Competition Law as a Catalyst for Access to Education: A Review of a Drive against Anti-Competitive Practices in the Procurement of School Uniforms by the Competition Commission of South Africa*

1 Introduction

Exclusive agreements and high prices in some markets can harm competition, competitors, and consumers and may also affect the enjoyment of constitutionally protected rights. Some practices impinge on aspects of citizens' fundamental rights, such as the right of access to education. In response to complaints from parents regarding anti-competitive practices involving schools, suppliers and/or manufacturers, the Competition Commission has undertaken a series of interventions to enhance competition in the procurement of school uniforms and other related materials. The initiative was aimed at promoting and balancing increasing competition in school-uniform procurement and to provide parents with more choices to ensure that they are not compelled to purchase school uniforms exclusively from selected suppliers. The initiative not only achieved market competitiveness, but, to a certain extent, it also secured the constitutional right to access to education. Therefore, the note examines the effectiveness of the Competition Commission's interventions on the procurement of school uniforms and showcases the role the agency played in promoting access to education.

The Competition Act 89 of 1998 (the Act), as amended, is structured to respond to the unique socio-economic conditions of South Africa. The objectives of the Act overlap with the aspirations of the Constitution of the Republic of South Africa, 1996 (the Constitution). Competition law is filled with constitutional imperatives. The preambles to the Constitution and the Competition Act share important themes (*Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd* 2022 (4) SA 323 (CC) par 71). At their centre, both preambles reflect on the injustices of the past and set the norms and values for the future. Both preambles underscore human dignity, equality and freedom as cornerstones of democratic values of South African society.

* The author wishes to express his heartfelt thanks to Dr Siyabulela Christopher Fobosi, who read an advanced draft of this manuscript and provided him with advice on how to improve the manuscript. The author also wishes to thank the reviewers and editors for their sterling job.

https://doi.org/10.17159/qm3g4069

The Competition Commission (the Commission) is responsible for investigating and prosecuting alleged prohibited practices under Chapter 2 of the Act. While the Act limits the functions of the Commission to those listed in section 21, a deeper contextual analysis reveals that the Commission, in its prosecutions, also uses the Bill of Rights to bolster its arguments (see s 21 of the Act setting out the functions of the Commission). The Commission derives these powers from section 1(3) of the Act, which provides that "[the] Act must be interpreted in a manner that is consistent with the Constitution and gives effect to the purposes set out in section 2 of the Act." In *Competition Commission of South Africa v Mediclinic Southern Africa (Pty) Ltd (Mediclinic)* (*Mediclinic supra* par 35), the Constitutional Court reaffirmed the constitutional obligation to interpret legislation in a manner that promotes the spirit, purport, and objects of the Bill of Rights (*Mediclinic supra* par 9, citing *Chisuse v Director-General, Department of Home Affairs* 2020 (6) SA 14 (CC) par 58; *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism* 2004 (4) SA 490 (CC) par 72; *Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd In re: Hyundai Motor Distributors (Pty) Ltd v Smit N.O*. 2001 (1) SA 545 (CC) (*Hyundai*) par 21–22).

The complementary relationship between the Competition Act and the Constitution has once again come to light following the investigation into the school uniforms market. Owing to numerous complaints, the Commission has investigated complaints concerning high school-uniform prices and potentially anti-competitive supply arrangements involving schools and suppliers (Competition Commission of South Africa "Outcomes of the Competition Commission's Interventions in School Uniforms Procurement: From 2010–2023" (June 2023) https://www.compcom.co.za/wp-content/uploads/2023/11/School-Uniform-Outcomes-Report.pdf (accessed 2025-03-09) par 1.1 (Report of the Competition Commission)). The cost of school uniforms and other education-related materials may reduce attendance and enrolment among learners from lower-income families (Shanks and McKinney "Cost and Affordability of School Uniform and Child Poverty" 2022 54(1) *Scottish Educational Review* 1 2; Ansari, Shepard and Gottfried "School Uniforms and Student Behavior: Is There a Link?" 2022 58 *Early Childhood Research Quarterly* 278–286, citing Draa *School Uniforms in Urban Public High Schools* (doctoral dissertation, Youngstown University) 2005; Gentile and Imberman "Dressed for Success? The Effect of School Uniforms on Student Achievement and Behavior" 2012 71(1) *Journal of Urban Economics* 1 7; Hoffler-Riddick and Lassiter "No more 'Sag Baggin': School Uniforms Bring the Focus Back to Instruction" 1996 5(4) *Schools in the Middle* 27 27–28). In developing countries like South Africa, ancillary costs of education, like school uniforms, continue to impede access to education (Bonke "Do Danish Children and Young People Receive Pocket Money?" 2013 *The Rockwool Foundation Research Unit, Copenhagen Study Paper No* 57 1–16). Evidence from an empirical study in Kenya suggests that providing free uniforms improved school attendance by 6.4 percentage points (Mutegi "Demand for Education in Kenya: The Effect of School Uniform Cost on Access to Secondary Education" 2018 5(2) *European Journal of Educational Sciences* 34 36).

