houses, that dominated the economy for a century or so, are fast disappearing, to be replaced by focused operating companies with only a few dozen head office employees. Giants such as Billiton and Anglo, that were truly global companies to start with, needed to compete for capital among a relatively small pool of global investors who invest in mining and resource stocks and had to restructure to have access to foreign capital for their expansion ambitions offshore. Industrial conglomerates also unbundled and created more investor-friendly corporate structures. Another major industry wave has taken place within financial institutions, where consolidation started with the demutualization of building societies, continued with the creation of ABSA and First Rand, and appears to be nearing its climax with the NEDCOR-STANBIC saga.

Demutualization and offshore listing have signalled the globalization of South African capitalism and have contributed to transparency, but they also showed its uneasiness with some of the ANC policies. While political circumstances have of course deeply changed, the ethnic devide has always been at the core of the political economy of South African capitalism. At the height of apartheid, Afrikaan nationalists regarded the (English-controlled) groups with great hostility and considered them as rival sources of power unfriendly towards the NP state. In the 1960s Harry Oppensheimer helped Akrikaneer businessmen to win control of General Mining, avoiding any nationalising tendencies the Nats may have held at the time. The ANC government has cautiously approached affermative action, refraining from the most activist stances, such as mandatory unbundling or nationalization, that some feared it could embrace to placate the pressure on a new government to do something about inequalities in economic power. Optimists like to argue that, in the long run, black empowerment will create a new middle class centered on young black managers and other professionals. Moreover, black shareholders, particularly if they are unions' investment arms, should foster calmer labor relations. One problem is that so far black empowerment deals have done little to establish genuine businesses. To impress the government and perhaps to avert racial unrest, white banks and businesses decided that they should nurture black capitalists. Because few blacks had much capital, banks lent money to well-connected black consortia that wanted to acquire shares in white businesses. The white firms offered their equity at a discount, because they thought that having black shareholders was politically sensible. The new black moguls were to repay their loans when their shares appreciated in value. No amount of financial engineering, however, can deal with the fundamental flaw of black empowerment, South African-style: that the emphasis has been almost entirely on taking over chunks of existing

[67] "Mbeki's South Africa" and "Mandela's heir", 29 May 1999.

enterprises, rather than creating new ones. If anything, the huge sums poured into flashy, paper-shuffling empowerment deals has reduced the amount banks can spare for real black entrepreneurs.

The concept of black economic empowerment is thus being questioned. It is no longer just a crude shareholding structure that determines what is an economically empowered company or not. Many would argue the most empowering thing for most black South Africans would be a job. Yet a third of the workforce is out of work, and black empowerment has created almost no new jobs. Then, if policies should be aimed at ensuring equal opportunities, and not solely equal outcomes, regulatory reform is the most important arena. Looking at the comparative experience of OECD countries over the past two decades, Haffner *et al.* (1999) examine factors affecting both product market competition and labour market flexibility. They find that where product market regulations restrict competition and state interference in the business sector is high, labour markets tend as well to have tight legislation protecting workers, especially those under permanent contracts. In particular, countries with restrictive product market regulation and tight emplyment protection legislation tend to have lower employment rates in the non-agricultural business sector. At the same time, biases in the regulatory environment will tend to distort the composition of employment. In particular, higher regulatory and administrative burdens for corporations relative to sole proprietor companies tend to increase the proportion of self-employed in the non-agricultural business sector.

Looking at the product market competition side of the equation, in South Africa the progress has been rather piecemeal. First, full privatization has only concerned peripheral activities. Although South Africa's SOEs are generally not huge loss-makers and have proved able to meet RDP targets, the international experience forcefully suggests that the private sector can manage these big assets more productively than the government. Second, the competition framework has been traditionally teethless. The recent legislative upheaval goes a long way towards addressing the needs of a modern market economy and is generally in line with recent developments in antitrust policies in OECD countries. It is *sui generis*, however, in explicitly linking competition policy with black empowerment, two domains that should be kept separate insofar as the risks of conflicting interests are particularly damaging for economic welfare. Third, market opening in network industries is also slow. The experience in domestic air transport, where route restrictions were uplifted earlier, has not been particularly positive, as the dominant carrier has been able to ride competitors out of the market, with a corresponding return of fares to pre-liberalization levels. The next few years will be crucial, with the new government apparently committed to fasten the pace of privatization, proceed with telecoms liberalization, and enforce the new antitrust legislation.

The complement of such larger needed flexibility, not least from the political viewpoint, must be found in governance. Like their counterparts abroad, South African stakeholders – including investors – are criticizing corporations for their lack of transparency in business dealings. Criticism has also been leveled at monitoring bodies, such as the JSE, for its lack of effort in demanding transparency from listed companies. The question raging now is whether voluntary compliance with codes such as the King is enough, or should key principles governing these codes be legislated. It is now widely accepted that good governance should be practised by companies for the right reasons – because it enhances organisational performance and creates shareholder and stakeholder value. Nonetheless, even if its is accepted that good governance does indeed add value, companies may find ways to excape sanctions. In South Africa, stakeholder activism is still rarely practised. The largest institutional investors still respond to insurance companies that,

despite unbundling, remain important investors in non-insurance businesses, financial and non-financial alike. Individual shareholders, for their part, are far from approaching the critical mass that is necessary to surmount the usual collective action problems. It is probably only the media that is starting to play a more assertive role,[68] although their scope for activism is limited by state control, ownership by black empowerment groups, and the risks of being blackmailed by advertisers in an economy where market power remains relatively concentrated.

[68] In Chile, for example, the takeover of the country's dominant electricity utility, Enersis, one of the largest in emerging markets, was stalled for some months by revelation made in the press that the management had negotiated lucrative additional terms for themselves based on important agreements concerning the future strategic direction of Enersis that they never told other shareholders about. The case led to a new set of laws governing the market for corporate control and a great improvement in the local corporate governance climate.

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