

The Political Economy of Competition, Regulation and Transformation

Black Economic Empowerment (BEE) and Quota Allocations in South African Industrial Fisheries

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Document Version

Final published version

Publication date:
2020

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Unspecified

Citation for published version (APA):

Vilakazi, T., & Ponte, S. (2020). *The Political Economy of Competition, Regulation and Transformation: Black Economic Empowerment (BEE) and Quota Allocations in South African Industrial Fisheries*. Centre for Business and Development Studies. CBDS Working Paper No. 2020/3

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THE POLITICAL ECONOMY OF COMPETITION, REGULATION AND TRANSFORMATION

**Black Economic Empowerment (BEE) and quota allocations in
South African industrial fisheries**

Thando Vilakazi and Stefano Ponte
1 September 2020

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CBDS WORKING PAPER 2020/3

CBDS: Centre for Business and Development Studies

Dalgas Have 15, 2200 Frederiksberg, Denmark

E-mail: cbds@cbs.dk

www.cbds.center

ISBN 978-87-999720-4-3 (pdf)

CBDS publications can be downloaded free of charge from www.cbds.center

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Acknowledgements

We are thankful for the constructive feedback we received at the CBDS seminar at Copenhagen Business School on 5 February 2020 and the webinar hosted by PLAAS, University of the Western Cape on 11 June 2020. We would like to acknowledge in particular the useful comments we received from Moenieba Isaacs, Simon Roberts, Gary Simpson and Lotte Thomsen. The research conducted for this project was made possible by the University of Johannesburg (for Stefano Ponte's Distinguished Visiting Professorship), the Inequality Platform at Copenhagen Business School and the Independent Research Fund Denmark (Project 0133-00046B). Lastly, we are grateful for the research assistance of CCRED researchers Teboho Bosiu and Grace Nsomba.

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The political economy of competition, regulation and transformation: Black Economic Empowerment (BEE) and quota allocations in South African industrial fisheries

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Abstract

Power asymmetries in value chains mean that inequalities in returns, access to key resources and share of value added are reinforced and skewed against smaller players. Policies put in place to enforce market rules and ensure fairness can be ineffective in the context of entrenched market power, lack of competition, and high levels of control by lead firms over key resources and rights – necessitating different rules of the game to change the inequalities. Under these circumstances, transformation and economic participation of marginalized groups are unlikely to be achieved, with important socio-economic and political implications. South Africa's Black Economic Empowerment (BEE) policies and competition laws target economic redress and inclusion of historically disadvantaged people in the ownership and control of economic activity and productive assets. BEE criteria have been embedded in a number of industry empowerment charters, a Broad-Based BEE Act and a series of codes of implementation. South Africa's competition law is well-established and effectively implemented. Yet, the impacts of these instruments have been frustratingly limited and slow, especially in sectors where a few companies dominate.

The paper draws on secondary sources and in-depth interviews with industry players in the South African Hake Deep Sea Trawl (HDST) fishery to examine the interactions between industrial fishery quota allocations by the government, BEE policy, and competition dynamics as they impact on allocation of finite access to national resource endowments. It shows that, even in one of the most regulated sectors of South Africa's economy, large incumbents maintain a disproportionate amount of bargaining power vis-à-vis smaller players in HDST fishery, both upstream and downstream, and throughout the domestic and global value chains. We conclude that as long as rules protect incumbency, inequality will be sustained. Even where scale economies are at play, quota allocation, transformation and competition regulation should go hand in hand to facilitate the effective participation of black-owned businesses as *competitors* in the hake value chain.

Key words: competition, value chains, regulation, black economic empowerment, South Africa, fisheries, hake

1 Introduction

Global inequalities are growing and have become widely recognized as major challenges (Piketty & Saez 2014, Zucman 2015, Piketty 2020). A main driver of inequality has been the globalization of production which yielded new winners and losers within and across nations (Milanovic 2016). Much of the Global Value Chain (GVC) scholarship in the fields of economic sociology (Gereffi 1994, Gereffi et al. 2005) and international political economy (Gibbon and Ponte 2005), and the related literature on Global Production Networks in economic geography (Yeung & Coe 2015), have shown that the massive participation of Global South actors in GVCs has not led to a significant increase in value-added within these countries (also known as ‘upgrading’), despite expectations of the contrary (Bair 2005, Bair & Werner 2011, UNCTAD 2016). As inequality in the distribution of value added between actors in the Global South and in the Global North persists, new efforts have been directed in understanding how to reduce these inequalities (Taglioni & Winkler 2016, Gereffi 2019, Ponte et al. 2019).

Inequality arises from power asymmetries. Research has shown that global buyers govern many production systems, with increasingly unequal distributions of value added to the disadvantage of smaller players, especially in the Global South (Ponte 2019). Addressing inequality upstream in value chains (i.e. close to production) does not necessarily ameliorate the situation of weaker players, as much of the value added is generated downstream (i.e. close to consumption), thus dampening the overall potential of transformation via regulation. Furthermore, inequalities can arise from power asymmetries within countries between different social groups and value chain actors. This is particularly relevant in countries with a historical legacy of inequality, such as South Africa, which has led to calls for structural transformation and related interventions. Regulatory interventions have different degrees of potential depending on the structure of the economy. In South Africa, many industries are controlled by large oligopolies, which means that any attempt at transformation and at lessening inequalities will be constrained by high entry barriers and powerful lobbying dynamics.

To address these issues, in this paper we apply a political economy approach to understand inequality and how to address it – one that examines the connections between regulation, competition and power dynamics – not only horizontally at individual value chain nodes, but also vertically along the value chain. We focus on inequality and transformation in the most important fishery sector in South Africa, hake deep-sea trawl (HDST). It is particularly important to do this at this point in time as the South African government is currently going through a process of quota (re)allocation – fifteen years after it allocated long-term rights to actors at the fishing node of the value chain. Our analysis is placed in the context of broader government affirmative action initiatives aimed at addressing race-based historical inequalities in the country through (Broad-Based) ‘Black Economic Empowerment’ (BEE) measures. Other relevant contextual factors relate to debates on what a radical fishery quota reallocation would do to the Marine Stewardship Council (MSC) sustainability certification of the hake fishery in South Africa (offshore and inshore), and cases of anti-competitive behaviour brought before the competition law authorities.

Our approach allows an examination of the potential and limitations of transformation via regulatory interventions and competition jurisprudence that goes beyond the usual focus on

transformation at individual nodes in a value chain. Fishing is not where large profits are made in the industry (downstream functions such as processing and retailing are). Yet, regulatory activity for transformation has been focused mostly at the fishing node of the value chain, leaving the other domestic functions to be addressed by weaker instruments, such as general BEE scorecards. At the fishing level, our approach also presents new insights about the substance of transformation by considering the experiences of entrants in the sector since the last quota allocations.

The material presented in this paper was collected in two different periods. First, one of the authors carried out fieldwork and collected secondary material in the 2004/05 period when the last long-term rights allocation for HDST took place in South Africa. Second, both authors carried out interviews and collected secondary material in 2019/20 as the new long-term rights allocation process was under discussion. A total of 17 interviews were carried out, with regulators, fishery consultants and representatives of industry associations, fishing companies in the hake sector and integrated fishing and processing companies.

In section two, we discuss the analytical framework we use in the paper, which combines insights from competition economics and law, and value chain governance theory – in view of providing insights into the political economy of inequality and transformation in South Africa. We also offer some background information on the process of BEE in the country. In section three, we discuss the main features and governance dynamics of the hake value chain in South Africa, the regulatory interventions under the aegis of BEE and fishery quota allocations, and the business models and clustering features of the HDST industry. In section four, we examine the imbricated processes of competition, sustainability certification and BEE/transformation in the HDST fishery, with particular focus on the politics of the imminent Fisheries Rights Allocation Process (FRAP). In section five, we highlight the main themes and connections emerging from the empirical material. We highlight our original contribution in terms of looking at the political economy of competition, power and transformation in the South African hake value chain vis-à-vis the established arguments by large industry actors and their association that focus on efficiency, stability and sustainability. In the conclusion, we discuss to what extent the HDST fishery is now marked by effective participation of black-owned businesses as *competitors*.

2 Competition, power and governance

2.1 Competition policy, barriers to entry and inequality

Competition law is concerned with practices that create or reinforce market power. In many countries, competition agencies are put in place as independent market regulators ostensibly to make markets work. They do this primarily by penalizing exclusionary and exploitative abuses of market power by firms acting unilaterally or collusively, and by preventing industry concentration through mergers and acquisitions which are expected to substantially prevent or lessen competition. The primary considerations are preventing losses in consumer welfare, and balancing potential pro-competitive gains or efficiencies against any envisaged economic harm.

Barriers to entry include business practices and structural features of the market that keep out potential or actual rivals from value chains or markets (Vilakazi, Goga and Roberts 2020). Where

barriers are high, they serve to entrench market power. The practices of firms with market power in raising the costs of rivals, or foreclosing them from the market, often mean that new entrants and comparatively efficient ‘outsiders’ are not able to contest markets. These are known as strategic barriers to entry, referring to the conduct of firms with market power in relation to other (often smaller) firms. Cartels, which involve coordination between competitors to jointly maximize profits, also involve elements of raising barriers to entry or keeping out outsiders in order to protect rents (Motta 2004). Similarly, cross-ownership and common directorships, as well as coordination through industry associations and information sharing arrangements, can serve to dampen competition between incumbents and raise barriers (Salop and O’Brien 2000; Harrington 2017).

In this context, inequality is reinforced and entrenched when barriers to entry are high and there is a lack of competition. This is because barriers maintain patterns of ownership of productive assets and control of rents in a society, and thus the distribution of income and wealth (Ennis, Gonzago and Pike 2019). Furthermore, it is now well understood in the development literature that having more inclusive institutions and access to economic opportunities is associated with higher rates of economic growth (North, Wallis, Webb and Weingast 2013; Acemoglu and Robertson 2012), while persistent inequality can undermine social cohesion (Atkinson 2015). Importantly, achieving equity in a society is not necessarily contrary to achieving productive growth and efficiency (Atkinson 2015; Wilkinson and Pickett 2009).

South Africa’s competition law framework is widely considered to be progressive, as it includes broader public interest objectives, such as empowering small enterprises and inclusion of historically disadvantaged South Africans to participate in the economy. It is curious therefore that South Africa remains one of the most unequal societies in the world, and why challenges of economic concentration persist despite the efforts of a competent competition regulator. At the heart of the problem are the complex ways in which barriers to entry can be raised, and how market power is entrenched and reinforced.

Competition law has been effective in some respects in South Africa, but it has had muted impacts in terms of addressing abuses of dominance by large incumbent firms (Roberts 2020). This is partly because the microeconomic tools of orthodox competition law, and the way it is framed in almost all countries, are limited to a rules-based approach which focuses on a narrow set of behaviours and not on broader factors which can act to reinforce market power. Specifically, competition law approaches are limited when it comes to dealing with the ability of large firms to lobby to shape policies in their favour or in addressing market failures in terms of access to finance and markets. Recent evidence points to the fact that different policies – in terms of who gets access to certain rights, the terms of access to value chains, the effect of private standards and costs of access, preferential access rights or special cost advantages bequeathed to firms -- can deliberately or inadvertently protect incumbency. Furthermore, elite networks and asymmetries in bargaining power can also work to keep out rivals (Vilakazi et al. 2020). Many of these issues are systemic and cannot be addressed by competition law alone. In these cases, a comprehensive rethinking of regulations and the ‘rules of the game’ is required to address market power and a lack of competition (Stiglitz 2015).

Markets are inherently imperfect and the appropriate benchmark is not one of unfettered competition in perfectly competitive markets. In small, open economies it is expected that

there will be a greater degree of concentration in key industries owing to limited demand and scale economies. Lessons from studies of late industrialising and developing countries point to the importance of ensuring that there are sufficient disciplines on the market conduct of incumbent firms, in view of ensuring that outcomes are developmental rather than extractive – even where firms enjoy state protections which insulate them from domestic or international rivals (Roberts 2010; Amsden and Singh 1994). Those disciplines can come from the threat of entry in a particular market, or rules and incentives through policy ensuring that dynamic efficiencies are achieved even in concentrated, capital intensive markets where scale efficiencies are important. Achieving these outcomes is typically beyond the remit of competition laws, with sectoral and industrial policies also playing a critical role. Therefore, in this paper, we combine the insights of competition law and economics with those of political economy, and the dynamics of power and governance in value chains in particular.

2.2 Power and governance in global value chains

The term value chain refers to the full range of activities that firms, farmers and workers carry out to bring a product or service from its conception to its end use, recycling or re-use. These activities can include design, production, processing, assembly, distribution, maintenance, marketing, finance, consumer services and disposal/re-use/recycling. They can be geographically limited within a country, span across regions, or be transnational/global. In this context, ‘lead firms’ are groups of firms that operate at particular functional positions along the chain and that are able to shape who does what along the chain, at what price, using what standards, to which specifications, and delivering in what form and at what point in time (Gereffi, Humphrey and Sturgeon 2005, Humphrey and Schmitz 2001, Ponte and Sturgeon 2014).

Understanding the changing dynamics of competition in global and local economies requires knowledge of how value chains are governed. The original concept of value chain governance is based on the observation that value chains are rarely coordinated spontaneously through market exchange (Gereffi 1994, Gereffi et al. 2005, Gibbon et al. 2008). Instead, they are governed as a result of strategies and decision-making by specific actors, usually large firms that manage access to global, regional, national and local markets. From this perspective, GVC governance refers to the set of concrete practices and organizational forms through which a specific division of labour between lead firms and other actors arises and is managed (Gibbon et al. 2008). Examining GVC governance then means studying the content and the management of these decisions across all suppliers and sub-suppliers, the strategies behind the decisions taken, the management methods chosen to implement them, and the systems through which their outcomes are monitored and reacted on (Ponte and Sturgeon 2014; Sako and Zylberberg 2019).

From a broader perspective, GVC operations are also shaped by actors that do not directly produce, transform, handle or trade products and services – such as civil society organizations, social movements, consumer groups, networks of experts and policy-makers, and multi-stakeholder initiatives for sustainability (Nickow 2015, Ponte and Sturgeon 2014, Bair 2017, Bair and Palpacuer 2015; Ponte 2019). States and international organizations play a key role in constructing and maintaining value chains as well – through facilitative, regulatory and distributive interventions (Nadvi and Raj-Reichert 2015, Neilson and Pritchard 2011, Mayer and Phillips 2017). States can act as intentional architects of value chains, regulate (or deregulate)

their functioning, and choose to (not) redistribute the value generated across value chains. States can also be important direct actors in value chains, for example through state-owned enterprises and public procurement (Horner 2017).