The Commission aimed to increase competition in the market and provide parents with more choices to ensure that they are not forced to purchase school uniforms and other related materials exclusively from selected suppliers (Report of the Competition Commission par 1.1 and 1.2. In the context of school uniforms, both manufacturers and suppliers, in certain instances, are in the same market. Manufacturers sometimes sell school uniforms directly to schools without the involvement of the supplier. Collusive agreement occurs when a supplier or manufacturer of school uniforms enters into agreements either about prices or market division. In some cases, as reflected in the case law discussed below, a supplier or manufacturer would enter into an exclusive agreement with certain schools that they are only going to buy school uniforms from them for a certain period.) The competition risks associated with collusive agreements (however, it must be noted that collusive agreement is prohibited only if it has the effect of substantially preventing or lessening competition in a market. This opens an opportunity for justifications in that if a party to the agreement can prove that any technological, efficiency or other pro-competitive gain resulting from that agreement outweighs that effect) are excessive pricing (the definition of "excessive price" in s 1 of the principal Act was deleted by s 1(*b*) of the Competition Amendment Act 18 of 2018. The current framework is contained in s 8, including the considerations set out in s 8(3) for determining whether a price is excessive. See Ncube and Shumba "Defining Excessive Pricing in South African Competition Law: A European Comparative Analysis" 2025 46(2) *Obiter* 410 417) and a compromised quality and/or value of goods or services (Boshoff "The Competition Economics of Excessive Pricing and its Relation to the Covid-19 Disaster Period" 2020 *Stellenbosch University Centre for Competition Law and Economics Draft* 4; Competition Commission of South Africa "A Guide on Promoting Competition in Public Procurement" (15 March 2022) https://www.compcom.co.za/wp-content/uploads/2022/03/A-Guide-on-Promoting-Competition-in-Public-Procurement-15March2022.pdf (accessed 2025-03-09); Boshoff "South African Competition Policy on Excessive Pricing and Its Relation To Price Gouging During The Covid-19 Disaster Period" 2021 89(1) *South African Journal of Economics* 112 124). While it is commendable that the Commission concluded a settlement with some of the schools and suppliers and/or manufacturers of school uniforms (Report of the Competition Commission par 2.7), the consumers who were on the receiving end of these practices had no recourse (this is, however, not a suggestion that there is no recourse provided for in the Competition Act 89 of 1998).

Notably, the successes of the Commission's intervention not only promote fair competition and consumer welfare but also give effect to section 29(1) of the Constitution. (When school uniforms are subsidised and/or sold at an affordable price, parents will be able to afford such uniforms and purchase them for their learners to attend school. The right of access to education has been the subject of discussion before the Constitutional Court in different aspects.) When the cost of a school uniform is affordable (Penne, Delanghe and Goedemé "An Exploration of Key Factors That Determine the

https://doi.org/10.17159/qm3g4069

Affordability of Compulsory Education in Europe" 2021 *Working Paper No 21/08, Herman Deleeck Centre for Social Policy, University of Antwerp* 3. Affordability is defined as "[t]he ability of households to afford a specific good or service without being forced to under-consume other essential goods and services), parents would be able to buy school uniforms for their children to go to school, and that would increase the chances of access to education (Shanks and McKinney 2022 *Scottish Educational Review* 27). The South African Human Rights Commission has also raised concerns that the cost of school uniforms can be prohibitive, leading to a lack of access to education for some learners (South African Human Rights Commission "SAHRC Wants School Uniforms to Be Affordable" (10 January 2024) https://www.sahrc.org.za/index.php/sahrc-media/news/item/3888-sahrc-wants-school-uniforms-to-be-affordable (accessed 2024-08-25) (SAHRC Plea to cut cost of school uniforms)).

This note examines the effectiveness of the Commission's interventions in the procurement of school uniforms and other learning-related goods and services. Through its interventions, the Commission has undertaken a series of advocacy initiatives that seek to raise awareness of competition law and prohibited conduct. The note reviews the extent to which these advocacy initiatives have yielded the desired outcomes. The Commission has also entered into consent agreements involving several school groups and suppliers, including Curro Holdings and Grit Procurement Solutions (Grit) (*Competition Commission v Curro Holdings Ltd and Grit Procurement Solutions (Pty) Ltd* (unreported) 2019-02-27 Case no CO086Jun18 (*Curro*)). The note examines the effectiveness of these agreements and assesses whether these schools still comply with them. The note further explores other initiatives that could supplement the work of the Commission and to ensure learners have access to education.

