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Black Economic Empowerment and Quota Allocations in South Africa's Industrial Fisheries

Thando Vilakazi  and Stefano Ponte

ABSTRACT

Power asymmetries in the governance of value chains mean that inequalities in access to resources and share of value added are skewed against smaller players. Policies enforcing market rules and ensuring fairness are ineffective when power is deeply entrenched, necessitating different rules to address such inequalities. South Africa's Black Economic Empowerment (BEE) policies and competition laws target economic redress and inclusion of historically disadvantaged people in business ownership and control of economic activities. BEE criteria have been embedded in many industry charters and implementation codes, and competition law is well established and effectively implemented. Yet, the impacts of these instruments have been limited and slow, especially in sectors where a few companies dominate. This article examines the interactions between value chain dynamics and industrial fishery quota allocations, BEE policy and competition dynamics in the hake deep-sea trawl fishery sector. It shows that, even in one of the most regulated sectors of South Africa's economy, large incumbents retain a disproportionate amount of power vis-à-vis smaller players. The article concludes that if rules protect incumbency, inequality will be sustained. Quota allocations, transformation and competition regulation should go hand in hand to facilitate the effective participation of black-owned businesses as *competitors* in value chains.

INTRODUCTION

Global inequalities are growing and are widely recognized as major challenges (Piketty, 2020; Zucman, 2015). The globalization of production is a main driver of inequality and has yielded new winners and losers within and across nations (Milanovic, 2016). The Global Value Chain (GVC) scholarship (see, for example, Gereffi, 1994) has shown that the massive participation of global South actors in GVCs has led to very uneven outcomes (Bair, 2009; Bair and Werner, 2011; Kaplinsky, 2005; Ponte et al., 2019; Whittaker et al., 2020). As inequality in the distribution of value added between

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actors in the global South and the global North persists, new efforts have been directed at understanding how to reduce this inequality (Gereffi, 2019; Tagliani and Winkler, 2016).

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 (Milberg and Winkler, 2013; Phillips, 2013; Ponte, 2019). Addressing inequality upstream in value chains (that is, close to production) does not necessarily ameliorate the situation of weaker players, since much of the value added is generated downstream (that is, close to consumption). 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 (Terreblanche, 2002), where calls have been made for structural transformation and related interventions (Andreoni et al., 2021). 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, this article examines the connections between regulation, competition and value chain dynamics — not only horizontally at individual value chain nodes, but also vertically along the value chain. It focuses on inequality and transformation in the most important export-oriented industrial fishery sector in South Africa, namely hake deep-sea trawl (HDST). The main contribution of the article is to analyse new primary data on the outcomes of social and industrial transformation processes in a key regulated sector in a developing country context, combining the insights of competition law and economics with the analysis of value chains (see also Mondliwa et al., 2021). This should be understood in the context of broader government affirmative action initiatives aimed at addressing race-based historical inequalities (‘transformation’) through Black Economic Empowerment (BEE) measures and various competition concerns relating to the industry. Our approach allows an examination of the potential and limitations of transformation via regulatory interventions and competition law processes that goes beyond the usual focus on individual nodes in a value chain. Regulatory activity for transformation has focused largely on the fishing node of the value chain, leaving the other domestic nodes of the chain to be addressed by weaker instruments, such as general BEE requirements.

The research material presented in this article was collected in two different periods. First, one of the authors carried out fieldwork and collected secondary material in 2004–05, during the period that the last long-term rights allocation for HDST was taking place in South Africa. Second, in 2019–20, as a new long-term rights allocation process was under

discussion, the two authors conducted 17 interviews with regulators and fishery consultants, as well as representatives of industry associations, fishing companies in the hake sector and integrated fishing and processing companies; they also collected secondary material. The rest of the article provides an overview of insights from the literatures on competition and GVCs, before setting out key aspects of BEE policy in South Africa and providing some background information on the hake value chain in the country. It analyses transformation, regulation and competition in the industrial fishing industry and concludes that regulation, competition and transformation policies need to go hand in hand in order to address the significant inequalities and power asymmetries that maintain the exclusion of black-owned businesses and rivals.