One way of taking further steps in understanding GVC governance is to examine the dynamics of power that underpin it. To do so, we draw from a typology of power in GVCs offered by Dallas, Ponte and Sturgeon (2019) which delineates two dimensions of power: *a transmission mechanism* and an *arena of actors*. The transmission mechanism of power is anchored by two ideal types: direct and diffuse. On the one end are circumstances where GVC actors (individually or collectively) seek to exert direct forms of influence over other actors or actor groups. On the other end are more diffuse forms of power where the actors or collectives and the objects of power may be less clearly identifiable, and actions less intentional. The arena of actors specifies whether power is wielded in dyads or collectives. Combining these two dimensions, Dallas et al. (2019: 677-681) offer a typology of four kinds of power: *bargaining*, *demonstrative*, *institutional* and *constitutive* (see Figure 1).

Bargaining power (dyadic, direct) is the most common form of power found in the GVC literature. The arena of actors in this case is normally populated by firms, and the analysis of power has been based on a series of firm-to-firm (dyadic) bargaining snapshots. However, in order to understand how bargaining power comes in to place and how it is leveraged, other kinds of power need to be considered.

Demonstrative power (dyadic, diffuse) reflects the fact that the requirements specified in a dyadic GVC relationship can shape more than the behaviour and choices of the suppliers involved in that specific transaction. It can also create a demonstration effect among competitor suppliers, would-be suppliers and/or second-tier suppliers and beyond. In other words, the outcome of bargaining within particular dyads can subsequently spread along the value chain and in contiguous industries through demonstration effects.

Institutional power (collective, direct) is a form of direct power that is exercised by collectives that are more formally organized (e.g. in business associations, multi-stakeholder sustainability initiatives or state institutions). While power in dyadic relationships stems from resources controlled by a single organization, in collective arenas it is at least partly external, in the sense of being dependent upon the strategic actions of groups of actors, or upon the rules set by formally organized collectives. The state, including when regulating competition, applies institutional power.

Constitutive power (collective, diffuse) is manifested when collective arenas do not exhibit clear or formal common membership and thus power is not embodied in particular actors or an institutionalized locus, even to the point that the outcome of power may be unintended. Constitutive power emerges when broad-based collective action involves less formal institutionalization or less clear common identity or purpose. Examples of constitutive power include the slow diffusion of outsourcing or financialization as general best practices against which firms came to become progressively structured (Gibbon and Ponte 2005), the normative role exerted by social movements on corporate conduct and transparency (Bair and Palpacuer 2015) and ‘acceptable’ forms of collusion between firms in different jurisdictions.

Figure 1. Four Types of Power in Global Value Chains

	Direct	Diffuse
Dyadic	<p><i>Bargaining Power</i></p> <ul style="list-style-type: none"> • Operates on a one-to-one basis • Exhibits different degrees in different kinds of value chain linkages • Is shaped by the relationship between lead firm requirements and supplier competencies, including those on sustainability 	<p><i>Demonstrative Power</i></p> <ul style="list-style-type: none"> • Operates through informal transmission mechanisms along GVCs between individual actors, e.g. buyers and suppliers or aspiring suppliers • Is shaped by conventions and best practices, including those on sustainability management, implicitly accepted by the parties of a dyadic transaction
Collective	<p><i>Institutional Power</i></p> <ul style="list-style-type: none"> • Operates through government regulation and/or multi-stakeholder sustainability initiatives or other institutionalized forms • Can be leveraged through collective standards or codified 'best practices', including those on sustainability 	<p><i>Constitutive Power</i></p> <ul style="list-style-type: none"> • Is based on broadly accepted norms, conventions, expectations and best practices, e.g. financialization, just-in-time supply chain management, environmental stewardship • Shapes what is systemically acceptable and desirable, e.g. green capital accumulation, sustainability-based value extraction from suppliers

Source: Dallas et al. 2019:673

In the rest of this paper, we apply the insights of competition literature and global value chain analysis to explain the dynamics of inequality and transformation. We do this in a country, South Africa, which has had explicit political legitimacy after the first democratic elections in 1994 to address the inequities of apartheid and which has used various regulatory instruments to do so – including those enforced by a very active Competition Commission and a unique BEE compliance programme.

3 South African hake: Regulation and value chain dynamics

3.1 Background and value chain configuration

The South African hake fishery targets two species: *Merluccius capensis* and *Merluccius paradoxus*. It is organized into four sectors: hake deep-sea trawl (HDST), hake inshore trawl, hake longline and hake handline. HDST constitutes 83% of hake Total Allowable Catch (TAC), inshore trawl 6.2%, longline 6.5% and handline 3.3% (Fiandeiro et al. 2019). The hake deep-sea

trawl (HDST) sector is valued at ZAR 4.5 billion (wholesale) or USD 308 million (2018) (Fiandeiro et al. 2019). It is by far the most important fishery in South Africa, accounting for approximately 45% of the wealth generated from commercial fisheries in the country (SADSTIA 2018) and providing over 7,000 jobs, most of which are full-time with benefits (SADSTIA 2019a; Fiandeiro et al. 2019). The value of the sector in terms of employment, export earnings and scale of the main players therefore makes it an especially contested one from a policy perspective, with various interests vying to shape its evolution over time.

The total hake TAC and its distribution amongst sub-sectors is determined by government in consultation with industry participants, academic representatives and considering recommendations from the demersal scientific working group. Catches of hake over recent decades have typically fluctuated at around 150,000 ton per annum, with most of the catch being landed by the HDST sector and comprising mainly *M. paradoxus*¹. The TAC refers to the finite total volume of the resource that may be harvested in a particular year. The hake fishery extends across the national boundaries – into neighbouring Namibia, where it is under a different management regime. Since 1978, established rights holders have been organized in the South African Deep-Sea Trawling Industry Association (SADSTIA). Newer and smaller entrants in the industry formed a separate organization in 1996, the Association of Small Hake Quota Industries, which ceased to exist in 2015. Most of these quota holders have now merged into SADSTIA, which currently includes virtually all quota holders in the industry².

The total book value of vessels and processing assets in the HDST industry is reported at over ZAR 6.6 billion, or USD 450 million (SADSTIA 2018).³ In 2014, only 40% of the HDST TAC was landed for value added processing, and there has been a gradual shift over time amongst the lead fishing companies towards on-board processing of the catch into marketable frozen products. This is because the catch cost per ton is lower for on-board processing than to land fish for shore-based processing and because of stricter labour requirements on-land (Cooper, Leiman and Jarre 2014).⁴ The industry uses ocean-going vessels and sophisticated processing plants (see value chain configuration in Figure 2).

Harvesting is currently undertaken by 51 trawlers: 21 freezer trawlers which focus on frozen headed and gutted (H&G)⁵ hake products with on-board processing facilities and 30 wet fish trawlers harvesting fresh fish for further processing on shore. Onshore processing includes large industrial facilities handling fresh fish and producing value-added products (such as crumbed, battered and sauced hake products), and small-scale primary processing facilities that focus on basic filleting (Fiandeiro et al. 2019). The insured asset value of the current fleet is approximately ZAR 3.7 billion (USD 252 million), and processing assets are valued at approximately ZAR 3 billion (USD 204 million) (Fiandeiro et al. 2019).

Capital expenditure on vessels between 2005 and 2018 has been over ZAR 3 billion (USD 204 million) (SADSTIA 2018). The two largest players in this industry have made major investments during this time. Sea Harvest recapitalized its fleet to the value of ZAR 450 million (USD 30.7

¹ http://oceana.co.za/pdf/Status_of_the_South_African_Hake_Resource_2019.pdf

² <https://www.sadstia.co.za/about/members/>

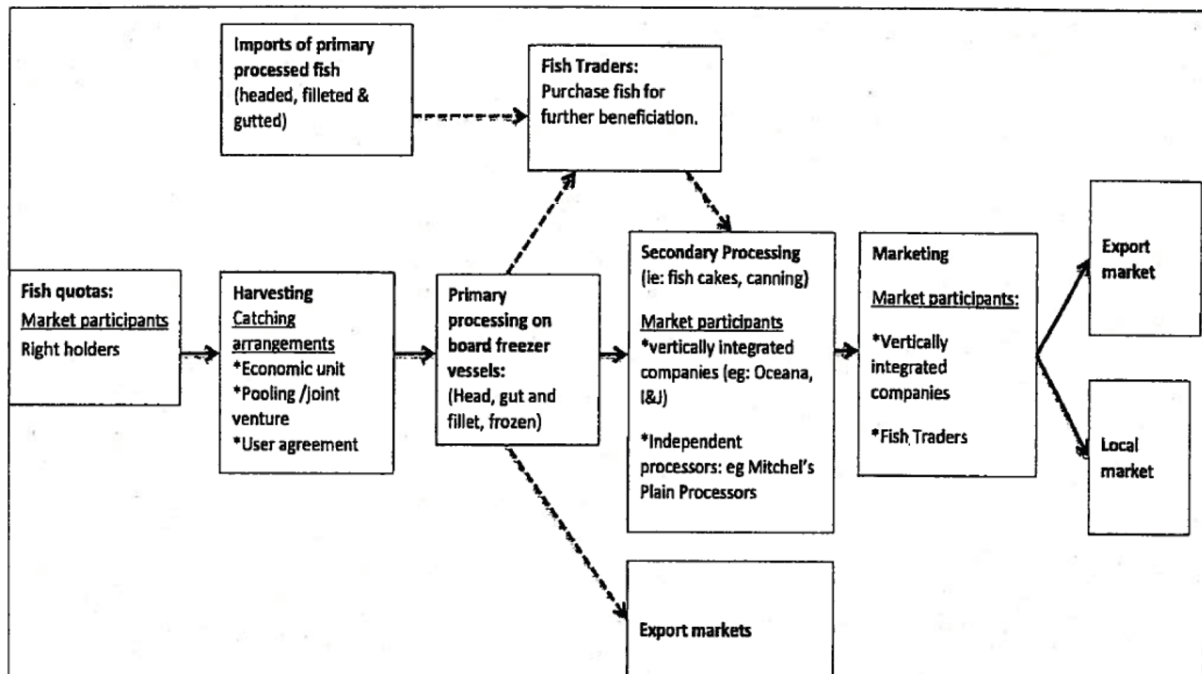
³ In this section, we apply the average exchange rate for 2018: 1 USD = 14.67 ZAR.

⁴ All vessels are equipped with stern trawlers and have an average length of over 50m. Typically, wet-fish vessels land 50 tons of fish. Factory vessels can process fillets on board, and typically process 400-500 tons of fish in 35-40 day trips.

⁵ Headed-and-gutted hake are considered to be the trawl fishery's baseline product. Value is added to H&G hake by skinning, filleting, moulding, coating and packaging.

million), including the acquisition and conversion of a new freezer trawler (at the cost of ZAR 255 million, or USD 15.3 million) in 2015 (SADSTIA 2019c). I&J spent ZAR 405 million (USD 24.3 million) for two new vessels in 2015 (SADSTIA 2019c). The industry spends roughly ZAR 300 million (USD 18 million) per year for maintaining the fishing fleet (Fiandeiro et al. 2019).

Figure 2. Configuration of the hake value chain in South Africa



Source: CTSA (2014b)

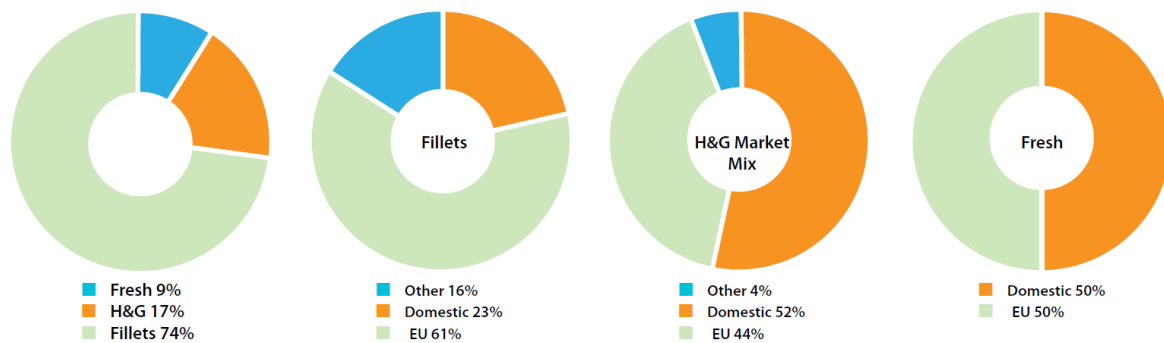
Hake in either raw or processed form is sold into domestic and export markets to traders, wholesalers, the food service industry (restaurants, hotels, public procurement, catering) and retailers. South African hake competes in the international market for white fish, which includes other popular species such as cod, pollock, halibut, haddock, tilapia and Nile perch. White fish contributes to a large proportion of European consumption of fish and fishery products. We do not analyse further the role of secondary marketing and retailing in export markets due to limited information, but note that full analysis of the global value chain to include these levels would provide a more comprehensive view of the value addition and returns to different players.

In the early 2000s, Spain imported approximately one third of all value of hake exports from South Africa, and, overall, exports to EU countries made up the vast majority of all South African hake exports by value. The HDST industry generally supplied customers (mostly in Spain) with simple products such as H&G hake and sea-frozen fillets, while the domestic market was supplied with a full range of products, including value added preparations. However, the financial crisis of 2008 subsequently led to a major decline in demand from Spain, especially of fresh hake (Lallemand et al. 2014, Interviews 260320A, 0505020A, 150520), and to an oversupply of hake on domestic markets – forcing the industry to find alternative markets and shift product forms (Interview 170620A).⁶ The new or expanding destinations include Denmark,

⁶ <http://www.sadstia.co.za/assets/uploads/Factsheet-7-Markets-for-South-African-hake.pdf>

France, Germany, Netherlands, Sweden, Switzerland and the United Kingdom, where MSC certification is required by many retailers.

