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Gender Inclusivity and Competition Law – Navigating Uncharted Waters

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As International Women’s Month draws to a close, its objectives needn’t be held over until the same time next year but ought instead to remain on the global priority list. This is because meaningful transformation transcends the celebration of an annual event. Inclusivity should be embedded in the fabric of all that we do, including law and policy.

It is therefore unsurprising that the Organization for Economic Co-operation and Development (OECD) has identified the need to incorporate gender inclusivity considerations into the development of competition policy and law enforcement.

The OECD has described competition policy to date, as being, “[largely gender blind priding itself on its objectivity](#)”. It is perhaps debatable that gender blindness is congruent with objectivity. This statement may itself fall into the trap of elevating formal equality over equality in substance. Having said that, it remains a compelling observation that the relationship between gender and competition policy has, up until recently, been notably uncharted.

South Africa is a natural case study for its incorporation of clear industrial policy underpinnings into its law, which has been formulated to, *inter alia*, maximise economic participation for historically disadvantaged persons. However, the definition of historical disadvantage is limited to those previously discriminated against on the basis of race. This is an important factor in the transformative project. However, it is worth noting that, even in a jurisdiction that transcends “*pure competition*” considerations in an effort to address endemic societal inequality, historical gender discrimination does not appear to feature. It is trite that women have faced barriers to markets and effective participation, which remain prevalent. This poses a threat not only to a fair distribution of resources but also to economic development and inclusive growth. The OECD has observed that gender inequality leads to smaller, less efficient and less competitive markets where talent is misallocated and where competition works less efficiently to guarantee high consumer welfare.

If the world is moving towards a recognition that competition policy should be underpinned by, *inter alia*, inclusion, then it should follow (having regard to the South African example) that inclusive competition policy should be intersectional, taking into account a number of factors that impede equal participation, including gender inequities. Taking into account gender may reduce market distortions and contribute to a reduction of inequality overall.

Beyond International Women's Month, it is worth contributing to the discourse that encourages a shift towards more inclusive competition assessments that foster and promote egalitarian participation in markets.

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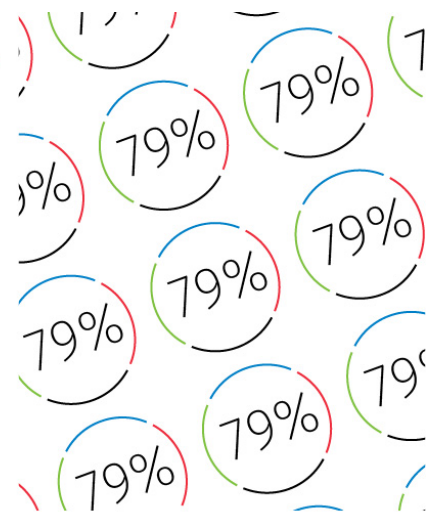
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