COMPETITION AND POWER IN VALUE CHAINS

Competition law is concerned with business practices that create or reinforce market power. In many countries, competition agencies are put in place to act as independent market regulators, ostensibly to make markets work. South Africa's competition law framework is widely considered to be progressive, as it includes broader public interest and transformation objectives, such as empowering small enterprises and including historically disadvantaged South Africans in the economy. It is curious therefore that the challenges of economic concentration and rent extraction persist in South Africa despite the efforts of a competent competition regulator and various policies, including BEE, for fostering inclusion. At the heart of the problem are the complex ways in which market power and incumbent interests are entrenched and reinforced.

In small, open economies, a greater degree of concentration in key industries is to be expected, on account of limited demand and smaller economies of scale. Lessons from studies of late industrializing and developing countries point to the importance of industrial policies and state-enforced 'discipline' on the market conduct of incumbent firms, with a view to ensuring that outcomes are developmental rather than extractive — even where firms enjoy state protections which insulate them from domestic or international rivals (Amsden and Singh, 1994; Roberts, 2010). This discipline can arise from competitors in a particular market, or rules and incentives ensuring that dynamic efficiencies and redistribution are achieved, including in concentrated, capital-intensive markets where scale efficiencies are important.

In this context, capitalism is characterized by the complex interactions of the economic and political interests of the state, labour and firms — the effects of which shape market outcomes and the (skewed) distributions of value that emerge and are reinforced. We are especially interested in how powerful firms act to protect their interests individually and collectively, including through their relations with the state and other firms. We contend

that a narrow framing of capital — consistent with conceptions of competition as the driver of productivity, technical change and value creation — is not adequate to explain the dynamics of power, control and distribution of value in societies, as it ignores how the actions of firms vis-à-vis the state and society shape and are shaped by the dynamics of the political settlement within which they exist (Khan, 2018; Shaikh, 1980; Whitfield and Buur, 2014). These social relations of production manifest unequal outcomes in terms of the distribution of value added, access to opportunity and productive resources, and returns to labour and capital.

In many countries competition policy is expected to discipline the power of large firms by focusing on sources and abuses of market power and reducing barriers to entry. Competition law has been effective in some respects in South Africa, but it has had a muted impact in addressing abuses of dominance by large incumbent firms (Roberts, 2020), despite a very active set of institutions. This is partly because the microeconomic tools of competition law adopt a rules-based approach, which focuses on a narrow set of behaviours and not on the systemic tendencies of capitalism and the broader factors that reinforce power. Competition law provisions are generally premised on orthodox conceptions of markets, assuming that the strategies of firms to extract surplus value ‘are discrete distortions of otherwise well-functioning markets when, in reality, entrenched market power and strategic interactions between firms are intrinsic features of market economies’ (Mondliwa et al., 2021: 343).

Recent evidence points to the fact that different policies (often shaped by the interests of political and economic elites) can deliberately or inadvertently protect incumbency (Goga et al., 2020). Elite networks and asymmetries in power can also work to entrench incumbent interests and keep out rivals (Mondliwa et al., 2021; Vilakazi and Ponte, 2020). Many of these issues are systemic and cannot be addressed by competition law alone. Rather, a comprehensive rethinking of the ‘rules of the game’ in modern capitalism is needed, requiring an understanding of the complex dimensions of power and influence and the way incumbent interests can create and reinforce inequalities and shape developmental outcomes, for better or worse (Khan, 2018).

Since these broader factors are typically beyond the remit of competition law, active state intervention is required in the form of sectoral and industrial policies to address inequalities. This is especially relevant in the context of a natural resource-based sector such as fisheries, in which the state plays a critical role in shaping the distribution of rents and property rights through quota allocations, potentially exposing it to the influence both of powerful interests and of social objectives that could seek to reduce inequalities. How (large) firms themselves engage with the state in this context can shape who gets to participate, on what terms, and who controls the largest share of value added within, along and through the value chain. We therefore need to combine the insights of competition law and economics, which are

helpful in explaining the nature of interactions between firms (Mondliwa et al., 2021), with a broader understanding of the GVC dynamics within which they operate.