Figure 3. South African hake products and markets in 2016



Source: SADSTIA (2019)

Currently, South Africa exports hake to more than 20 countries around the world, but normally with unbranded products, differently from the domestic market. Export markets are generally more lucrative, and a premium of around 15% can be earned overseas for the equivalent product sold in the domestic market even though local producers view themselves as price takers that are relatively insignificant in the international market (Interview 170620A, SADSTIA 2019a). Partly as a result of the earnings available in export markets, the South African HDST sector exports 67% of its catch (SADSTIA 2019a).

Three-quarters of the catch is processed into fillets or fillet-type products (steaks, loins, portions and sauced, coated and crumbed products), with a much smaller proportion sold as H&G product (see Figure 3). About half of the volume of hake is processed at onshore facilities. Fresh hake is a premium product that is marketed in fillet form locally and exported to Europe as prime quality hake. While in the past there was a regular market for fresh hake, it is now mainly seasonal (Interview 260320A). The main market for frozen fillets is the EU, followed by the domestic market and by other export destinations. H&G is sold mainly in the domestic market, followed by EU exports. Fresh fish sales are split equally between the domestic market and EU exports.

Previous work on the governance dynamics of fish and seafood value chains has shown that they are quite diverse depending on the end-market, quality segment, species, and the capacity of local suppliers to meet volume and quality demands from importers and/or retailers, including food safety and in some cases sustainability standards (Wilkinson 2006; Ponte et al. 2014). In value chains where exporters target wholesale markets with lower value species or cuts/preparations, the little explicit governance there is tends to be exercised by overseas importers. In value chains for most other seafood, governance tends to be bipolar, with exporters and various types of importing country actors displaying fairly balanced power dynamics. Even in these value chains, internal variation is common, with some more clearly driven by retailers, foodservice, branded processors and restaurant chains (Islam 2008; Tran et al. 2013; Ponte et al. 2014). The hake value chain in South Africa is governed by a small number of vertically-integrated companies (I&J, Sea Harvest and Oceana), which exercise their bargaining power along the domestic value chain through a combination of access to fishery

quota allocations, ownership of hake deep-sea trawlers and control of onshore processing plants, including dominant control of the domestic and export markets for South African hake (see details in section 4.2).

3.2 Black Economic Empowerment in practice

A nuanced understanding of constitutive and institutional forms of power in the South African hake value chain (see details in section 5) needs to start from a discussion of BEE processes. These relate to institutional power when they are embedded into regulation and to constitutive power when they come to permeate the 'legitimate' forms of organizing and operating business more generally.

Since 1994, South Africa has embarked on a series of programmes aimed at empowering groups and individuals who were previously disadvantaged by the system of apartheid. BEE emerged in the early 1990s, focusing initially on increasing 'black'⁷ ownership of shares in major corporations (Roberts et al. 2007). But accusations that BEE was simply enriching a small number of well-connected politicians and business people in the context of persistent poverty and inequality, eventually led government and business to reformulate the concept as 'broad-based BEE' (Southall 2007; Bracking 2019).

Most relevant for our analysis is the fact that from the early 2000s the government responded to criticisms of the previous framework by broadening inclusion criteria and entrenching enforcement through the scorecard system from a focus on ownership before 2000 (Southall 2007; Bracking 2019). Throughout much of this period, the Broad-Based Black Economic Empowerment Act No. 53 of 2003 ("B-BBEE Act") has provided the legislative framework through which the government supported and promoted the economic participation of black people in the South African economy, until it was amended in 2013. This phase in the 2000s extended the conceptual and practical formulation of empowerment to beyond a narrow focus on ownership (Hamann, Khagram and Rohan 2008; Tangri and Southall 2008; Mebratie and Bedi 2013; Mondliwa and Roberts 2020). The B-BBEE amendment Act of 2013 (which came into force in 2014) builds on this framework and adjusts the weightings of different considerations. This broadened idea of empowerment is described in the amended legislation (2013) as follows:

Broad-based black economic empowerment means the viable economic empowerment of all black people including, in particular women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to- (a) increasing the number of black people that manage, own and control enterprises and productive assets; (b) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises; (c) human resource and skills development; (d) achieving equitable representation in all occupational categories and levels in the workforce; (e) preferential procurement from enterprises that are owned or managed by black people; and (f) investment in enterprises that are owned or managed by black people (section 1(c), B-BBEE Amendment Act No. 46 of 2013).

The related BEE codes of good practice for companies, sector codes, and the scorecard system can be applied by government when procuring goods and services from the private sector. In this context, the BEE status of a company under the 2013 amended legislation is calculated according to the firm's score on each of five elements: ownership (weighted 25 points),

⁷ Some of the legislation equates 'black' to 'historically disadvantaged persons' (HDPs) of South African citizenship — this includes women and disabled persons (of all races). We refer to the approach in the B-BBEE Act as amended.

management control by black South Africans (15 points plus 4 bonus), skills development (20 points plus 5 bonus), new enterprise and supplier development (40 points plus 4 bonus) and socio-economic development (5 points) – amounting to a score out of 118 potential points with the inclusion of bonus points. On this basis, a company achieving a score of 100 points and above, is considered to be a Level 1 contributor (BEE status of Level 1), a company scoring between 95 and 100 points has a Level 2 status, and a company scoring between 90 and 95 points has a Level 3 status. Overall, there are five other levels (4 to 8) with scores ranging from 55 to 89 points.

Inherently, the programme seems to be striking a balance between the interests of white owned businesses, labour and black entrants in the economy, which is perhaps why outcomes have not been good in many sectors (B-BBEE Commission 2017, 2020). There are also different interests amongst black individuals and business people, such as between so-called ‘credit-based’ beneficiaries that largely acquired ownership stakes through complex loan and funding arrangements in the early phases of BEE, and ‘tender-based’ beneficiaries that leveraged (state) procurement to insert their businesses into existing value chains (Bracking 2019; Mondliwa and Roberts 2020).

Some have highlighted the role of BEE in trying to build a developmental state (a set of instruments that are used to exercise institutional power), at least during the Mbeki presidency (Roberts et al. 2007). But they also highlighted that while as a principle BEE could provide venues for radical redistribution and for justifying an aggressive social development policy, this would entail a holistic approach to policy making, including land, social policy, and skills development (Roberts et al. 2007). In practice, its *modus operandi* has followed the principle of ‘getting the economy right first’, then address BEE as long as it does not weaken competitiveness in export markets or challenge the established oligopolies of South African industry. In other words, BEE has not radically challenged the inherited structures of the economy – it has ‘coloured’ its features. This is quite evident even in sectors of the economy, such as mining and fisheries, where the government has strong regulatory powers with respect to allocations of extractive rights. Here, oligopoly has remained the main feature of the industry.

Part of the challenge seems to have been that BEE enforcement has been soft, and that the BEE framework could not meaningfully change the structure of the economy because it could not address various barriers to entry that work against outsiders (Mondliwa and Roberts 2020). Although powers were put in place to fine and blacklist firms for compliance and fronting issues, which have been pervasive, very few firms comply with reporting requirements and even fewer have been fined by the B-BBEE Commission (Mondliwa and Roberts 2020). More generally, BEE policy has not sought to tackle the myriad barriers which prevent dynamic rivalry – the charters, for example, have arguably emphasised ‘blackening’ of existing enterprises rather than opening up for new ones, and enforcement by various institutions has been weak. This form of mandatory reporting has often been implemented through ‘token compliance’, naming and shaming in some cases, and generally without engendering deep transformation and inclusion within companies and throughout different value chains (Bowman 2019; Bracking 2019; Ponte et al. 2007).

To further explore the dynamics between competition, regulation and transformation, in the rest of this paper we focus on one of the sectors where regulatory influence could have brought

deep transformation – the industrial fisheries sector, with specific attention paid to the most capital-intensive fishery in South Africa, HDST.

3.3 Fishery quota allocations⁸

The hake fishery was established back in the 1890s, with the employment of the first deep-sea trawlers, and grew steadily after World War II, witnessing rapid growth in the 1960s and first half of the 1970s with the arrival of foreign fleets. Before 1978, the fishery was by and large unregulated (thus was characterized by weak institutional power) and catches peaked at over 300,000 tons in the early 1970s. Following the establishment of an Exclusive Economic Zone (EEZ) in 1977, the industry has been regulated through the allocation of an annual total allowable catch (TAC) quota and of individual (non-tradable) quotas assigned to fishing companies. Foreign vessels have been excluded from the EEZ since 1983 (Ponte and van Sittert 2007). In return for the exclusion of all foreign fishing vessels from this zone, the HDST industry agreed to abide by state regulation setting an annual TAC (Hutton 2003). In 1979, the government started to allocate individual producer quotas on the basis of historical performance in the fishery.

It was only following Namibian independence and the unbanning of the black nationalist movements in 1990 that a growing awareness emerged among the major fishing companies of the need for redressing the racially-skewed ownership structure of the apartheid fisheries (van Sittert 2002). The formation of the government of national unity, following the first democratic election in 1994, was followed by the appointment of a Fisheries Policy Development Committee to draft a new fisheries act. This committee was dominated by well-resourced and organised incumbent rights holders. SADSTIA, in alliance with organised labour and marine science, fought against any redistribution of hake quotas in view of defending the sustainability and economic stability of the sector. It actually demanded the effective privatisation of the fishery through the conversion of the existing annual access rights into individual transferable quotas to be held in perpetuity and tradable as corporate assets. These demands were included in the first draft of the new Marine Living Resources Act (MLRA) in 1997 (van Sittert 2002; Ponte and van Sittert 2007).

The disintegration of the government of national unity at the end of 1996, however, led to the appointment of an African National Congress (ANC) minister and to a shift towards a more radical redistribution of access rights. The Portfolio Committee on Environmental Affairs and Tourism rejected the existing draft MLRA and rewrote it to restore a more important role of the state in its final version promulgated in 1998 (van Sittert 2002), which provides that the allocation of a fishing right does not constitute a property right but is rather a statutory approval of access for a limited period. This shift exposed the HDST sector as the least transformed of all national fisheries – with the largest rights holders I&J and Sea Harvest having transferred only 2% and 8% respectively of their share to employees in 1996. The duopoly of I&J and Sea Harvest still collectively controlled 75% of the TAC. Sea Harvest then sought to avert redistribution of their quotas to new entrants in the fishery by internally redistributing share ownership through BEE deals with politically-connected black capital. In 1998, I&J's parent Anglo Vaal Industries (AVI) transferred a 20% stake in the company to a BEE vehicle comprising

⁸ This section draws heavily from van Sittert (2002) and Ponte and van Sittert (2007). We are thankful to Lance van Sittert for allowing us to draw from his work at length here.

Siphumele Investments (10%), Ntshona Investment Enterprises (5%) and Dyambu Holdings (5%), in a deal valued in excess of ZAR 162 million. In the same year, Sea Harvest's parent Tiger Brands sold a 27% share in its operations to a consortium controlled by the BEE company Brimstone, which included a 10.8% stake in Sea Harvest (van Sittert 2002).

With the Mbeki presidency, a five-year timetable was announced for the transition from annual to medium-term rights (MTRs), and eventually to long-term rights (LTRs) in all fisheries. This led to a switch in emphasis away from redistributing direct quota allocations from TAC to new entrants to an approach emphasizing internal transformation through the transfer of shares to BEE consortia – justified in view of maintaining economic efficiency and international competitiveness (see Ponte and van Sittert 2007). At the time of the medium term rights (MTR) allocation of 2001, the then regulatory agency, Marine and Coastal Management (MCM), had developed a general policy, but left substantial space for incumbents to write their own sectoral policies. This resulted in very limited transformation (van Sittert 2002).

The first version of the HDST policy for the LTR process, released in early 2005, however, contained a quantum criteria of redistribution, which applied the following mechanisms: (1) 10% of the TAC was to be redistributed according to transformation scores; (2) 20% in accordance to the overall balancing score (other than transformation); and 10% was to be set aside for SMMEs (ZAR 3-5 million turnover) (MCM 2005a: 12-13). The legitimacy of the draft policy was attacked by industry and the unions on the basis of its potential impact on: (1) employment (proper jobs as opposed to non-unionised ones; number of jobs); (2) sunk investment and the possible creation of overcapacity; (3) loss of value added production, thus lower export value; (4) loss of clout for marketing; and (5) negative effects to historically disadvantaged investors and workers (Ponte and van Sittert 2007).

As a result of industry lobbying, the final version of the hake policy included the following guiding principles for redistribution: (1) the allocation of quantum would be determined in reference to the quantum held in 2005; (2) the redistribution of at least 10% of the TAC would take place to the benefit of holders with small allocations that have transformed and performed well during the MTR period; and (3) the allocation of an additional quantum to achieve objectives of transformation and performance. These changes made a potentially revolutionary redistribution process (encompassing up to 50% of TAC) into a relatively marginal one. The final score was divided into 24% of points allocated to 'investment' (the larger the investment over the industry average, the higher the score) and financial performance, and 26% to job creation, safety and value addition. Thus for 50% of the score, larger companies were more likely to perform above average. The remaining 50% was scored in relation to transformation, as re-engineered in the broad-based BEE approach, which meant less focus on ownership and more on the adoption of a broader set of indicators (Ponte and van Sittert 2007).⁹

Fishing rights in South Africa cannot be transferred without the approval of the Minister and the quotas attached to them refer to a proportion of the TAC and Total Allowable Effort, which are set every year for each regulated species. The TAE refers to: (1) the number of fishing days allowed in a given season or year for a specific fish; (2) restrictions on the vessel type and gear;

⁹ The remaining 15% was subdivided into the following: number of black directors (0.5%), proportion of black top salary earners (4%), income levels of black staff (6%), distribution in occupational categories (0.5%), skills development (1.5%), corporate social investment (1%), affirmative procurement (0.5%), enterprise development (0.5%), and employment equity compliance (0.5%).

and (3) the number of vessels (horse power) allowed in each fishing sector (Mnisi and Lekezwa 2014). Fishing rights can be traded only in accordance with the principles set in the Policy for the Transfer of Commercial Fishing Rights of the MLRA. In its decisions, the relevant Ministry (until recently, the Department of Agriculture, Forestry and Fisheries, DAFF; currently, the Department of the Environment, Forestry and Fisheries, DEFF) considers: (1) whether the transfer would lead to a consolidation of fishing rights and effort in a specific fishing sector (a competition issue); and (2) whether the level of black ownership of the transferee and the ownership of the quota allocation and vessels would change upon the approval of the transfer. The ministry is supposed to decline any application for the transfer of rights which leads to the dilution of black shareholding in an entity (Mnisi and Lekezwa 2014), which was at issue in the Oceana/Foodcorp case discussed below.