The note proceeds as follows. Following this introduction is the overview of the impact of high prices of school uniforms on access to education. Section 3 sets out the background to the Commission's investigation into school-uniform procurement practices involving schools and suppliers. This part examines the effectiveness of the awareness initiative implemented by the Commission and assesses the progress since the publication of guidelines for school uniforms. Section 4 assesses the impact and outcomes of the Commission's interventions, while section 5 considers programmes that may further reduce uniform-related barriers to education.

2 The impact of high prices of school uniforms on access to education: An overview

South Africa has experienced over a decade of weak economic growth (National Treasury *Budget Review 2024* (21 February 2024) ch 2 "Economic Outlook" https://www.treasury.gov.za/documents/National%20Budget/2024/review/Chapter%202.pdf (accessed 2025-03-15) (National Treasury)). Weak economic growth, in turn, affects household incomes and economic security. This affects low- and middle-income households, particularly those with insecure employment or heavy reliance on social grants. The latter groups of people

find it difficult to survive under these extreme economic conditions to the point that some even go to bed with empty stomachs. A family that cannot afford, or can barely afford, food is also likely to struggle with school-uniform costs. For this reason, the United Nations Educational, Scientific and Cultural Organization (UNESCO) notes that the cost of school uniforms in low-income nations remains a major obstacle to educational opportunities for poor and vulnerable learners (UNESCO "Achievements and Challenges" *Global Education Monitoring Report Paris* https://unesdoc.unesco.org/ark (accessed 2025-03-16); Sabic-El-Rayess, Mansur, Batkhuyag and Otgonlkhagva "School Uniform Policy's Adverse Impact on Equity and Access to Schooling" 2020 50(8) *Compare: A Journal of Comparative and International Education* 1122).

A study of school-uniform policy in Mongolia reveals that the non-standardisation of school uniforms in turn impact on school attendance (Sabic-El-Rayess *et al* 2020 *Compare: A Journal of Comparative and International Education* 1122. In this context, standardisation refers to a consistent and affordable dress code, and non-standardisation refers to the lack of a strict, uniform or consistent dress code.) South Africa is no exception, as it has been found that dominant suppliers and manufacturers of school uniforms engage in collusive agreements in which they exchange sensitive information, such as prices, which may contribute to higher prices and reduced consumer choice to the detriment of parents and learners (Report of the Competition Commission par 2.4). Reducing uniform costs may therefore help remove one barrier to school participation (Sabic-El-Rayess "Acting and Reacting: Youth's Behavior in Corrupt Educational Settings" 2014 89(1) *Peabody Journal of Education* 70–85). For the longest time, school uniform suppliers and manufacturers, in collaboration with certain schools, have entered into collusive agreements regarding uniform purchases (Report of the Competition Commission par 2.1).

The note observes that there are many factors that contribute to learners dropping out of school. According to Statistics South Africa, South Africa has one of the highest unemployment rates in the world, accounting for 32,7 per cent of the working population (Statistics South Africa "South Africa's Youth and the Labour Market in Q1 2026" (12 May 2026) https://www.statssa.gov.za/?p=19526 (accessed 2026-07-05)). Unemployment and poverty can place particular pressure on households in economically disadvantaged rural areas and townships who rely on government grants for sustenance (Moleko and Xulu-Gama "Learning Disrupted Through High School Dropouts: Perceptions of Access to Education in the Eastern Cape of South Africa" 2024 54(4) *South African Review of Sociology* 464 468, citing Legotlo, Maaga, Sebego, van der Westhuizen, Mosoge, Nieuwoudt and Steyn "Perceptions of Stakeholders on Causes of Poor Performance in Grade 12 in a Province in South Africa" 2002 22(2) *South African Journal of Education* 113–118; Dieltiens and Meny-Gibert "In Class? Poverty, Social Exclusion and School Access in South Africa" 2012 55 *Journal of Education* 127–144). In turn, "urban townships and rural areas have high levels of poverty … [a]nd learners from contexts with high poverty levels are more susceptible to dropping out" (Moleko and

https://doi.org/10.17159/qm3g4069

Xulu-Gama 2024 *South African Review of Sociology* 468). It is submitted that without employment, families cannot provide school essentials like uniforms for their children. For this reason, school dropouts are more common in townships and rural areas than in urban areas. This is despite them attending schools that do not charge compulsory school fees and instead receive state funding allocations.

The study conducted by Moleko and Xulu-Gama illustrates some of these impediments faced by learners from poor families. In one of the interviews they conducted in the Eastern Cape, Mqanduli, a 32-year-old, told them, "I did not have problems with anything at school. It was that I had no clothes" (Moleko and Xulu-Gama 2024 *South African Review of Sociology* 472). Another interviewee also revealed that "I was trying, but it was not enough … I was unable to get a uniform at the end. Even the things that [were needed at school, I did] not have them" (Moleko and Xulu-Gama 2024 *South African Review of Sociology* 473). The two passages extracted from Moleko's and Xulu-Gama's study resemble the challenges faced by parents and learners in rural areas and townships with respect to school uniforms (see Chikoko and Mthembu "Financing Primary and Secondary Education in Sub-Saharan Africa: A Systematic Review of Literature" 2020 40(4) *South African Journal of Education* 1 6).