One of the main observations of GVC analysis is that GVCs are rarely coordinated spontaneously through market exchange (Gereffi, 1994; Gereffi et al., 2005; Gibbon et al., 2008). Instead, they are governed by strategies and decision making by specific actors, usually large firms that manage access to global, national, regional and local markets (Ponte and Sturgeon, 2014). GVC operations are also shaped by actors that do not directly produce, transform, handle or trade products and services, such as civil society organizations, consumer groups, multi-stakeholder initiatives for sustainability, networks of experts and policy makers, and social movements (Bair and Palpacuer, 2015; Nickow, 2015). States and international organizations of course also play a key role in constructing and maintaining value chains, through facilitative, regulatory and distributive interventions (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).

It is within the context of these discussions that ongoing GVC analysis is attempting to understand how GVC governance shapes inequality within the larger context of social and ecological relations. This critical literature suggests that GVCs are actually reinforcing global inequalities (see, for example, Campling and Selwyn, 2018; Phillips, 2017; Selwyn, 2015, 2019). Bair and Werner (2011) argue that GVCs embed a systemic reproduction of uneven geographies. Baglioni et al. (2020) interpret GVCs as entrepreneurial capture, where lead firms redistribute value away from labour. Baglioni and Campling (2017) show how lead firms appropriate nature and exacerbate inequality by progressively exhausting ecological surpluses at the expense of other actors (see also Campling, 2012). Havice and Campling (2017) argue that states have various ways of leveraging power in natural resource-based GVCs where they control access. Quantin and Campling (2018) reflect on how, through mechanisms of wealth accumulation and protection, value is distributed away from production and towards asset owners. Finally, Dallas et al. (2019) delineate different forms of power and how they can shape the governance dynamics of GVCs.

This article applies the insights of the existing literatures on competition and value chains to explain the dynamics of competition, regulation and transformation in an industrial fishery in South Africa. South Africa is particularly relevant to our discussion because the government had explicit political legitimacy, after the first democratic elections in 1994, to address the inequities of apartheid and it has used various regulatory instruments to do so, including those enforced since the 1990s by a very active Competition Commission and a unique BEE compliance programme.

BLACK ECONOMIC EMPOWERMENT IN SOUTH AFRICA

A nuanced understanding of governance in South African value chains needs to encompass a discussion of BEE processes and ‘transformation’. Since 1994, South Africa has embarked on a series of policies aimed at empowering groups and individuals who were previously disadvantaged by the system of apartheid. While the objectives of BEE, as part of this set of policies, were focused on transforming the racial composition of ownership, control and access to opportunities in the business sector, they derived from a wider socio-political imperative to redress broader imbalances (including in education, labour laws and access to basic needs) that had arisen from a system of social relations that significantly marginalized black South Africans in society as a whole.

In terms of BEE specifically, the process initially involved large firms actively transferring and selling equity in existing white-owned enterprises to businesses owned by ‘black’¹ South Africans through what became known as ‘BEE deals’ (Gqubule, 2006). This was an attempt by established businesses to stave off more aggressive state policies to rearrange the distribution of ownership of economic assets in response to growing societal pressures (Roberts et al., 2007). By incorporating powerful black businesspeople and political elites in the ownership of major business assets, the interests of at least some black capitalists and politicians became more aligned with big business, and it would be against their interests to undermine the rents that would derive from these arrangements. This pattern is mirrored in our discussion below on an industrial fishery.