These observations suggest that to properly understand what happened in the HDST value chain between 2006 and the imminent allocation of long-term rights (see section 4.3), we need to examine the key business models used in the industry and the cluster arrangements that involve entities with smaller rights allocations. These are useful indicators of the dynamics of bargaining and demonstrative power in the hake value chain.

3.4 Business models and cluster arrangements

Vessels operating in each fishing sector are linked to a proportion of TAC or TAE allocated to quota holders (see Table 1), and the number of permitted vessels is typically capped. Vessel prices tend to be inflated and new entrants would need to buy used vessels from existing owners or enter into joint or financing ventures (Interviews 030420A, 030420B). Therefore, in practice, vessels are largely owned by a small group of larger companies (Fiandeiro et al. 2019). These companies not only control much of the fish catch quotas, they are also vertically integrated into processing (both off- and on-shore), including domestic and international marketing of fish (Interview 170620A), and exercise strong bargaining power especially when it comes to accessing value addition processing on-shore. In this context, small quota holders and new entrants may sell (on annual renewable contracts) their fishing rights to a processing company that catches fish for them (these are normally known as ‘paper quota holders’). Alternatively, they can enter into a joint venture agreement with established players in the industry involving the fishing, processing and marketing of their hake quota allocation. Small quota holders can also pool their quotas with other quota holders and jointly invest in a vessel.

In practice, therefore, the 44 rights holders in the sector are organized along a smaller number of clusters constructed around the operation of trawlers and the arrangements for the processing and marketing of fish once caught. Oceana as a grouping is a relatively small player in HDST (Table 2). Furthermore, its common shareholding with Sea Harvest, as we discuss later in the paper, means that the market can effectively be understood as being duopolistic in terms of structure and the incumbent business interests represented through the two major groupings, Sea Harvest and I&J.

Table 1. Official HDST rights holders and shares of total TAC (2018)

Rights holder	Proportion of TAC (%)
Irvin & Johnson Ltd	31.00
Sea Harvest Corporation	30.21
Amawandle Hake (Vaxograph)	4.81
Eyethu Fishing	3.34
Blue Continent Products	3.20
Vuna Fishing Company	2.15
Viking Fishing Company (Deep Sea)	2.03
Offshore Fishing Company	1.83
DMA Fishing Enterprises	1.82
Mayibuye Fishing	1.72
Hangberg Fishing Company	1.64
Bhana Coastal Fishing CC	1.26
Ziyabuya Fishing Eastern Cape	1.20
ZWM Fishing	1.18
Noordkaap Visserman Onderneming Ltd	1.17
New South Africa Fishing Enterprises	1.02
Ntuitif	0.86
Usuthu Fishing CC	0.63
Combined Fishing Enterprises CC	0.60
Sistro Trawling	0.57
Premier Fishing SA	0.57
Impala Fishing	0.48
Selecta Sea Products	0.47
Quayside Fish Suppliers (Cape)	0.47
Hoxies Holdings	0.44
Community Workers Fishing Enterprises	0.42
Luzizi Fishing	0.42
J&J Visserye BK	0.41
Snoek Wholesalers	0.40
Bayview Fishing	0.40
Siyaloba Fishing Enterprises	0.40
Rainbow Nation Fishing CC	0.39
Ntshonalanga Fishing	0.38
Visko Seeproducte	0.36
Anglo Mar Fishing Rights Company	0.36
BP Marine Fish Products CC	0.24
Azanian Fishing	0.24
Pellsrus Historical Fishing Corp. CC	0.22
EFH Walters Trawling	0.16
Suidor Fishing	0.13
Khoi Qwa Fishing Development Company	0.12
Dyer Eiland Visserye	0.12
Tradeforth 13	0.11
J Engelbrecht Visserye CC	0.06

Source: elaboration from <https://www.sadstia.co.za/about/members/> and DAFF data

Table 2. Hake fishing clusters

Cluster		Allocation per cluster 2018 (%)
I&J	Irvin & Johnson (Pty) Ltd	31.00
Sea Harvest	Sea Harvest Corporation (Pty) Ltd Combined Fishing Enterprises CC Pellsrus Historical Fishing Corporation CC Vuna Fishing Company (Pty) Ltd ¹⁰ Seavuna Fishing Company (Pty) Ltd SA Fishing Empowerment Corporation (Ziyabuya Fishing Eastern Cape (Pty) Ltd) Nalitha Investment (Pty) Ltd	44.74
Oceana	Amawandle Hake (Pty) Ltd (Vaxograph) Azanian Fishing (Pty) Ltd Bhana Coastal Fishing CC Blue Continent Products (Pty) Ltd BP Marine Fish Products CC Community Workers Fishing Enterprises (Pty) Ltd Hoxies Holdings (Pty) Ltd Ntuitif (Pty) Ltd Premier Fishing (Pty) Ltd Snoek Wholesalers (Pty) Ltd	13.63
Eyethu	Eyethu Fishing (Pty) Ltd	3.34
Echalar	Khoi Qwa Fishing Development Co. (Pty) Ltd Mayibuye Fishing (Pty) Ltd Offshore Fishing Company (Pty) Ltd Tradeforth 13 (Pty) Ltd	3.78
Da Olim	Impala Fishing (Pty) Ltd Rainbow Nation Fishing CC Usuthu Fishing CC	1.51
Basani	Visko Seeprodukte (Pty) Ltd ZWM Fishing (Pty) Ltd	1.54
Dyer Eiland	Dyer Eiland Visserie (Edms) Bpk EFH Walters Trawling (Pty) Ltd Engelbrecht Visserie	0.33
Suidor Cluster	Suidor Fishing (Pty) Ltd	0.13
Ntshonalanga	Ntshonalanga Fishing SA (Pty) Ltd	0.38

Source: elaboration from <https://www.sadstia.co.za/about/members/>, DEFF data, and Interviews 260320A, 260320B, 030420A. Note: Clusters may include straight sub-units of a larger company, equity participation in vessels, and/or commercial agreements to catch, process and market smaller HDST quota allocations.

Overall, three broad business models are observed in the industry. The first is the *vertical integrated* system utilized by the three largest industrial processors (Sea Harvest, I&J and Oceana). They have large on-shore plants where they process catch from their own wet-fish vessels, and also run large freezer trawler operations with on-board processing facilities. Their main preoccupation is to ensure enough volume of fish to make their processing operations profitable and meet the requirements of fish buyers (both domestically and internationally). Large vertically integrated groups may also enter into joint ventures related to vessel ownership and operation, financing, processing and/or marketing to make up for losses in ownership of quotas (this happened in consequence to the 2005 LTR allocation). But the need for

¹⁰ <https://www.seaharvest.co.za/press/sea-harvest-celebrates-the-competition-tribunals-approval-of-its-acquisition-of-the-viking-fishing-group/>

coordination of fishing and processing means that they prefer direct ownership of quotas rather than a higher-risk contractual system (SADSTIA 2019a; Fiandeiro et al. 2019; Interviews 260320A, 230620A). Smaller quota holders may also find these arrangements necessary as they do not have the capital and logistics support to run off-shore operations (Interviews 260320A, 070420A, 150520C).

A second business model is one based on *vessel joint ventures*. These are usually structured around a freezer trawler catching and processing H&G hake, where shareholding and profit allocations are easier to ascertain (there is no onshore value addition to contend with) (SADSTIA 2019a; Fiandeiro et al. 2019). A third business model is based on *diversification and flexibility*, usually operated by smaller rights holders which jointly operate a vessel by pooling their quotas and then selling their catch to on-shore processing facilities, usually other than those of the big three conglomerates (Interview 260320A). These firms often seek economies of scope by holding quotas in a number of different fisheries. Some may also harvest on contract for other rights holders and/or simply sell their quotas to them (SADSTIA 2019a; Fiandeiro et al. 2019).

Several interviewees have highlighted the deep power inequalities that underpin many of these arrangements, especially when large vertically integrated companies are involved (Interviews 260329B, 030420B, 150520A). ‘Paper quota’ transactions and low prices paid by integrated processors to independent fishing operators should be seen in the context of the strictures dictated by economies of scale, the lack of access to space in some of the key harbours, and the difficulties in obtaining financing for smaller players – as they often receive month to month leases of operational harbour space based on verbal agreements, which cannot be used to make a business case to the banks (Interviews 260320B, 150520A). In the Cape Town harbour, for example, ‘the three berths are all taken by the big companies; offloading and ice provision is controlled by them; and they process their own fish first’ (Interview 070420A). Furthermore, in many of the equity tie-ups no dividends have been paid to smaller quota holders for a long period of time, if ever (Interviews 260320B, 070420B) – and the capacity of small rights holders to risk legally challenging enforcement hake fishing, processing and marketing agreements can be prohibitive (Interview 260320C).

Other smaller quota holders, however, argue that equity tie-ups with major companies do not need to be disempowering. One of our interviewees said that he is fully involved in strategy, operations and management (Interview 030420A). SADSTIA has also celebrated that Nalitha Investments, which partnered with Sea Harvest as part of the Viking acquisition (see below), has had a positive experience in terms accessing quota and vessels building on the prior relationships and experience of its Chief Executive Officer, Mr Bonga Mavume, in the industry (formerly at Oceana) (See SADSTIA 2020; Interview 170620A, 250620A). Also, major differences have been reported in the ways large companies deal with their minor partners. One of our interviewees had dealings with two, and stated that ‘Company X saw us as a necessary evil they had to deal with ... They locked us in exploitative practices. We were part of their trawling division which never made a profit because of internal pricing. All the value was transferred to their processing and marketing division ... With company Y, we are on much better footing, but it could be even better. There is no reason why we cannot be shareholders of the processing plant. Yet, they will not change that – it’s an industry thing’ (Interview 070420A). At the same time, one of the smaller quota holders which also operates a basic processing facility stated that they cross-subsidize profits from their freezer vessels to prop up onshore processing, where they lose money because they do not have enough volume to run it competitively. They

do so, we were told, because the onshore plant employs 400 people and is key for the local economy (Interview 070420B).

One of the arguments used to avoid fragmentation of the capital-intensive HDST sector is that it is much easier to invite new and smaller players in the hake longline and hake landline fisheries, which receive 6.2% and 3% of the total hake TAC, respectively. To highlight the difference, hake longline has 110+ quota holders whereas the HDST sector has 44. In longline and handline hake, capital requirements are less demanding, due to the smaller size of the vessels which are sometimes utilized as dual purpose vessels for tuna longline fishing as well (Interview 030420A). Still, a quota holder we interviewed stated that the quota allocated was too small to do anything with on its own, so he had to transfer it to another holder who held the productive capacity and means to invest further into another fishery in his portfolio to grow in scale (Interview 030420B). While the diversification option highlighted in the previous section may be read as strategy, it is often a question of necessity and survival (Interviews 260320C, 070420A, 150520A).

These observations entail that rather than considering the HDST industry as made of 44 rights holders (as presented in Table 1), it is more analytically appropriate to examine the 10 HDST harvesting ‘clusters’ indicated in Table 2. If we expand this approach to onshore processing, the funnel is even narrower, with the largest three HDST groups controlling almost all value added production and export-oriented processing and marketing, and with a few small processors packaging fish for the domestic fresh fish market (Interview 030420A). As a small quota holder stated, ‘we black guys chase only the quotas, but do not get the value added in processing and marketing ... because we sell our fish to the three big companies. They make the real money’ (Interview 030420B). Another argued that they ‘need more sizeable quotas to add value and process ourselves ... because processing is where the margins are good. We have been asking the big companies for years to share a bit of the value added from the processing of our fish, but it is not happening’ (Interview 070420B).

Demands by smaller HDST quota holders to have a share in the processing and marketing of hake domestically and internationally are more often than not ignored, as ‘the legal cost to challenge these is steep and SMME’s run the gauntlet of jeopardizing relationships with the large conglomerates who may choose to ignore or not deploy their production services to those not willing to comply with their catch, process and marketing dictates’ (Interview 260320C). At the same time, the lead firms and others advocate that margins are not substantial in processing activities anyway, and that required scale could not be achieved without concentration at this level (Interviews 170620A, 070420A).

4 Competition, sustainability and transformation

The direct and indirect control of the HDST industry by the main conglomerates suggests that the overall patterns of ownership and control of the sector’s upstream production and downstream marketing have not changed substantially since the 2005 LTR process. We now consider the evidence on change and continuity in the sector since then in relation to three critical dimensions: competition, MSC certification, and the political economy of transformation through the imminent allocation of long term fishing rights.

4.1 Competition and transformation in the hake industry

At the start of the LTR allocation in the mid-2000s, Ponte and van Sittert (2007) estimated that ‘pioneer companies’ (defined as incumbents which owned quotas already in 1987) directly controlled 84% of the HDST quota. I&J and Sea Harvest at that time controlled 64% of the access to the HDST TAC, while four other pioneer companies controlled almost 20%. As of 2019, the three largest conglomerates in the HDST industry directly or indirectly hold access to 89.4% of the fishing rights allocations in the HDST sector, indicating a major process of consolidation. Brimstone Investments (44.9% white owned) in turn owns and controls 54.9% of the issued share capital in Sea Harvest and 25.1% of the issued share capital in Oceana. This implies that Brimstone indirectly holds a dominant footprint in the HDST (58.37 of TAC). As such, while the LTR process sought to achieve redistribution, control over rights has effectively returned to previous levels.

The changes in the distribution of TAC in time reflect the combined impact of four kinds of power in the hake value chain (see more in section 5.3): *institutional* power through government actions (2005 LTR and subsequent rights transfer process controlled by DAFF, then DEFF) and lobbying actions by SADSTIA; constitutive power through the coalescing of a specific set of how the industry should be run and how it should look from the perspective of BEE; *bargaining* power through consolidation in the market via mergers and acquisitions (abetted by the approval by competition authorities); and *demonstrative power* through the peer-to-peer copying of ownership models and pooling arrangements and the use of a relatively small number of empowerment groups.