In the section that follows, the note discusses the importance of school uniforms and their impact on learners. It examines the Commission's indirect role in promoting access to education. From the outset, the Commission has specified functions aimed at enforcing competition (s 21 of the Act provides that the functions of the Commission *inter alia* include investigating and evaluating alleged contraventions of Chapter 2 of the Act, authorising, with or without conditions, prohibiting or referring mergers of which it receives notice in terms of Chapter 3 to the Tribunal and initiating and conducting market inquiries in terms of Chapter 4A). Even though the Commission is not primarily a human-rights adjudicative body, as noted above, any forum, including the Commission when interpreting legislation, ought to promote the spirit, purport and objects of the Bill of Rights.

3 The background and overview

3 1 National Guidelines on School Uniforms

On 23 February 2006, the then Minister of Education issued guidelines on school uniforms, emphasising their importance in public and/or private schools (GN 173 in *GG* 28538 of 2006-02-23). School uniforms serve important social and educational purposes and should be retained in those schools that choose to do so (National Guidelines on School Uniforms GN 173 in *GG* 28538 of 23 February 2006 par 1). School uniform can play a key role in promoting pride, self-confidence and a feeling of belonging to the student body. These guidelines seek to ensure that practices related to school uniforms do not impede access to education in any manner (National Guidelines on School Uniforms par 2) by promoting affordability and discouraging practices that impose unreasonable costs on parents (National Guidelines on School Uniforms par 3).

Uniform costs may fall where procurement practices encourage competition and reduce unnecessary exclusivity (see SAHRC's plea to cut cost of school uniforms: "The DBE should make it clear that expensive clothing, such as blazers, is not compulsory." South African Human Rights Commission "Debate on Gender Neutral Uniforms" (10 January 2024) https://www.sahrc.org.za/index.php/sahrc-media/news/item/3882-debate-on-gender-neutral-uniforms (accessed 2026-07-05)). Schools, suppliers and/or manufacturers often collude through price-fixing, market allocation, product or geographical divide and collusive tendering. (Price fixing is often referred to as an agreement between two or more firms (competitors) who enter into an agreement to sell products or services at a certain price. Market allocation is loosely defined as an agreement between two or more firms (competitors) who enter into an agreement to allocate a market, where firm one will only sell such products or services, and firm two sells other products or services, to avoid competition. This can also be done through geographical allocation, where firm one will only sell or conduct business in a certain area, and firm two conducts business in a different area. Collusive tendering, commonly called "bid rigging", is an agreement amongst competitors not to compete on the bids they submit after being invited to tender. For this purpose, firms will be regarded as competitors if they are in the same line of business.) For example, schools, suppliers and/or manufacturers enter into agreements that schools within a particular circuit would procure school uniforms (of a certain type) from a selected supplier or manufacturer. Depending on their structure and competitive effects, these arrangements may contravene the Competition Act (s 4(1)(*b*) of the Competition Act 89 of 1998) and may lead to abuse of dominance, such as excessive prices (higher prices) (s 1 of the Act defines excessive price as a price for a good or service which bears no reasonable relation to the economic value of that good or service and is higher than its supposed economic value).Some parents struggle to afford school uniforms. The conduct of collusive practices makes it extremely difficult for them, as in some instances, suppliers would sell uniforms at the same high price, and this leaves the parents with no alternative.

The school uniform plays an integral role in schools, as it promotes safety and improves discipline (National Guidelines on School Uniforms par 6). The guidelines empower schools, through their school governing bodies (SGBs), to determine their school uniform policies (National Guidelines on School Uniforms par 7). However, schools are limited in exercising their discretion; they ought to ensure that access to education is not impeded in any way (National Guidelines on School Uniforms par 8). The guidelines further provide that the pricing of school uniforms should not constitute an unaffordable financial burden on parents (National Guidelines on School Uniforms par 9). The guidelines do not specify an affordable price for school uniforms, but the Commission Guidelines on the procurement of school uniforms and the Competition Act may assist in this regard. They provide that schools must have a range of options designed to leverage economies of scale, thereby reducing input costs or the final cost to consumers (National Guidelines on School Uniforms par 10).