Economic strategies in the early 1990s did not articulate a clear policy direction on how BEE would be achieved (Hirsch, 2005), but it was clear that the initial approach was not socially and politically tenable. Indeed, it was not long before groups of black entrepreneurs (led by the Black Business Council) and other actors in civil society raised concerns that BEE was simply enriching a small number of well-connected politicians and businesspeople, on terms set by white business elites (ibid.). In 1998 a review was commissioned by the Black Business Council, with a view to defining a vision for a broader BEE policy and enhancing the voice of black business owners in society (Gqubule, 2006). The outcome was a report tabled to government in 2001, the findings of which came to shape ‘broad-based BEE’ (B-BBEE)² and a new law and strategy in 2003 (Bracking, 2019; DTI, 2003; Southall, 2007).

Most relevant for our analysis is the fact that from the early 2000s the government responded to criticisms of the previous approaches to BEE,

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1. We refer to the definition in the B-BBEE Act of 2013, as amended: www.bbbee.commission.co.za/wp-content/uploads/2016/09/Consolidated-B-BBEE-Act-2013.pdf
 2. Broad-based in terms of the policy refers to the incorporation of a range of different elements of inclusion along with the percentage of ownership by black South Africans.

including that it lacked policy direction, by defining inclusion criteria and broadening empowerment to include other aspects of business control, such as management, funding, skills development and inclusion in value chains through procurement (Bracking, 2019; Southall, 2007). Compliance with B-BBEE was not made compulsory, but it was entrenched through Codes of Good Practice as soft law to encourage good transformation practices in existing businesses (DTI, 2007) — especially those that needed to deal commercially with the state and thus required good BEE credentials. The Codes embodied a codified 'BEE scorecard' system in which firms were given weighted scores by verification agencies against various inclusion criteria.³

The soft enforcement and codification of transformation was a negotiated outcome reflecting the careful balance that the state chose to strike, between being seen to be driving transformation in the economy after the political transition in 1994 and giving a sense of security to white-owned businesses that transformation would not undermine their economic assets in South Africa (Chabane et al., 2006). Similar compromises had been reached in the competition law of 1998,⁴ whereby widespread divestiture of large businesses was ruled out (Mondliwa et al., 2021). That is, the interests of incumbents had to be considered in order to maintain a careful balance of interests in South Africa's political settlement. This also set the context for quota allocations in industrial fisheries.

The complexities of the political economy of BEE and its implementation are well documented in the literature and we do not traverse all this work here.⁵ Throughout much of the period that we analyse, the 2003 Broad-based Black Economic Empowerment Act No. 53 ('B-BBEE Act') and the 2013 B-BBEE Amendment Act (which came into force in 2014) provide the relevant legislative framework for understanding BEE processes in South Africa.⁶ Most relevant is that outcomes have been below expectations in many respects (B-BBEE Commission, 2017, 2020). Although BEE policy is primarily responsible for putting the issue of transformation firmly within the economic discourse and practices of businesses, its poor performance is reflective of a policy framework (along with other policies aimed at driving transformation) which could not address the systemic features of the

3. At the time of writing, firms can obtain scores for achieving targets under five scorecard elements (revised from seven elements in the previous framing): ownership share held by blacks; management control (formerly employment equity and management control in the 2004 codes); skills development; enterprise and supplier development (formerly preferential procurement from black owned-enterprises and supplier development); and socio-economic and sector-specific contributions.

4. See: www.compcom.co.za/the-competition-act/

5. See: Freund (2007); Gqubule (2006); Hamann et al. (2008); Iheduru (2004); Mebratie and Bedi (2013); Mondliwa and Roberts (2020); Patel and Graham (2012); Roberts et al. (2007); Tangri and Southall (2008).

6. See: www.bbbeeecommission.co.za/wp-content/uploads/2016/09/Consolidated-B-BBEE-Act-2013.pdf

economy and society (Andreoni et al., 2021). This served to entrench the position of large firms and incumbent interests, including the interests of local elites that have benefited from the status quo (Vilakazi and Bosiu, 2021).