In this section, we focus specifically on the major mergers and acquisitions that have significantly reconfigured rights holdings since the last allocation of long term rights in 2005. In terms of the relative positions of the ‘big three’ holders over time, three key events have led to significant shifts since 2005:

- In 2012, the Competition Tribunal approved Oceana’s merger with the Lusitania Group, its associated companies and, amongst others, the outright acquisition of Lusitania’s HDST (and inshore hake) fishing rights, thus improving Oceana’s position from access of 1.1% of the HDST TAC to 3.3% of inshore and HDST (Oceana 2012).
- In 2014, the Competition Tribunal approved Oceana’s merger with Foodcorp, which focused on small pelagic fish and a hake business with significant access to HDST sector TAC, to be purchased by Amawandle Hake (Pty) Ltd (the name later changed to Vaxograph) (CTSA 2014b). This transaction meant the transfer of Foodcorp’s allocation of approximately 6,271 tons of HDST quota (2013) to Oceana’s HDST (and hake inshore) joint venture business Amawandle and its empowerment partner. Presently, the Oceana cluster holds direct and indirect access to 13.63% of the HDST TAC.
- In 2018 – the Competition Tribunal unconditionally approved Sea Harvest Corporation and Sea Harvest Group’s (together ‘Sea Harvest’) acquisitions of the fishing rights and assets of Viking Fishing Holdings and its subsidiaries, and 51% of Viking Aquaculture (together ‘Viking’, which was a significant player in the HDST fishery) (CTSA 2018). Sea Harvest acquired Viking under the guise of a BEE consortium it led, which comprised three other

organisations – SeaVuna Fishing Company, Nalitha Investments and South African Fishing Empowerment Corporation (SAFEC) (DAFF 2018). Both Nalitha and SAFEC are new black-owned entrants in the industry, led by directors and shareholders with ‘commercial and executive-level experience in the South African fishing industry’ (DAFF 2018: 1).

The cases of SAFEC and Nalitha reveal that relationships and existing networks in the industry may be what it takes for entrants to enter and have the networks to integrate into value chains in the sector. SAFEC’s two sole directors at the time were Brimstone executives (managing director and chief operating officer), while Nalitha involved a former executive at Oceana as noted above.¹¹ We understand that the inclusion of these strategic partners, now celebrated by some in the industry as successful new entrants (SADSTIA 2020), was partly due to some pressure from the ministry.

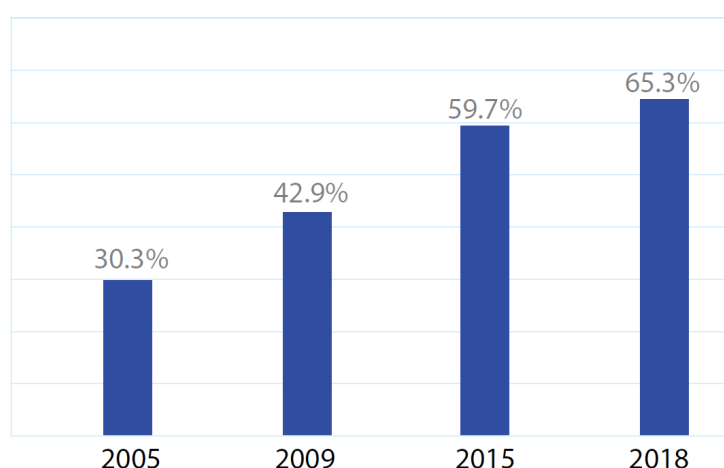
The key question is whether much has changed since 2006 except for these three major transactions. It is clear that these M&A deals amounted to a reallocation of rights held by competitive, medium-sized players to relatively larger players. Consolidation in the industry is in SADSTIA’s view necessary to enable fishing operators to achieve scale in their operations, and much of its recent advocacy effort has indeed hinged on this argument (SADSTIAa 2019; Interview 170620A).

A striking contribution of the 2005 LTR process had been the introduction of a greater number of medium-size players in the HDST fishery, resulting in an increase in the proportion of TAC held by these firms compared to 2005 and a reduction in the proportion allocated to smaller rights holders. This was consistent with the view advanced by SADSTIA that smaller players cannot become viable given the substantial capital costs and scale economies inherent in HDST fishing and processing. Thus, many effectively sold off or relinquished their rights over time. These changes over time matter primarily if they had led to changes in the degree of competition and/or transformation in the sector.

Overall, historically disadvantaged persons (HDPs) hold approximately 65% of the shares in the firms that harvest 90% of the HDST catch (Fiandeiro et al. 2019). The top three firms in the HDST fishery are level 1 BEE contributors and the 4th is a level 2 contributor. The industry moved from an average BEE score of approximately 80% in 2011 to approximately 100% in 2018. The industry seems to score high on transformation of management, skills development and socio-economic development, and enterprise and supplier development (Fiandeiro et al. 2019, Oceana 2019; Premier Verification 2016; Empowerdex 2017).

¹¹ Source: <https://www.fishingindustrynewssa.com/2018/06/19/done-deal-viking-fishing-group-takeover-confirmed-by-competition-tribunal/> 19 August 2020

Figure 4. Industry black shareholding over time weighted by TAC



Source: SADSTIA (2019d)

The HDST industry also performs well relative to others on transformation scores – in 2016, it was in the top 4 of sectors on overall empowerment scores in the fishing industry (SADSTIA 2019d), and HDST was the highest ranked among a selection of lead firms in key sectors in 2018 (Empowerdex 2018). In terms of transformation, it would seem that the government got exactly what it asked for – a substantial improvement in the BEE scores of the major operators (Figure 4). However, some in the industry question the substance of social development achievements, for example, noting that there has largely been incorporation of small and medium enterprises and/or black-owned businesses in ancillary activities such as cleaning, fuel, transport and laundry and not core fishing-related functions (Interviews 170620A, 260620A, 150520B). Based on our interviews, this is effectively confirmed by the lead players, although claimed, rightly or wrongly, as a key part of the industry’s socio-economic contribution (Interview 170620A). Some in the industry are of the view that the main players have simply done what they were asked to by the government through its policies and measurement system, although it also seems to be accepted by different stakeholders including businesses that not all the major players have transformed sufficiently. The question of whether the changes that have taken place represent substantive transformation is one to which we return below.

4.2 Marine Stewardship Council (MSC) certification of South African hake

MSC certification of the HDST industry in South Africa has been an important element of how the largest players have been able to shape a discourse of sustainability to justify the structure of the HDST industry (an element of constitutive power). Certification was first achieved in the mid-2000s after an evaluation process that lasted almost two years, starting with an application prepared by SADSTIA and resulting in the first certification of the fishery in 2004. The overall cost of fishery certification is substantial, and has been paid for since then by SADSTIA members in proportion to the quota allocated to them (Interview 150520B).

Various motivations for seeking MSC certification of the HDST fishery in South Africa were mentioned in official documents and in interviews with hake industry actors in the mid-2000s. These can be divided into two categories: (1) ‘official’ motivations, promoted by the regulatory agency, major fishing rights holders and conservation groups, which fall within mainstream

understandings of what ecolabeling can achieve in competitive fish markets; and (2) ‘unofficial’ motivations, mentioned by some of the same actors under confidentiality, which stem from domestic politics or are reflections on the established relations of power within the South African hake industry (Roberts et al. 2007).

Among the ‘official’ motivations for seeking MSC certification, which underpin the constitutive power of established companies in the industry, the most commonly referred to were the following: (1) to keep up with international competitors, such as New Zealand hoki (also MSC certified at that time) and to remain ahead of Namibia, Chile and Argentina; (2) to maintain South Africa’s share in new markets where environmental demand was developed (UK, Germany, Scandinavia, Switzerland) – mostly for frozen products; and to keep ahead of possible developments in more traditional fresh fish markets, such as Spain, Italy and Portugal; and (3) to match buyer demands (Unilever was the biggest buyer of frozen fish for the two main South African fishing companies at that time), thus maintaining preferred supplier status. These are still important motivations mentioned in more recent SADSTIA literature, together with an additional one – the necessity of maintaining the price premium for MSC-certified fish (currently at 10-15% as in SADSTIA 2019a; but other sources report it to be smaller, Interviews 260320A, 270520A, 170620A; Lallemand et al. 2014).

While these motivations played a role in gathering momentum for the application of MSC certification and its subsequent re-certification processes, at least two other ‘unofficial’ motivations were also mentioned among rights holders during interviews in 2004/05 (Ponte and van Sittert 2007). The first was to entrench interests of major South African fishing companies, as MSC certification benefits the large companies that dominate the industry. These companies have advanced processing lines, where they prepare processed products such as fish fingers, burgers, cutlets, and marinated fillets for both domestic and international markets. They are said to have dragged along other SADSTIA members, and later on the in-shore hake sector as well, even though other companies had much less interest in MSC certification because their main markets (domestic, Spain, Italy) were not particularly interested in ecolabeling for fisheries products – at least at the time of first certification. As of 2005, only three companies held a MSC chain of custody certification in South Africa. However, in following years, another 22 companies registered for it.¹²

A second motivation was to avoid redistribution of fishing quotas to new entrants through the international legitimization of the ‘conservative management’ of the hake fishery in South Africa. MSC certification was expected to provide a guarantee against the possibility of a further re-allocation of quotas away from the main (at that time white-owned) fishing companies. Very few players held hake rights up to the 1990s. But, as shown above, following the end of apartheid, the number of rights holders increased to 40-50. The overall way in which SADSTIA has been able to impart constitutive power is through pushing the argument that it is easier to manage the resource and police catch levels when there are few players in the industry. This argument was first developed and put forward at a key moment in time, when the regulatory agency in charge of managing quotas was thoroughly revising its system of allocation in the early 2000s. This process continued later through quota transfers and M&A activity.

¹² Source: <https://cert.msc.org/supplierdirectory/VController.aspx?pk=91fdea9a-2bd5-4cf3-bf2f-ebc7aae75c38&dt=04%3a47%3a36&Path=be2ac378-2a36-484c-8016-383699e2e466&xf=1&Country=South%20Africa&SpeciesL=Merluccius%20capensis,M.paradox>.

In the context of our discussion, what is important to note is that MSC certification was instrumental for SADSTIA in pushing against the first version of the LTR policy of 2005, which led to the much less redistributive (towards new entrants) second version of the policy. MSC certification became much less visible in fishery debates in South Africa in the period following the 2005 LTR allocation. However, a new wave of constitutive power flexing picked up again as the industry prepared for the next round of LTR allocation in 2020. In the interim, the fishery was re-certified in 2009 (with similar scores by the same auditing agency) and again 2015 with much higher scores (by a different auditing agency) – and now includes hake inshore trawl as well. The longline hake industry is going through a Fishery Conservation Project (FCP) with WWF and the South Africa Sustainable Seafood Initiative to eventually seek a separate certification (Interview 050520A).¹³ Even though South Africa and neighbouring Namibia HDST share the same hake biomass, and even though the South African hake longline and hake handline subsectors share the same hake biomass, only the South African HDST and inshore fisheries are currently MSC certified.

At the time of writing, the HDST fishery was undergoing a further reassessment,¹⁴ with the added complexity of the parallel process of MSC hake certification that is now taking place in Namibia. This raises a number of issues related to transboundary movements of the hake stock (Interviews 260320A, 270520A) which are further complicated by the reluctance of Namibian regulators to share information in view of a joint stock assessment (Interviews 150520B and 270520A). MSC certification remains essential for market access to European, North American and Australian markets, which have become especially important since the collapse of the Spanish market after 2008 (Interview 150520B; see also Lallemand et al. 2014; Interview 170620A). This means that maintaining the status quo, or conditions in the domestic market which do not jeopardize the potential recertification of the sector, is a strategic priority for the industry.

In addition to MSC certification, the Responsible Fisheries Alliance has been active in promoting the key issue of sustainability of fisheries in South Africa. The alliance was started in 2011 and currently counts the three major fishing conglomerates (Sea Harvest, I&J, Oceana) and mainstream NGOs (WWF and BirdLife South Africa) as members. In addition to funding a number of training, research and outreach projects, RFA has also been involved in writing a code of conduct for responsible fisheries.¹⁵

4.3 Overview of the imminent Fisheries Rights Allocation Process (FRAP)

In this section, we examine the complex political layers that frame the current process of allocation of long-term fishing rights, which was supposed to come to fruition in 2020 (thereafter referred to as Fishing Rights Allocation Process, or FRAP 2020). To do so, we first need to place the industry dynamics we highlighted in the previous sections in the context of the weakening institutional power imparted by the regulatory agency in charge of fisheries regulations. According to some of our sources, once the previous rights allocation process ended, the regulatory capability of the institution in charge (MCM at that time, then DAFF and currently DEFF) essentially imploded (Interviews 280819A, 260320B). Research capacity is

¹³ See also <http://wwfsassi.co.za/hake-longline-fishery-conservation-project>

¹⁴ Source: MSC certification reports available at <https://fisheries.msc.org/en/fisheries/south-africa-hake-trawl/@assessments>

¹⁵ <https://www.rfalliance.org.za/wp-content/uploads/2014/09/Code-of-Conduct-for-Responsible-Fisheries-29-01-2014-.pdf>

particularly lacking on socio-economic issues which has by some accounts allowed industry to drive its own research and narrative in the sector, although some contest the findings of industry funded studies (Interviews 150520B, 270520A, 250620A). High rotation and lack of retention of senior staff and limited resources to handle a very expensive FRAP process are compounding the situation (Interviews 050520A, 270520A). Fisheries regulatory functions have also moved around quite a lot in the past decade, sometimes combined with agriculture and forestry and other times, including in the latest configuration, with the environment (Interview 270520A). One of our interviewees also claims that large operators are not interested in efficient regulation, but rather in healthy doses of self-regulation in view of maintaining the status quo in the HDST fishery (Interview 260320B).

As a result of these combined factors, the patrol and research functions that used to be exercised by the regulatory agency now seem to be completely dependent on the availability of industry vessels. The ministry's vessels are not operational, and the research agenda and funding in the HDST sector are essentially driven by industry. This has allowed an internalization of functions by industry that previously were thought as pertaining to the regulatory agency – which is further strengthening the bargaining power of the main players. Institutional weakness are also seen as underpinning the current delays in the FRAP allocation process (Interview 050520A).

Overall, critical voices in the industry argue that 'institutional collapse is driving monopoly and stagnation' (Interview 280819A), and that 'nothing has been measured between 2005 and 2019' to assess the impacts of the previous allocation policy. The Fisheries branch of DAFF (and now DEFF) is seen as being in a state of 'meltdown . . . as corruption, in-fighting and maladministration cripple the branch from even undertaking the most basic of administrative functions.'¹⁶ The MSC re-certification process, which is key to maintaining access to lucrative markets in Europe, is entirely dependent on SADSTIA, with little or no input from the ministry. The observer programme that the ministry is supposed to have in place is not operative – industry players pay for their own observers and for their own research, even though they also pay a levy to the government for exactly the same purposes (Interviews 280819A; 150520B, 270520A). Regulation was made even weaker by internal division within the ministry between fisheries regulation (placed under the Fisheries division) and ocean and coastal management (placed under the oceans and coasts branch in the division of the Environment). The latter has focused especially on the establishment of new Marine Park Areas (MPAs), with little or no interaction with the fisheries division (Interview 280819A).