https://doi.org/10.17159/qm3g4069

3 2 The role of the Commission as the panacea for access to education

The Circular on the Procurement of School Uniforms and other learning-related goods and services (Department of Basic Education and the Competition Commission "Circular on the Procurement of School Uniform and Other Learning-Related Goods and Services" (16 November 2020) https://www.compcom.co.za/wp-content/uploads/2021/01/School-Uniform-Circular-2020.pdf (accessed 2025-03-16) (DoBE and Commission Circular)) reiterates that school uniforms serve important social and educational purposes (DoBE and Commission Circular par 1.1). The purpose of the circular was to remind SGBs of the National Guidelines on School Uniforms and to encourage them to adhere to the guidelines (DoBE and Commission Circular par 2.1). The circular also aimed to encourage SGBs and governing-body associations to cooperate with the Commission and assist in monitoring compliance with the National Guidelines on School Uniforms (DoBE and Commission Circular par 2.2). Among other aims of the circular was to ensure that the cost of school uniforms and other learning-related goods and services does not impede access to education (DoBE and Commission Circular par 2.3).

Competition regulation in the supply of school uniforms is important for both parents and firms involved in the market. This regulation would allow small-medium-enterprises (SMEs) and historically disadvantaged persons (HDPs) businesses to enter the market, and it encourages firms to compete on price and quality rather than higher prices. In turn, fair competition promotes economic growth and development by encouraging firms to innovate and improve their products and services, thereby increasing efficiency. More importantly, it provides consumers (parents) with access to a wider range of goods and services (such as school uniforms and related materials) at competitive prices (DoBE and Commission Circular par 1.1).

Since 2010, the Commission has received numerous complaints from parents who are forced by schools to buy school uniforms exclusively from selected suppliers. This has been a common practice among many schools that sign exclusive agreements with preselected suppliers of school uniforms. The Commission found that these agreements are entered into without following a competitive bidding process and remain enforceable for between 10 and 50 years. Accordingly, these agreements may substantially prevent or lessen competition in the market, and parents may face higher prices where meaningful alternatives are limited (DoBE and Commission Circular par 1.2). The Commission's intervention has resulted in the conclusion of settlement agreements with some of the respondents, and the negotiations of settlement agreements with other firms are still underway. This is an important step towards ensuring access to education. To a certain extent, parents and learners benefit from the reduced and/or regulated uniform prices, but it is worth noting that they will not get any financial recourse. The recourse provided in the Act is far-reaching and has its own financial implications.

During the COVID-19 pandemic, the Commission has received new complaints regarding schools' requirements that learners wear school-

branded or brand-specific COVID-19-related items. These items included face masks. Their cost, combined with existing uniform expenses, placed additional pressure on some parents during the pandemic (DoBE and Commission Circular par 1.4). Schools were cautioned not to compel parents to purchase new additional items for the purposes of clothes rotation during the COVID-19 pandemic and were advised to consider feasible alternatives that would still meet relevant health requirements. Schools, SGBs and suppliers and/or manufacturers were advised to ensure compliance with the circular and the National Guidelines on School Uniforms in all matters relating to school uniforms. Further, these stakeholders were advised to ensure that agreements for the purchase of all other learning-related material do not infringe any of the provisions of the Competition Act (DoBE and Commission Circular par 6) or impede the constitutional right to a basic education.

4 Assessing the impact and outcomes of the Competition Commission intervention

The Commission has responded to several complaints about the anti-competitive practices in the market for school uniforms and related learning materials. The Commission conducted investigations and subsequently concluded settlement agreements with some of the schools and suppliers. It has further implemented advocacy initiatives to curb anti-competitive practices in the market. Therefore, this section reviews the implementation of the settlement agreements concluded by the Commission and the relevant respondents and the effectiveness of the complaint-resolution process. It is observed that the Commission's interventions led to more competitive bidding, shorter supplier contracts, and greater use of generic uniform items that can be purchased from various retailers. These outcomes result in reduced costs for parents, increased market opportunities for new suppliers, and greater compliance with procurement guidelines by schools.

4 1 The review of the implementation of the settlement agreements of selected schools

The Competition Act empowers the Commission to investigate and prosecute practices contravening Chapter 2 of the Act (s 21 of the Competition Act). Where the Commission concludes that a prohibited practice may have occurred, it may refer the matter to the Competition Tribunal for adjudication (s 21 of the Competition Act). The Commission investigated complaints concerning school-uniform procurement and followed the same procedure. Thereafter, the Commission referred a complaint to the Tribunal, which resulted in settlement agreements with the impugned schools and suppliers and/or manufacturers (Report of the Competition Commission par 2.7). The schools, suppliers and/or manufacturers that have concluded settlement agreements are Curro Schools and Grit (*Curro supra*); ADvTECH Group and McCullagh & Bothwell (*Competition Commission v AdvTech Ltd* Competition Tribunal (unreported)

https://doi.org/10.17159/qm3g4069

2019-02-27 Case no CO067May18); Inspired Schools (Pty) Ltd, trading as Reddam House Schools and Reddford House Schools, and Reddam House Shop (*Competition Commission and Inspired Schools (Pty) Ltd t/a Reddam House Schools and Reddford House Schools; Reddam House Shop* Competition Tribunal (unreported) 2019-02-27 Case no CO167Aug18); and St Andrews School for Girls and St Andrew's Uniforms Shop Trust (*Competition Commission and St Andrews School for Girls NPC; St Andrews School Uniform Shop Trust* Competition Tribunal (unreported) 2019-02-27 Case no CO066May18). The effectiveness of each settlement agreement is discussed in the subsequent paragraphs.