While, as a principle, BEE could provide a basis for radical redistribution and for justifying an aggressive social development policy, achieving this would entail a holistic approach to policy making, including land, social policy and skills development (Gqubule, 2006; Roberts et al., 2007). In practice, its *modus operandi* has been to follow the principle of ‘getting the economy right first’, then to address transformation — as long as it does not weaken competitiveness in export markets or challenge the established oligopolies of South African industry. In other words, although there has been some progress (Bowman, 2019; Patel and Graham, 2012), BEE has largely failed to radically challenge the inherited structures of the economy (Bowman, 2019). We are especially interested in why this path dependence is evident even in sectors of the economy, such as fisheries and mining, where the government has strong regulatory powers with respect to allocations of extractive rights. To further explore the dynamics between competition, regulation and transformation, we now focus on the value chain for an industrial fishery (hake deep-sea trawl), where regulatory influence could have brought deep transformation.

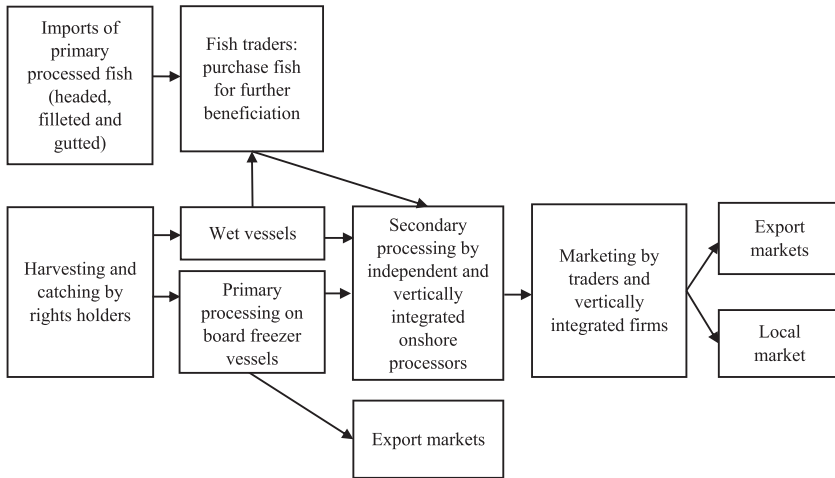
THE SOUTH AFRICAN HAKE VALUE CHAIN

The South African hake fishery is organized into four sectors: hake deep-sea trawl (HDST, the focus of our analysis), hake inshore trawl, hake longline and hake handline. Fisheries in South Africa are regulated in terms of a total allowable catch (TAC), which is determined and allocated each year by the government’s Department of Forestry, Fisheries and the Environment (DFFE)⁷ in consultation with industry participants and the Demersal Scientific Working Group.

Catches of hake over recent decades have typically fluctuated around 150,000 tonnes per annum, with most of the catch being landed by the HDST sector (Oceana Group, 2019a). HDST constitutes 83 per cent of hake TAC and was valued in a 2019 report at ZAR 4.5 billion (wholesale) — approximately US\$ 308 million at 2018 exchange rates (Fiandeiro et al., 2019), up from approximately ZAR 3.2 billion in 2012 (Lallemant et al., 2016). It is by far the most important fishery in South Africa, accounting for approximately 45 per cent of the wealth generated from commercial fisheries in the country (SADSTIA, 2018a) and providing over 7,000 jobs, most of which are full-time with benefits (Fiandeiro et al., 2019; SADSTIA, 2019a). The value of the sector in terms of employment, export earnings and scale of the

7. Formerly Department of Agriculture, Forestry and Fisheries (DAFF), amongst various other iterations since 1994. It was renamed in April 2021.

Figure 1. Configuration of the Hake Value Chain in South Africa



Source: Authors' own compilation based on the Competition Tribunal of South Africa in 2014; see: www.comptrib.co.za/open-file?FileId=23730.

main players therefore makes it an especially contested one from a policy perspective, with various interests vying to shape its evolution over time.