Similar to what had happened in the period leading up to the 2005 LTR allocation, the industry association SADSTIA has been arguing that the hake industry should remain structured as is. A study SADSTIA commissioned in 2018 highlights the decent work contribution of the industry – and that sea-going employees in the HDST fishery earn on average ZAR 20,000 per month, with quayside and processing employees earning ZAR 10,000 (SADSTIA 2019b; Fiandeiro et al. 2019). These wages, it claims, are 'substantially higher than the national minimum wage that came into effect on January 1 [2019], and are believed to inject at least R468m into rural economies every year'.¹⁷ Wages are reportedly also higher than in Namibia as a comparator and competing sector (Interview 1700620A).

¹⁶ Source: <https://feike.co.za/blog/page/2/> 30 May 2019.

¹⁷ <https://www.businesslive.co.za/bd/opinion/2019-03-13-rights-for-hake-deep-sea-trawl-fishery-vital-to-the-economy/> and <https://www.sadstia.co.za/assets/uploads/FFRAP-executive-summary.pdf> p.2.

In early 2019, SADSTIA had called for a 'sensible' rights allocation¹⁸ and clearly stated that 'because the industry is substantially more transformed today than it was 14 years ago, reallocation of rights to new entrants will increasingly destroy value for historically disadvantaged persons (HDPs) who have invested in the industry, including employees who are invested via employee share schemes.'¹⁹ MSC certification has also been used by SADSTIA as a justification for continuing to operate the hake trawl industry as usual,²⁰ just like they did back in the period leading to the 2005 LTR.

SADSTIA has good reasons to be worried, and the company equity partners under the various empowerment deals are worried too it seems (SADSTIA 2020, Interview 170620A). The 2015 FRAP (which concerned the allocation of fishing rights in 10 other commercial fisheries, including hake inshore trawling) indicated that DAFF was looking to regain some level of institutional power over the industry by 'shaking things up.'²¹ During that initial process, 30% of the TAC was redistributed from existing rights holders to a pool of new entrants, based on their transformation scores. Both I&J and Viking saw their allocations in the hake inshore trawl and horse mackerel trawl sectors slashed, which then led to prolonged legal battles. Eventually, Viking under some pressure sold its portfolio of quotas in various fisheries, including HDST, to Sea Harvest – a conglomerate with a higher transformation score backed by its links to Brimstone which is also linked to the empowerment partners as discussed above.

The then Minister, Senzeni Zokwana, urged all players in the fishing industry to ensure that the transformation agenda be realized during the FRAP 2020. At the Fishing Rights Allocation Process Seminar of April 2019, the minister stated that 'substantive transformation in the fishing industry still remains a challenge . . . When we talk transformation in the fishing industry, we need to be honest in our discussions in order for government to adequately deliver and achieve on this imperative.'²² Zokwana challenged big and established commercial companies within the fishing industry not only to embrace transformation, but lead it.²³ Yet, the establishment of the Fisheries Transformation Council (FTC), which had been called for in the MLRA, had not yet taken place. 'Wrangling over quota allocations . . . is partly the reason why companies are anxious about the Fisheries Transformation Council,'²⁴ which would include only one representative of commercial fishers.

Later in 2019, however, the newly appointed DEFF Minister Barbara Creecy blocked the FRAP process and extended the timeframes for dealing with the fishing rights in twelve commercial fishing sectors (due to expire on 31 December 2020) to 31 December 2021.²⁵ SADSTIA

¹⁸ <https://www.businesslive.co.za/bd/national/2019-03-07-fishing-companies-call-for-sensible-rights-allocation/>

¹⁹ <http://maritimereview.co.za/article/ArtMID/450/ArticleID/56/Fishing-companies-caution-government-over-rights-allocations> 7 March 2019.

²⁰ <https://www.sadstia.co.za/publication/economic-study-of-the-hake-deep-sea-trawl-fishery-and-the-implications-for-frap/> and <https://www.sadstia.co.za/publication/certification-msc-vital-continued-prosperity-south-african-deep-sea-trawling-industry/>

²¹ <http://www.dawsons.co.za/pre-frap-2020-restructuring-fishing-news-industry-apr-2018/>

²² <https://www.sanews.gov.za/south-africa/business-called-lead-transformation-fishing-industry>

²³ Ibid.

²⁴ <https://www.fishingindustrynewssa.com/2017/12/15/fisheries-transformation-council-uncertain-future/>

²⁵ See 'Withdrawal of the notice containing information about the date of the fishing rights allocation process, the proposed review of the application forms for the allocation of fishing rights and the proposed review of several departmental policies', https://www.greengazette.co.za/notices/marine-living-resources-act-18-1998-withdrawal-of-the-notice-containing-information-about-the-date-of-the-fishing-rights-allocation-process-the-proposed-review-of-the-application_20190802-GGN-42608-01019.pdf

welcomed the news and called for a future process that is 'rigorous and transparent and safeguards the sustainability and competitiveness of the fishing industry.'²⁶ It also called for conducting 'a comprehensive socio-economic study of the 12 fisheries that will be affected by the allocation of rights . . . [to] clarify the impact that allocations policy will have on investment in these fisheries, the jobs they create and sustain, and their global competitiveness . . . [and to] allow the Department to quantify the significant transformation that has taken place in the fishing industry since 2005, when long-term rights were last allocated.'²⁷ This could be seen as another step by SADSTIA to regain control of the discourse around sustainability and viability in the hake industry, and thus an exercise of constitutive power.

Part of this revised process was supposed to include the re-establishment of the Consultative Advisory Forum (CAF), a committee that, according to the MLRA, should play a key role in managing fisheries in South Africa, but which has not been constituted since 2002. But despite the closing date for CAF member nominations being sought by no later than 30 August 2019, to date there has not been any further mention regarding the effective establishment of the CAF or the appointment of CAF members.²⁸ Furthermore, the possible constitution of the FTC has been called off.²⁹

Some actors in the industry have questioned the logic and legality of this turn of events, claiming that the minister 'cannot decide to extend the validity period of any fishing right. That authority is firmly vested with Parliament.'³⁰ It also seems strange to some that more time is needed to review the allocation process, following 15 years of practice which could have been used to evaluate a system that has operated under successive ANC-led governments (Interview 260320B). According to one source, this change of mind may be related to the fears by one of the main hake fishing operators, which had witnessed cuts in their inshore hake quota during the long term rights allocation of 2015, and thus was acting to ensure protection and more time to address the risk of losing parts of its quotas in the HDST sector (Interview 280819A). Another interpretation of the current allocation process is that recent changes may have nothing to do with proper procedure and with transformation, but rather which faction of the ANC is benefitting from what allocations – essentially pointing to possible cases of cadre deployment and corruption (Interview 260320B). We were not able to evaluate this issue further. However, there is a widely held view that interests in several companies in the sector are held through trusts and other complex arrangements by highly connected and influential political actors. This reality seems to create a coalition or alignment of interests necessary to sustain the status quo wherein the companies admittedly enjoy 'protection' through their connected partners, while political elites earn returns as equity owners in exchange ultimately for not rocking the boat in terms of industry policy and radical transformation. The alignment of powerful interests can also mean that there may be a reluctance on the part of some state actors to use policy and regulations to address issues in the sector in those areas where competition law, in particular, has been limited in terms of its ability to address entrenched market power in the sector in the absence of a full market inquiry (Mnisi and Lekezwa 2014).

²⁶ <https://fiskerforum.com/south-africas-trawl-sector-welcomes-postponement-long-term-rights-allocation/>

²⁷ Ibid.

²⁸ As a matter of fact, on 2 August 2019 in government gazette no. 1018, minister Creecy served public notice regarding the 'Withdrawal of prior notice and call for nominations for appointment on the consultative advisory forum'

<https://cer.org.za/wp-content/uploads/1998/09/Withdrawal-of-call-for-nominations.pdf>

²⁹ See 'Abolishment of the fisheries transformation council',

https://www.greengazette.co.za/notices/marine-living-resources-act-18-1998-abolishment-of-the-fisheries-transformation-council_20190802-GGN-42608-01021.pdf

³⁰ <https://feike.co.za/blog/> 9 September 2019.

The argument made by SADSTIA for caution in reallocating quotas, which is mirrored in the economic study it commissioned in 2018, is based on several tenets:³¹ (1) taking away quotas from (larger) operators who have on-shore value addition processing plants will have a negative impact on jobs – as new entrants usually pool together quotas into freezer vessel operations with little onshore processing; (2) economies of scale are key in HDST, thus it is essential to make use of fixed assets to the maximum level possible – this is an argument against the fragmentation of quota holders; (3) MSC certification is essential for the industry as it allows market access to higher paying customers in Europe; (4) supermarket chains in importing countries have minimum volume requirements, another argument against fragmentation; and (5) the HDST industry has already transformed quite radically, with HDPs holding 65% shares in the firms harvesting 90% of the quota, up from 30% in 2005.

This set of positions, however, ignores at least three points. First, that the transformation of the industry was itself driven by the threats of a more radical redistribution of quotas that had been vented in the early 2000s, when the same arguments had been used to avoid new entrants and to focus instead on ‘internal transformation’ of the main rights holders. Without such a threat, it is unlikely that transformation would have occurred to this extent. Second, an exclusive focus on fishing, a low profitability function in the value chain, means that transformation discussions tied to quotas are too narrow. Third, merger and acquisition (M&A) activities in the industry have restructured HDST in ways that make it more concentrated and less internally competitive, a trend that is not reflected upon in the official discourse on the threats of (so far very limited) fragmentation. The acquisition of Viking by Sea Harvest and of Foodcorp by Oceana are a clear indication of this trend. Lack of competition is also compounded by the current general policy of not allowing foreign vessels in the country, which means that there have been no new investors in the industry, only the replication of the status quo. This creates an embedded oligopoly that strengthens the bargaining power of a small group of existing rights holders, in HDST and elsewhere.³²

5 Discussion: Competition, power and transformation in the South African hake value chain

The main issues emerging in the previous sections relate to the interface of two broad rationales that have been used in the yielding of institutional and constitutive power by various actors in the hake value chain in South Africa: (1) the interaction between competition and production efficiency and investment justifications; and (2) the political economy of transformation imperatives (largely embodied through BEE instruments). The lead companies in this industry have not argued for less competition between them, but have put forward a clear position on the need for greater consolidation to achieve productive efficiencies and incentivize investments. Nor have they explicitly argued against the need for transformation in the industry – and, indeed, the levels of transformation as measured through the BEE scorecards has increased on some measures (Fiandeiro et al. 2019; Empowerdex 2018). Yet various commentators have argued that not enough has been done to support the growth of

³¹ <https://www.sadstia.co.za/publication/economic-study-of-the-hake-deep-sea-trawl-fishery-and-the-implications-for-frap/> (see also Leiman 2015; similar views were formulated to us in Interview 170620B).

³² In tuna longline, for example, out of 50 allocated licenses, only 15 are operational because no Japanese vessels are allowed to operate. In horse mackerel, the only operational vessel is owned by one of the top three companies, which leads to much lower prices paid to small quota holders than in Namibia (Interview 280819A).

smaller players in the industry, and that DEFF ought to restrict further consolidation of rights in HDST in particular (Mnisi and Lekezwa 2014; Interview 100919A). A key question for the sustainability of the industry (considered broadly, and not only in terms of environmental issues), is whether the seemingly competing objectives of productive efficiency and broad-based transformation can be achieved in conjunction.

5.1 Competition

The main rationales for the current model of rights allocation relate to productive efficiencies, international competitiveness and scale economies. Leiman (2015) has argued that the HDST industry is mature, that profits are not exceedingly high, and that they ‘have long been based on sustainable harvesting rather than mining down the resource stock; all “get rich quick” opportunities are long gone. In the colloquial sense, the industry’s members have demonstrated a mature willingness to sacrifice short-term yields for long-term stability’ (Leiman 2015: 71). In terms of productive efficiencies, Leiman claims as follows:

- long-term access rights lay the path for investments and environmental sustainability termed as ‘responsible management of the resource’;
- scale economies are critical, and bigger is very often more efficient, especially when competing ultimately in international markets;
- monopsony buying power of large supermarkets would mean that small producers would be subject to the bargaining power of supermarkets, and thus exposed to very low prices for their fish; and
- the industry has been vocal regarding the employment generated (and retained) in the sector.

These points are not necessarily incorrect, albeit debatable. At the core of dominant players’ effort to yield constitutive power is thus the portrayed need to balance efficiency and productivity on the one hand, and sustainability and transformation on the other hand. There is a clear efficiency rationale for aggregation of capabilities in the industry, and to some extent for coordination between fishing entities to achieve scale economies at different levels of the value chain. But it is important to recognize that in the absence of competitive discipline on market behaviour, firms do not face any incentive to pass on the cost savings or efficiencies to consumers. It is also increasingly understood, as discussed earlier, that achieving efficiency is not necessarily contrary to achieving equity.

It is evident that there is limited competition between the main companies. First, there has been a culture of collusion and coordination in related fisheries which has been proven by the competition authorities and admitted by the investigated entities in the sector (see CTSA 2014a). Second, the HDST sector has a significant degree of cross-ownership between Oceana and Sea Harvest which can dampen competition between the major companies and related clusters as is predicted in the economic literature (Salop and O’Brien 2000; Harrington 2017). In practice, for example, the South African competition authorities have raised this concern regarding the cross-shareholding of Brimstone in Oceana, Vuna and the merging parties in the Sea Harvest/Viking transaction (CTSA 2018). Third, a long history of joint lobbying for industry interests, not least through the activities and funding of SADSTIA and various other industry-

led initiatives, means that there is a certain degree of market transparency and closeness between firms, which also reduces the likelihood of intense rivalry.