4 1 1 Curro schools and Grit

On 27 January 2017, the Commission initiated a complaint against a number of schools, including Curro, school uniform manufacturers and suppliers, including Grit, for potential contraventions of sections 5(1), (1)(*a*) and/or 8(*c*) of the Act (*Curro* par 4.1). The Commission investigated the complaint and concluded that the existence of exclusive supply agreements between suppliers and various schools may substantially prevent or lessen competition in the market by excluding potential and existing school-uniforms suppliers from entering or growing in the relevant market (*Curro* par 5.1). The Commission found that an exclusive agreement between each of the schools falling under Curro and Grit is likely to have contravened sections 5(1), 8(10)(*a*) and/or 8(1)(*c*) of the Act respectively (*Curro* par 5.4.5). However, Curro and Grit disputed the findings of the Commission. Curro and Grit did not admit liability for any prohibited practice under the Act arising from the conduct described in the complaint, as they contended that they did not engage in any unlawful conduct in contravention of the above-mentioned provisions.

While they disputed the Commission's findings, as part of the settlement agreement, Curro or Grit agreed that any contract they enter into to supply school uniforms shall be for a limited period of no more than five years. At the end of the contract period, a new competitive bidding process will be conducted in compliance with the Tribunal's guidance (*Curro* par 9.2). Curro and Grit agreed to adhere to the code of conduct containing best practices, which are in line with the Department of Basic Education (DoBE) Circular of 2015 and to continue seeking innovative measures to manage the cost of uniforms (*Curro* par 9.3).

Additionally, Curro has initiated its programme to improve affordability and access to school uniforms. The firm established a second-hand uniform shop at most of its schools or in the vicinity of those schools. The purpose is to assist parents with additional options when procuring Curro school uniforms. In its efforts to provide affordable and accessible school uniforms, Curro pledged to open additional locations in large centres where parents could purchase school items. During the proceedings in this matter, Curro had already entered into a five-year agreement with an independent black-owned operator in Pretoria where Curro school uniform items would be sold to parents (*Curro* par 9.4). These settlement agreements are enforceable and replace any prior agreement, if any. Curro and/or Grit shall be entitled to apply for a waiver or modification of any terms of the consent agreement. If

all the parties agree to this application, they may apply to the Commission for confirmation (*Curro* par 11.1). Further, in instances where the Commission does not agree to waive the consent agreement, Curro and/or Grit may apply directly to the Tribunal (*Curro* par 11.2).

Have Curro and Grit complied with the settlement agreement?

According to the Commission's assessment, Curro has complied with the settlement agreement. The firm changed many of the practices it engaged in before the Commission's intervention. Curro complies with the competitive bidding process to open equal opportunities for potential competitors. When the contract has ended with the existing supplier, the firm opens another bidding process, and it no longer uses a blanket approach or appoints suppliers solely on the basis of historical relationships with the schools. Curro requires contracts to be retendered rather than renewed automatically (Report of the Competition Commission par 2.13).

Further, Curro considers Broad-Based Black Economic Empowerment (B-BBEE) status, financial position, track record, pricing, and other relevant criteria as the determining factors in awarding the tender (Report of the Competition Commission par 2.14). This consideration also ensures that SMEs and HDPs have equal opportunity in the market. When a supplier has been awarded a tender, Curro imposes strict conditions: there must be no inflation, and costs should be compared to ensure that the best cost is passed on to the parents. In addition, the supplier may not unilaterally implement a price increase without Curro's approval (Report of the Competition Commission par 2.15). However, no supplier is guaranteed exclusivity, and individual schools may consider additional suppliers in their community (Report of the Competition Commission par 2.16).

4 1 2 ADvTECH Group and McCullagh & Bothwell

ADvTECH was investigated and prosecuted for the same alleged contraventions as Curro. The matters raised similar competition concerns, although the terms and parties to the consent agreements should be described separately. Therefore, there is no need to repeat the alleged contraventions and the settlement agreement, but it is worth discussing the conditions of the settlement agreement. The settlement agreement stipulates that ADvTECH shall not include an exclusive clause in the supply agreement that favours only McCullagh & Bothwell as the sole stockists of school uniform items for schools. They further agreed that supply agreements exist for a period of not more than five years and reopened the bidding process to allow other competitors to bid. They also agreed to change the exclusive clause and amended the supply agreement to exist for not more than five years in the contract that is already in existence. McCullagh & Bothwell cooperated and agreed to all the pro-competitive conditions and volunteered to form part of the advocacy initiative.

https://doi.org/10.17159/qm3g4069

Have ADvTECH Group and McCullagh & Bothwell complied with the settlement agreement?