The hake value chain in South Africa is governed by three vertically integrated groups — Irvin and Johnson Limited (hereafter I&J), Oceana and Sea Harvest — with most industry rights holders organized in the South African Deep-sea Trawling Industry Association (SADSTIA). All three groups are listed on the Johannesburg Stock Exchange. They exercise their 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 control of the domestic and export markets for South African hake. In 2014, 40 per cent of the HDST TAC was landed for value-added processing; over time, there has been a gradual shift among the lead firms towards on-board processing of the catch into marketable frozen products. This is because the catch cost per tonne is lower for on-board processing than for shore-based processing and because of stricter labour requirements on land (Cooper et al., 2014).

The industry uses ocean-going vessels and sophisticated processing plants (see value chain configuration in Figure 1). Harvesting in 2020 was undertaken by 51 trawlers: 21 freezer trawlers which focus on frozen headed and gutted hake products with on-board processing facilities, and 30 wet fish trawlers harvesting fresh fish for further processing onshore. 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).

Hake, in either raw or processed form, is sold into domestic and export markets to traders, wholesalers, the food service industry (catering, hotels, public procurement, restaurants) and retailers. South African hake competes in the international market for white fish, which includes other popular species such as cod, haddock, halibut, pollock, Nile perch and tilapia. White fish contributes to a large proportion of European consumption of fish and fishery products. In the early 2000s, Spain imported approximately one third (by value) of hake exports from South Africa, and exports to EU countries overall comprised the vast majority of all South African hake exports by value. Historically, the HDST industry generally supplied export customers with simple products such as headed and gutted hake and sea-frozen fillets, while the domestic market was supplied with a full range of products, including value-added preparations (Ponte and van Sittert, 2007). However, the global financial crisis of 2008 led to a major decline in demand from Spain, especially of fresh hake (Lallemand et al., 2016),⁸ and to an over-supply of hake on domestic markets, forcing the industry to find alternative markets and shift product forms (SADSTIA, 2018b). The new or expanding destinations include Denmark, France, Germany, The Netherlands, Sweden, Switzerland and the UK, where Marine Stewardship Council (MSC) certification is required by many retailers. MSC certification is the leading global eco-labelling standard for fisheries, through which firms are assessed and scored based on various environmental sustainability criteria (Ponte, 2012).

By 2019, South Africa exported hake to more than 20 countries around the world, but normally with unbranded products (a common situation for fish exports from developing countries, except for canned tuna; see Campling, 2012). Export markets are generally more lucrative, and a premium of around 15 per cent 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 (SADSTIA, 2019a). Partly as a result of the earnings available in export markets, the South African HDST sector exports 67 per cent of its catch (ibid.).

Overall, three broad business models are observed in the hake value chain. The first is the *vertical integrated system* utilized by the three largest industrial processors (I&J, Oceana and Sea Harvest). They have large onshore plants where they process catch from their own wet fish vessels, and they also run large freezer trawler operations with on-board processing facilities. Their main preoccupation is to ensure a sufficient volume of fish to make their processing operations profitable and to 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. But the need to coordinate fishing and processing

8. Interviews, industry experts, online, 26 March, 5 May and 15 May 2020.

means that these companies prefer direct ownership of quotas rather than a higher risk contractual system (Fiandeiro et al., 2019; SADSTIA, 2019a).⁹ Smaller quota holders may also find these arrangements necessary as they do not have the capital and logistics support to run offshore operations.¹⁰ The second business model is based on *vessel joint ventures*. These are usually structured around a freezer trawler catching and processing headed and gutted hake, where shareholding and profit allocations are easier to ascertain (there is no onshore value addition to contend with) (Fiandeiro et al., 2019; SADSTIA, 2019a). A third business model is based on *diversification and flexibility*; it is mostly adopted by smaller rights holders who jointly operate a vessel by pooling their quotas and then selling their catch to onshore processing facilities, usually not owned by the big three conglomerates.¹¹ These firms often seek economies of scope by holding quotas in several different fisheries. Some may also harvest on contract for other rights holders and/or simply 'sell' their quotas to them (ibid.).