This environment of limited rivalry is not unique to the HDST sector, as it often features in markets where there is a tight oligopoly with high capital costs, entrenched structural barriers to entry and thus high bargaining power for incumbents. The argument for concentration and consolidation to achieve efficiencies is akin to that claimed by firms during the government-sanctioned cement cartel era in South Africa, where cement producers argued for collusive arrangements to support the rationalization of transport and to prevent the duplication of investments in plant and transport infrastructure (Vilakazi 2019; Vilakazi and Roberts 2019). These efficiencies, while they may have existed at some stage in the life of the industry, have been shown to have at least been overstated by the cement companies (Vilakazi 2019). This was confirmed in the eventual decision by competition authorities to revoke the exemption that was held by the cement companies in the early 1990s.

This means that firms can misrepresent their position and the significance of efficiencies or competition in an industry, when in fact their positions and profits are protected behind anticompetitive behaviours, strategic barriers and aggressive lobbying for policies that protect incumbency (Vilakazi and Roberts 2019). Furthermore, in cases where there is a clear rationale for consolidation and protecting an incumbent group of firms, lessons from other industries in South Africa and elsewhere suggest that it is still important to ensure effective discipline against anticompetitive behaviour and to ensure that the promised efficiencies materialize (Vilakazi 2019; Roberts 2010; Singh 2002). It is not clear that this discipline is applied in the HDST fishery. At the very least, it seems unlikely that other rivals or clusters can challenge the position of the main vertically-integrated companies, which operate at multiple nodes along the value chain. It also does not seem that the ministry enforces any control on the market behaviour of the firms or any aspects to do with competition, demonstrated somewhat by the fact that DAFF had already approved the Oceana/Foodcorp consolidation even before the Competition Commission had reached its decision on the matter (Mnisi and Lekezwa 2014).

In addition to the links between the main firms, SADSTIA serves as a central organization around which the common interests of firms are negotiated and identified – even though firms may not collude directly through communicating with one another. These common interests between firms are likely to translate into some distortion in the transformation of the industry in terms of BEE and the allocation and ownership of fishing rights and access to HDST TAC. Specifically, long-standing practices, veiled behind the cover of efficiency justifications, are likely to be a reflection of a far deeper common interest among firms to maintain the status quo in terms of ownership. The ability of companies to lobby together over rights allocation policies through SADSTIA creates a powerful grouping of interests which can be influential over state decision-making in the sector. The continuity of the status quo may well be entrenched further over a longer time horizon in relation to future rights allocations. These broader issues are highlighted in Mnisi and Lekezwa (2014) and supported by the fact that the bargaining power of the three largest HDST conglomerates (measured by their share of TAC and the processing capacity they hold) has effectively increased since the 2005 allocations – if one considers the clustering dynamics we examined earlier in this paper.

According to a memorandum of understanding signed in 2016 by DAFF and the Competition Commission, the two government departments should cooperate with each other, where

required, in the assessment of M&A transactions, and in investigating prohibited practices. This would improve their institutional power in the industry – in recognition that both departments have powers in terms of the relevant legislation to consider and intervene on transactions or business practices which lead to consolidation or lack of competition. However, just because these powers are legislated does not mean that the authorities responsible for fisheries have the capability or an interest in raising issues of competition. This is because in some instances there may be a strong alignment of interests between policy makers and lead firms in the industry. For example, the MLRA (in section 11.5) states as follows on consolidation in the industry, which aligns with the industry position:

While the Department will encourage the consolidation of right-holders in this fishery, the Department is opposed to monopolies which may operate to the detriment of smaller right-holders. The Department is concerned, in particular, that the smaller right-holders in the fishery are not able to fully realise the value of their allocations due to their size. The Department will not at this stage determine a maximum threshold of the TAC that any one right-holder may hold or control but will monitor whether any large right-holders act in a manner contrary to fair competition practices [emphasis added]

This position is at odds with the concerns of the competition authorities with a lack of rivalry in the sector. Generally, it is clear that there is no imperative to prevent consolidation in the sector, which is understandable, if not at odds with the concern for smaller rights holders. Our understanding from interviews is that smaller holders only benefit from consolidation if it will mean that they can obtain a greater TAC with which to justify investments in vessels and achieve scale economies in their own operations. If consolidation, also implied through cluster arrangements, concentrates TAC directly or indirectly in the hands of the big three firms as it has done, then those efficiencies may not pass on to customers or the local industry as a whole.

A requirement of the MLRA is that the Department should monitor any anticompetitive behaviour, but it has had challenges in terms of building up capacity and research especially on socio-economic issues. In any event, this framing in the legislation may be a limitation to transformation. We argue that a concern with monopolies is misplaced in that it is unlikely that the industry would experience consolidation to that extent – it suggests that the Department would only intervene in relation to market power in the extreme cases of monopoly, whereas in reality much harm can be caused simply by firms with a significant degree of entrenched market power. In fact, firms in the industry do not meet the dominance threshold in the competition legislation of 45% market share by some margin. What is more important in our view, is understanding the nuanced ways in which bargaining power is exercised, and how asymmetries in it play out between the main firms and smaller rivals that need access to their fishing, processing and marketing facilities. These concerns around the buyer power of large firms have most recently come into sharp focus of the competition authorities through an amendment to the legislation, although the current focus is on specific sectors such as retail (CCSA 2020). Indications from our interviews are that the terms agreed are often not viable, and certainly not negotiable, including that the rights holder will have no say over when their fish is caught and sold for them (Interviews 030420B, 070420A). These practices trap smaller rivals in a low growth, low investment and high debt cycle, leading many to simply trade away their rights.

5.2 Transformation and inclusion along the value chain

Other key factors relevant to our discussion are the structure of the industry and its transformation dynamics. This aspect can be examined by following major BEE deal activity and the general structure of ownership of the main rights holders over time – particularly where changes have involved so-called empowerment partners. The interventions of the government in terms of transformation in the fishing industry have focused largely on issues at the level of fishing operations through the fishing rights allocation process. What is less understood is the way in which vertical integration in the industry substantially raises barriers to entry, even as it may enhance efficiency. This implies that transformation and inclusion have been driven mostly at the primary production level, which is also where the highest level of investments and coordination is needed (Interview 260320B). This creates dependency for small players on the main vessel owners. Less attention has been paid to transformation in activities where much of the value and returns lie, which is further downstream. The financial reports of Oceana and Sea Harvest show that the largest proportion of their revenues and operating profits derives from downstream activities, such as canning and marketing of processed products, even where margins may be narrow at these levels (see Oceana 2019; Sea Harvest 2018; Interviews 030420A, 030420B, 170620A).

Table 3. Company ownership and BEE status

Company/ Group	Ownership composition	Reported BEE status
Sea Harvest	Listed (JSE) <ul style="list-style-type: none"> • Brimstone (54.2%)³³ • GEPI (9.9%) • 36One (5.5%) 	<ul style="list-style-type: none"> • 80% black owned • Level 1 (2018 score: 100.7)³⁴ • 2 major deals since 2005
I&J (unlisted)	Private company <ul style="list-style-type: none"> • AVI Limited (75%) • Main Street 198 (Pty) Ltd (20%) • Richtrau No 53 (Pty) Ltd (5%) 	<ul style="list-style-type: none"> • 41% black owned³⁵ • Level 1 (2019)³⁶ • 0 major deals since 2005
Oceana	Listed (JSE, NSX) <ul style="list-style-type: none"> • Brimstone (24%) • Oceana Empowerment Trust (9.9%) • GEPI (9.4%) 	<ul style="list-style-type: none"> • 72% black owned • Level 1 (2019: score 103) • 1 major deal since 2005

Source: Company websites and annual reports

Of the three lead companies in the fish value chain in South Africa (I&J, Sea Harvest and Oceana; the latter is not a dominant player in HDST though), I&J has the lowest level of black ownership at 41% (as of 2019) (see Table 4). The company is a private entity, albeit owned by a listed group, and thus faces less public scrutiny or reporting requirements on BEE compared to its listed rivals. This perhaps explains why it has not yet dramatically changed its ownership profile. Sea Harvest and Oceana, which are both listed companies, have greater levels of black

³³ Sea Harvest Notice to Shareholders, 17 May 2019, available: <https://www.seaharvest.co.za/wp-content/uploads/2019/05/Sea-Harvest-Group-Notice-to-Shareholders-17-May-2019.pdf>

³⁴ Sea Harvest Integrated Annual Report 2018.

³⁵ See DAFF National Assembly submissions (2019).

³⁶ AVI Limited Annual Report 2019.

ownership, which partly reflects the fact that listed companies face greater public pressure to report and to show improvements in their BEE status over time. This practice is embedded into law – since 2016, all JSE listed firms have been required to submit BEE compliance reports to the BEE Commission each year. In many cases, the outcome of this approach has been token compliance (Mondliwa and Roberts 2020), and indeed in the fishing industry some stakeholders have questioned the substance and extent of transformation that has taken place through the value chain as discussed above (Interview 260320C, 250620A).

There have been major empowerment deals which have impacted the HDST fishery by including more black owners of capital through various consortia or employee share schemes. Oceana, for example, has benefited its employees through the Oceana Empowerment Trust that was established in 2006 – the trust is one of the major shareholders in the group and draws company dividends (Oceana 2019). Key deals in the period since 2005 include: (1) in 2009, Brimstone, Kagiso Investment Holdings and senior management acquired a majority shareholding of 73% (valued at ZAR 541 million) of Sea Harvest's parent company Tiger Brands; (2) in 2015, Oceana partnered with Ulwandle to acquire Foodcorp's fishing business for ZAR 355 million; and (3) in 2018, a Sea Harvest-led black empowerment consortium (including SeaVuna, Nalitha Investments and SAFEC) acquired Viking Group and Viking Aquaculture (for ZAR 884 million).

The 2005 LTR process enabled the entry of new, small and black owned players into the industry at the fishing level. Furthermore, various high value transactions, in particular the main BEE deals considered above, included an empowerment partner. These partners are viewed as strategic for improving the likelihood of approvals and public support for the mergers and acquisitions (Mondliwa and Roberts 2020; Bracking 2019). A clear example of this effect was the glowing recommendation which accompanied the approval by DAFF's Deputy-Director General of Fisheries Management of the transfer of Vikings' various quotas to the Sea Harvest-led empowerment consortium, stating that:

The transaction will not only bolster black economic empowerment in South Africa's leading and most valuable commercial fisheries such as Hake Deep-Sea Trawl...but it confirms an Investor confidence in the manner in which our commercial fisheries are being managed, including the legally sustainable allocation of long term fishing rights...the Department will continue to support investments of this nature in the SA fishing industry which seek to bolster black economic empowerment, competition amongst right holders, and employment security for fish workers while balancing the economic challenges faced by smaller quota holders in these capital intensive offshore fishery sectors (DAFF 2018: 2).

Notably, Sea Harvest's consortium partners are very small entities, even though their management includes people with experience in the industry as discussed. The consortium also includes a collaborative initiative with community fishing groups that are typically not powerful or influential groupings. This makes it more likely that there will still be significant dependency created for funding, operations and resources, between the smaller players and the lead partner. Operational control still largely remains in the hands of a network of longstanding, trusted managers and affiliates, with new BEE partners not being involved at this level.

These observations mean that the institutional power of government is limited by a policy gap in terms of the scope of both the B-BBEE Act and the Competition Act to address systemic structural barriers to participation and asymmetries in dyadic power. The B-BBEE Act in fact says very little about effective participation of black owned firms directly as competing businesses. The major HDST fishery companies have argued and demonstrated that they are

performing very well in terms of BEE. But the primary objective seems to have never been to create new black owned rivals in the industry (the competition rationale), but rather to simply change the colour ('blackening', 'internal transformation') of some of the ownership of lead firms, and to provide token roles through the rights allocations to black companies at the fishing level. In this regard, we learnt of extensive fronting in the sector and the fishing industry as a whole, which also extends beyond listed firms, that has left many HDP partners (those that contribute their quotas) with little to no economic returns from these arrangements (Interview 030420A). Furthermore, it is striking that because transformation policies have focused on the fishing level, internal pricing within vertically integrated groups seems to have meant shifting of value to processing and other levels of the chain to protect returns, reinforced by MSC certification, maintaining a high level of exports, and supply of increasingly sophisticated value added products.

There are more prominent and influential partners like Brimstone Investment Corporation, and its role is particularly interesting in this picture as the BEE partner of choice in major deals. This might reveal an inherent distortion in the BEE process – Brimstone's chairman formerly served as a director of Remgro Limited which controls a large portfolio of companies in the economy (Mondliwa et al. 2017), and the company also has investment links with the PSG Group through shares held in Brimstone by a PSG fund.³⁷ Although these sorts of links between elite interests are commonplace and not unique to South Africa or this industry, they do suggest the need to be cautious in evaluating the nature and extent of transformation – interpreting the BEE scorecards is not sufficient. Importantly, strategic financial partners of this nature are less likely to become involved in the management and operational control of the companies in which they invest, and they certainly face limited to drive transformation if it would diminish the value of investments made in different entities. The same applies to employee share trusts and groups, in that these employees are not expected to participate in management and control.

Overall, there have been important changes in the HDST industry, such as greater black ownership, but this progress has not translated strongly into other BEE parameters, or in substantive inclusion in other productive nodes of the hake value chain. DAFF's own remarks in recent years suggest that it has not addressed the issue of the inability of the smaller rights holders to become viable, let alone the inclusion of these and other firms in the downstream value chains of the major groups (DAFF 2018). The experiences of these firms confirm this reality, as discussed below.

5.3 Participation and inequality – the experience of smaller entities and black-owned entrants

The prevailing view in the industry is that representatives of smaller firms (small relative to the operations of the two main groups) owned by HDPs are reluctant to voice their views publicly on their concerns regarding trading terms and lack of transformation in the industry. This is largely because many are 'afraid of being targeted and eliminated' or 'ending up in court', owing in part to the fact that they are often dependent on the major companies for the processing and marketing of their fish (sometimes also harvesting) (Interviews 260320C,

³⁷ Brimstone was formed in 1999 as a consortium with Commlife Holdings and Santam. Its shareholders in 2020 are Brimstone Black Executive Investment Trust (7.2%), Brostone Securities Pty Ltd (6.25%), GEPP (6.25%), Jasmynweg Beleggings 3 (RF) (Pty) Ltd (6.25%) and PSG Flexible Fund (3.11%). The other 72% is split amongst other (presumably) smaller shareholders. The company has shareholding in several entities including in other companies in the fishing industry, such as Oceana, Vuna Fishing Company (Pty) Ltd, Viking Aquaculture (Pty) Ltd and Cape Harvest Foods (Pty) Ltd.