McCullagh & Bothell have complied with the settlement agreement according to the Outcomes of the Competition Commission's Interventions in School Uniforms Procurement report (2010–2023). McCullagh & Bothell advised the Commission that although they are abiding by the consent order and have incorporated pro-competitive measures in their business units, stockists such as themselves are put at a disadvantage in the market, as the market participation and competitive strength of large retailers are increasing in the market (Report of the Competition Commission par 2.24).

4 2 The review of the effective resolution of school uniforms complaints

Some of the settlement agreements concluded between the Commission and the relevant respondents required changes to future conduct such as ceasing to participate in anti-competitive practices. Further, they will run awareness campaigns to inform communities about practices that may contravene the Competition Act and ultimately undermine the right of access to education. From the above discussion, it appears that some of the parties have honoured the settlement agreements they entered into, as the report reveals that these firms undertook advocacy initiatives. As a result, more parents, schools, suppliers and/or manufacturers became aware of the anti-competitive practices in the school uniforms market, and one would assume that this is what made the Commission receive a high number of complaints from 10 January 2022 (Report of the Competition Commission par 2.25). Accordingly, the complaints still relate to exclusive agreements and excessive prices.

While the Commission received a high number of complaints in 2022, the Commission decided not to refer many of them for prosecution before the Tribunal (Report of the Competition Commission par 2.26). Some of the reasons for non-referral were that the complaints did not raise competition concerns or that the alleged conduct did not lessen competition in the market. Second, some schools have more than one supplier. Third and last, some schools were not contactable (Report of the Competition Commission par 2.26). In 2023, the Commission received at least 28 complaints. Five had been non-referred for similar reasons, while other matters remained under consideration by the Screening Unit as at the reporting date (see Report of the Competition Commission par 2.27). However, at the time of writing this note, there was no report on it. Some of the complaints to the Commission at least resulted in settlement agreements, and the schools are complying with the Guidelines and their respective consent agreements (see Report of the Competition Commission par 2.27).

The number of complaints resolved suggests that the Commission's Intervention for Effective Resolution of School Uniform Complaints and the Commission's Screening Unit are yielding towards the desired outcomes. The large number of non-referred complaints in 2022 and the few non-referred complaints in 2023 reveal that most schools no longer engage in

anti-competitive conduct, such as exclusive agreements and that the contract for each school is limited to a maximum of five years. Further, the schools align their uniform procurement practices with the Guidelines (Report of the Competition Commission par 2.28). Some schools have more than two suppliers and do not restrict access to third suppliers through competitive tender processes. This intervention is highly recommended, as it underscores the Commission's ongoing commitment to promoting equitable access to education. By fostering a competitive market environment, such measures help ensure affordable school uniform pricing, which plays a pivotal role in supporting learners' educational participation and success.

4 3 The review of advocacy initiatives to foster pro-competitive practices and affordability in school uniform procurement

As part of its intervention, the Commission established educational and awareness initiatives targeted at schools, SGBs and parents on the potential anti-competitive effects that are common in the procurement of school uniforms. The Commission visited the DoBE district offices in the Eastern Cape, Limpopo and Gauteng. The Commission selected these provinces because most of the complaints received were lodged against schools in these provinces (Report of the Competition Commission par 2.35). As a result, 12 schools signed an undertaking to comply with competition principles in the procurement of school uniforms. They are committed to implementing measures that promote competition in the procurement of school uniforms and ensure reasonable and affordable prices for parents, as outlined in the Guidelines. They committed to:

1. adopting a competitive bidding process for supplier selection,
2. appointing multiple suppliers,
3. limiting exclusive agreements and
4. limiting contract duration to shorter periods of no more than five years.

They further pledged to maintain affordability by ensuring a reasonable mix of generic and unique or branded school-uniform items and selecting generic items that parents can easily purchase from multiple retailers (Report of the Competition Commission par 2.36).

5 The impact of the programmes to provide school uniforms: An overview

According to Bonke, the cost of school uniforms affects access to schooling, and there is a need to reduce costs or subsidise schooling programmes to make education affordable and accessible (Bonke 2013 *The Rockwool Foundation Research Unit, Copenhagen Study Paper No* 57; Mutegi "Demand for Education in Kenya: The Effect of School Uniform Cost on Access to Secondary Education" 2018 5(2) *European Journal of Educational Sciences* 35). In Kenya, programmes of that nature increased school

https://doi.org/10.17159/qm3g4069

attendance by 6,4 per cent, and scholarships to cover school fees have significantly increased attendance (Bonke 2013 *The Rockwool Foundation Research Unit, Copenhagen Study Paper No* 57; Mutegi 2018 *European Journal of Educational Sciences* 36). South Africa should invest in programmes that provide free school uniforms to learners to increase school attendance. The South African Social Security Agency (SASSA) has provided school uniforms to qualifying learners in several provinces. This initiative should be visible across all provinces and target the most learners from public schools. Non-profit organisations and civic organisations should also join the call and assist learners and parents who cannot afford school uniforms.

In 2024, SASSA KwaZulu-Natal (KZN) reported that, for its Back-to-School Campaign alone, SASSA spent R12 568 500 on 4655 children across the four SASSA KZN Districts. This initiative falls under the Social Relief of Distress programmes, which assist needy and qualifying learners in obtaining school uniforms from SASSA. This initiative forms part of the National Development Plan 2030 and aligns with former president Nelson Mandela's words that "[e]ducation is the most powerful weapon which you can use to change the world." These uniforms are a tangible demonstration of the government's efforts to ensure that no child is left behind. SASSA Mpumalanga has also implemented this initiative in several districts of its region. These initiatives should be seen unfolding across the country to eliminate barriers to education.

Evans and Ngatia reflect on the effectiveness of the initiatives by Kenya. In their reflection, they observe that since the inception of these initiatives, dropout and/or absenteeism have been reduced by 37 per cent on average and by 55 per cent among children who initially had no uniforms (Evans and Ngatia "School Uniforms, Short-Run Participation, and Long-Run Outcomes: Evidence from Kenya" 2021 35(3) *The World Bank Economic Review* 705 706). This has a significant impact on access to education and indicates greater stakeholder participation in the programme. It is an undisputed fact that, like South Africa, Kenya has abolished formal fees in public schools to ensure public access to education. However, school uniforms remain a hindering factor to learners' education. Many commentators observe that providing school uniforms reduces dropout rates (Glewwe, Kremer and Moulin "Many Children Left Behind? Textbooks and Test Scores in Kenya" 2009 1(1) American Economic Journal: Applied Economics 112–135; Quan "Understanding the Right to Education Under the African Charter on the Rights and Welfare of the Child, Within the Four Pillars of Interpretation" 2024 24(2) *African Human Rights Law Journal* 502 530).

While this initiative appears progressive, some academics oppose it, arguing that the programme negatively affects attendance in Ecuador. The reasoning for this assertion is that "parents who pay for their children's uniforms feel more committed to the school" (Hidalgo, Onofa, Oosterbeek and Ponce "Can Provision of Free School Uniforms Harm Attendance? Evidence from Ecuador" 2013 103 *Journal of Development Economics* 43–51). This reasoning is not entirely correct – there are parents who wish their children would have access to opportunities their parents did not have. Further, most Black parents always state that "Yes, I did not go to school, but

I want my children to close that gap and go to school." By contrast, studies of particular programmes in Kenya have found short-term reductions in absenteeism for historically disadvantaged learners, and this affirms the idea that free uniforms will relieve parents and improve outcomes for the most disadvantaged learners.

It is evident that school uniform subsidies and related programmes would improve access to education and substantially reduce the financial burden on parents caused by high uniform prices. South Africa has introduced some programmes of this kind, but more should be established, particularly in rural areas and townships where evidence shows that uniform costs create a significant barrier. These programmes would complement the Competition Commission's existing efforts to promote more competitive and inclusive school-uniform procurement.

6 Conclusion

The purpose of the note has been to examine the role of the Competition Commission in promoting access to education. The Commission, as a government agency, was established to regulate competition in relevant markets, prevent the exploitation of consumers by market actors, and promote competition. The Commission has shown that it not only regulates competition, but it also has, in relevant matters, engaged with constitutional principles when interpreting and applying the Act (See *Competition Commission v Beefcor Proprietary Ltd* 2021 (4) SA 408 (CC) par 24). This has surfaced during the Commission's investigations into the school uniforms market. The Commission has received complaints from parents about high school-uniform prices and exclusive supplier arrangements, and the Commission heeded the call. In its intervention, the Commission addresses competition concerns and may indirectly reduce financial barriers to education. This is because many schools that were reported to have been participating in prohibited practices (or conduct) have since stopped engaging in collusive practices, and which may expand consumer choice and strengthen price competition. In addition to the Commission's initiatives, the note calls for further interventions to ensure that education is accessible to all, regardless of wealth. This can be achieved through policy development in the school sector to ensure that school uniforms do not create avoidable barriers to the right to a basic education.

Sandiso Mbulawa
LLB
University of Fort Hare, South Africa
https://orcid.org/0000-0002-5209-2707

https://doi.org/10.17159/qm3g4069