030420A, 030420B). Indeed, but for the interviews under anonymity, there is not a sense of a strong and organised grouping of HDP and/or smaller rights holder interests that is agitating for change in the sector. While there is a Black Right Holders Forum, for example, there was no sense in the industry that this was a prominent voice, and others argued that some involved with the Forum may have been co-opted by the main players in the industry through BEE deals and otherwise. Other groupings that existed in the past have fallen apart because many of the smaller firms needed to partner with the larger companies to sustain their operations (070420A).

The ministry has apparently not been responsive to the complaints raised by black-owned or smaller firms in the recent past (Interview 030420B), and indeed Fish SA, the industry-recognized umbrella body for all commercial fisheries, really re-emerged at the seeming behest of the present minister – in view of establishing a single contact point and voice when interacting with the industry (Interview 150520C). This is somewhat concerning, as it is not likely that the interests of such a large representation of stakeholders from different sectors can align, especially when there are very powerful players in the industry.

The above speaks to the nature of control and power in the industry, as we analyze further below. It does seem that there also important political links and interests in the sector, as well as control of the dominant narrative by industry insiders that has involved major firms, academics and consultants, and industry organizations, including those involved in sustainability. However, it is difficult to the analyze this issue fully with the information available to us for the time being (but our future research agenda includes social network analysis). What we can observe is that these informal connections between local elites is not necessarily unique to this industry or South Africa, and what matters is to understand whose interests are being served and whether those coalitions of interests lead to pro-developmental outcomes or extractive ones (Khan 2001, 2010; Whitfield and Buur 2014).

Only around 10 companies in the HDST sector are 100% black owned out of 44 registered rights holders, based on the information we have from interviews (Interview 030420A). A far larger proportion of the rights holders classify as small- or medium-sized entities. While some of these players have vessels of their own, the majority are involved in quota-linked joint ventures and financing schemes to gain access to vessels. Fewer firms have access to their own freezer vessels which are more expensive to own and operate, at up to R400 million for a vessel (Interview 170620A). Many firms have largely made ‘entry level’ investments in wet fish vessels in order to be able to demonstrate some level of investment leading up to the FRAP 2020 process (Interviews 030420A, 030420B). Even fewer have their own packing facilities partly because they would not be able to invest in the facilities or make them viable in terms of economies of scale (Interviews 030420A, 170620A).

As noted above, there is anecdotal information about fronting and unfavourable relationships between entities with smaller TAC and larger firms. That being said, conditions vary across the industry and a handful of companies such as Nalitha and others reflect positive experiences with the arrangements, including elements of management control and influence (Interview 030420A, 170629A). It is important to note that some smaller firms in the sector may not have productive capabilities in terms of human capital, access to skills, or leaders with business experience which limits their ability to remain in the sector or become effective rivals. However, this issue is not unique to this sector, and the key issue for policy is how to bring together a

coordinated package of industrial financing and support measures to enable entrants and firms owned by HDPs to test and learn and develop capabilities in the sector (see Vilakazi et al. 2020 on the time it takes for firms to grow due to barriers to entry in various South African sectors). In this regard, there is inadequate finance for smaller rivals in the sector from commercial banks or development finance institutions (Interviews 030420B, 070420A). This is part of explaining why there has been ‘no organic growth for black firms’ in fishing, and many have had to rely on partnerships with other established players and foreign (often Spanish) companies over time (Interview 030420A). Generally, if the allocated quota is small, then it is unlikely that a firm will access finance for fishing or processing operations (Interview 070420A). Processing is especially unviable at smaller scale (estimated that a viable on-shore facility requires 5000 tons, other things equal), unless partners can be drawn in for the facility (Interview 070420A).

The various inequalities relating to capabilities, access and resources are symptomatic of a restrained approach to transformation. This is despite the fact that the ministry in various policy documents and statements is well aware of the challenges faced by even medium-sized players in the sector. This suggests that limitations in terms of capacity (Interview 270520A) and an approach which has (deliberately or inadvertently) aligned with the interests of larger firms are significant factors at play. One example of this is with respect to the delayed FRAP, where one representative of an HDP-owned firm noted that the postponement is negative because it is ‘postponing transformation’ (Interview 030420A). Another remarked that the postponement is only good if it means the ministry will ‘get the [transformation] policies right first’ before the process begins (Interview 030420B). At the same time, industry players linked with larger groups and organisations welcomed the postponement because apparently it allowed for a more transparent and efficient process (including the involvement of legal and auditing consultants) to be followed by the ministry (Interviews 270520A, 170620A, 150520B).

The concerns with the dependent role of smaller rights holders, and the corresponding high bargaining power of the lead players points to a lack of a core coalition of interests to drive transformation in the industry. In this regard, it is important to be clear that we are addressing a specific kind of transformation that is far reaching and engenders entry and expansion of HDP-owned firms in the sector as effective rivals. The argument is not for a proliferation of players in the sector necessarily, but the removal of barriers that prevent the establishment of sufficient competitive disciplines to check the behaviour of established insiders. We recognise that in such an industry scale economies are implied by structural market features and those that are imposed by incumbents, such that the focus of policy should be on fostering the emergence and growth of medium sized rivals that can be effective competitors. In this way, in line with much of the competition economics literature, it is expected that those disciplines may elicit pro-developmental competitive responses from the incumbents – as they make investments and derive efficiencies to improve their product and service offering in response to rivals.³⁸

The implications of opening up the sector are also critical for addressing inherent inequalities. If BEE processes and sector policy cannot drive transformation through inclusion of outsiders, then it is unlikely, from the evidence we have seen, that the efforts of established insiders (including large and small players) will organically arrive at more favourable outcomes in the sector in terms of wealth distribution, ownership and substantive rivalry.

³⁸ This was evidenced in the South African and regional cement industry over the past decade (see Vilakazi 2019 and Vilakazi and Roberts 2019).

6 Conclusion

The analysis we carried out in this paper suggests that, even in one of the most regulated sectors of South Africa's economy, institutional power by the state has been dampened, that constitutive power is firmly in the hands of industry despite the state-led process of BEE, and that the combination of these two factors means that large incumbents maintain a disproportionate amount of bargaining power vis-à-vis smaller players in the industry, both at the fish capture level and downstream in the value chain. Figure 5 summarizes the elements that we examined in detail in the previous sections and how they come together to lead to such a conclusion. We conclude that, despite the strong instruments at disposal by the state, lead firms and their industry associations have been able to dampen the potential regulatory effect of quota allocations and BEE processes and managed to build and coalesce a specific set of now broadly accepted principles on how the industry should be run and how it should look. This has allowed incumbents to preserve their bargaining power, also through consolidation via mergers and acquisitions (largely approved by the competition authorities despite the concerns they have raised), the peer-to-peer copying of ownership models and cluster arrangements, and the involvement of a relatively small number of empowerment groups.

Our assessment has uncovered a sector in which the task of reducing barriers to entry for (black-owned) entrants falls between the cracks. On the one hand, the ministry has primarily concerned itself with quota allocation as a means of redress and redistribution, even whilst it is common knowledge that a large proportion of value in the sector lies further downstream (and not in cleaning services etc., which are ancillary supply chain activities that are not value-adding in the context of the fishing value chain). On the other hand, competition agencies have not been able to intervene in the past because the issues in the industry are broader than what can legally be addressed in a particular case, and because some of the issues, in our view, are more appropriately addressed through better industry policy and regulations. In addition, BEE as a tool for achieving transformation can only go so far it seems – the main companies in the industry have complied with the government's narrow prescriptions and have outperformed firms in other sectors. However, representatives of smaller and black-owned firms we interviewed continue to express a frustration about the slow pace of change and the inadequacy of support for them to compete effectively in the industry.

What has gone wrong in South Africa's regulatory framework? It seems that a technocratic approach to both competition regulation and transformation through BEE has potentially stifled the earlier ambition of the government to engender more extensive transformation. This outcome is symptomatic of the critical trade-offs made in the formulation of both BEE and competition policies in South Africa, in which big business negotiated favourable middle ground positions across the economy in which their core interests would not be disrupted substantially (Mondliwa and Roberts 2020; Chabane, Goldstein and Roberts 2006). In the competition law, this took the form of a compromise away from large scale divestitures of large businesses, and very strict conditions under the abuse of dominance provisions in the Act (Chabane et al. 2006; Makhaya and Roberts 2013; Roberts 2020). On BEE, companies were effectively not compelled to comply which would not have been palatable in a largely neo-liberal economic policy paradigm.

Figure 5. Dynamics of power in the South African hake value chain

	Direct	Diffuse
	<i>Bargaining Power</i>	<i>Demonstrative Power</i>
	Exercised by dominant vertically-integrated firms through:	Peer-to-peer diffusion of:
Dyadic	<ul style="list-style-type: none"> - direct or indirect control of quotas, also through M&A and pooling agreements; - trawler vessel ownership; - lobbying and advocacy; - oligopoly in (especially on-shore) processing, which places high entry barriers to new entrants and allows exploitative terms for storage, processing and logistics services; - BEE vehicle cross-shareholding, which further dampens horizontal competition. 	<ul style="list-style-type: none"> - specific BEE ownership models; - a relatively small number of empowerment groups involved to 'blacken' ownership; - different models of vessel operation and cluster arrangements among different sized operators.
	<i>Institutional Power</i>	<i>Constitutive Power</i>
	Exercised by the state through:	Gradual and general acceptability of:
Collective	<ul style="list-style-type: none"> - broad-based BEE regulation and scorecards; - allocation of fishing quotas by DAFF (in the context of its functional weakening); - approvals of M&As by competition authorities; - lack of alignment of regulatory instruments by DAFF and competition authorities. 	<ul style="list-style-type: none"> - specific ownership profiles that meet BEE expectations; - other elements of BEE than ownership being in practice less important; - a focus on empowerment elements at the fishing node of the value chain, rather than downstream; - transformation not jeopardizing economic efficiency, sustainability and international competitiveness;
	Exercised by SADSTIA through:	
	<ul style="list-style-type: none"> - lobbying and advocacy - funding of research; - driving MSC certification and re-certification (in collaboration with WWF and BirdLife SA). 	<ul style="list-style-type: none"> - mutually beneficial (rather than rivalrous) market arrangements; - scenario of black-owned firms acting as rivals not being a priority.

Source: Authors, on the basis of the typology of power developed by Dallas et al. (2019)

Whose interests are protected by the status quo in the South African HDST sector? Our assessment suggests that the key beneficiaries have been the main firms, the connected BEE investor groups which have partnered with the incumbents plus politically linked shareholders, and that the interests of smaller firms do not seem to find a voice. The task of addressing the specific barriers faced by these players has not fallen on any one department of government, which is especially problematic because these entrants required a comprehensive package of policy support in terms of access to finance, greater share of rights, better terms of trade, competitive access to processing and routes to market, and the opportunity to build sufficient scale over time to make investments. Only few firms have overcome some of these issues at great expense, and we did not identify any major success stories of black owned companies that have expanded their operations to substantial scale and into processing and marketing

downstream. This suggests that although entry may be possible through the fishing rights allocation process, expansion and growth are severely impeded.

Our analysis points to the power of the lead firms in the value chain to coalesce to limit the effect of redistributive policies on their businesses and shape the rules of the game in favour of maintaining the status quo. This has been matched (or allowed) by weakened capacity within the state. Asymmetric bargaining relationships with smaller rights holders, as well as control of all aspects of the value chain from harvesting to marketing means that key parameters of competition are controlled by the major players. The terms of trade for rivals in using the vessels of the main players or their processing facilities do not seem to be favourable (which would help), and scale economies in processing and vessel ownership mean that there are few alternatives available.

At the core of these issues is the way in which policies are framed and implemented, with a narrow focus on activities upstream. While this may be a pragmatic approach, it is evident that the institutional capacity to conduct research and monitoring to ensure that the intended objectives of transformation are achieved has been eroded. This effectively leaves the industry to self-regulate on narrowly framed transformation objectives, through the influential industry body, SADSTIA, which has led the charge in terms of obtaining and maintaining MSC certification, conducting critical research, and shaping the narrative through consultant reports in terms of performance on transformation, environmental standards and the socio-economic impact of the HDST fishery.

Lead firms in this sector and in others are in the strongest position to benefit from a scenario where a technocratic, mechanistic approach to transformation is followed. Indeed, there have been a number of contested legal cases in the industry as a whole, and some pending following the 2015 allocations (Interviews 030420A, 150520A, 260320B). This is because large firms can afford the costs of compliance, and are able to contest issues in court when their interests are challenged (Interview 250620A, 270520A). This pattern has also been quite evident in the record of competition law enforcement in South Africa (Roberts 2020). With respect to BEE, this litigious approach has not been necessary because enforcement of the rules has been weak. The reasons firms have complied with the BEE reporting seem to have more to do with the requirements of operating as a listed entity, and the increased constitutive and demonstrative pressure to be viewed as good corporate citizens by shareholders and when doing business with the state and others in the economy. Compliance with the BEE rules allows large firms to stave away potential ‘radical’ redistributive policies in the sector.

To conclude, we suggest that transformation did not go far enough by requiring the opening up processing, distribution and marketing along the value chain, nor did it attribute sufficient shares of TAC to smaller rights holders to enable them to emerge as effective challengers in the sector. Real value lies in the downstream levels of the value chain, and the lack of financial and industrial policy support for meaningful entry at this level signals a coalition of political and business interests not to disrupt the status quo. Although the main players in the industry have continued to invest and employ large numbers of people, and earn good returns on those investments, some smaller firms have managed to make investments in vessels and have grown their businesses in spite of the significant barriers to expansion. Some of these operators also employ significant numbers of people and have contributed proportionately to stability and growth of the sector. As such, there is a strong case for furthering transformation in the sector

through policies that recognize these contributions, particularly of emerging medium sized players with potential to scale up and compete, and incentivize greater integration downstream in the value chain. Supporting these players to operate at greater scale and access wider markets would enhance rivalry and efficiencies in the sector overall, and indications are that there is an appetite amongst lead firms in the sector to make some room for these types of firms to grow.

In sectors such as industrial fisheries which are capital intensive and highly regulated, inequality is sustained when the rules protect incumbency. Even where scale economies and other factors militate against entry of multiple large scale rivals, it is necessary that the rules are set to ensure that there are sufficient disciplines on the conduct of large firms and that medium sized rivals that can achieve scale and compete effectively are encouraged. Where insiders can leverage and influence the rules to prevent rivals from growing or to restrict their participation in the value chain, their bargaining power becomes entrenched, and the possible dynamic gains to the economy are lost.

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