TRANSFORMATION, REGULATION AND COMPETITION

Transformation in South African fisheries occurs at the nexus of a range of different policy and industry processes, involving a complex interaction of the various interests that control and benefit from the fisheries. Government ostensibly has an interest in driving racial diversity in ownership and control in the sector through the TAC quota allocation processes, the 1998 Marine Living Resources Act (MLRA)¹² and BEE policies. It also has an interest in driving growth and profitability of the sector. The main firms in the hake fishery sector straddle compliance with local standards in terms of B-BBEE scores (especially in the case of listed firms where there is a corporate governance scrutiny placed on firms to transform), the various policies relating to rights allocation and transformation in the fishery, as well as international compliance with MSC requirements which are directly related to their concern about firm profitability overall. This section analyses the interface of these factors and examines how transformation has evolved as an outcome of the interaction of different interests in the sector, through the lens of the GVC literature, in order to understand the power relations at play. It focuses on two thematic areas: 1) quota allocations and consolidation, and 2) inclusion and transformation.

9. Interview, industry expert, online, 26 March 2020.

10. Interviews, industry experts and industry participant, online, 26 March, 7 April, 15 May 2020.

11. Interview, industry expert, online, 26 March 2020.

12. See: www.gov.za/documents/marine-living-resources-act-27-may-1998-0000#:~:text=The%20Marine%20Living%20Resources%20Act,certain%20marine%20living%20resources%3B%20and

Quota Allocations and Consolidation

In addition to determining the total allowable catch for each year, DFFE governs the system of allocating long-term, 15-year quotas for different companies through what is now known as the Fishing Rights Allocation Process (or FRAP, previously known as ‘long-term rights allocation process’). While the allocation of rights in South African fisheries has a complex history dating back to deregulation of the HDST in the late 1970s,¹³ we focus on the period from the 1990s onwards, and in particular the allocation of 15-year rights in 2005–06 and the FRAP process of 2020–21.

The Long-term Rights Allocation Process of 2005–06

The policy position for the 2005 allocation of rights was the outcome of a lengthy process of bargaining from the 1990s between the relatively new African National Congress (ANC) government, business and organized labour. The state had at its disposal two key levers for driving transformation in the sector; on the one hand, it could leverage its power to shape the provisions of the MLRA that was being developed and thus assert its control of quota allocations which had direct and significant implications on the profitability of the lead firms. On the other hand, discussions within fisheries were taking place in the context of national changes and processes that started in the late 1990s to develop the BEE policy strategy, which could have meant significant change in the control and operations of the major companies unless they made significant sector-level commitments with government. The latter is relevant because at that time there was no certainty as to whether the government would make compliance with BEE compulsory or institute far-reaching measures such as ordering divestitures of major businesses (which it ultimately did not).

SADSTIA’s position was always that the MLRA under the democratic government had to protect the economic stability and sustainability of fisheries including HDST. Its proposed approach was against redistribution of hake quotas and in favour of the conversion of the existing annual access rights into individual transferable quotas to be held in perpetuity and tradable as corporate assets. The practice since the 1970s had been to allocate rights annually based on historical performance in the fishery, with the local market ring-fenced through the exclusion of foreign vessels from 1983. This position was also supported by an argument that rights had been allocated in the 1990s to smaller industry participants and that they should be supported to grow their businesses, which was essentially an argument against further radical redistribution of quotas.

13. For a more comprehensive account of the history of deregulation and quotas in HDST, see Ponte and van Sittert (2007), van Sittert (2002), and Vilakazi and Ponte (2020).

SADSTIA's position was rejected by the ANC government, partly through the parliamentary Portfolio Committee on Environmental Affairs and Tourism, because it ultimately meant that established players would retain the largest share of quotas as a function of their historical dominance of the sector. These players had the scale to sustain industry profitability, capacity to generate investments (which was less likely with smaller players), and were already contributing to (unionized, formal) employment and foreign exchange earnings through exports. However, the SADSTIA proposal obscured the fact that by the early 2000s the HDST was the least transformed of all national fisheries — with I&J and Sea Harvest having transferred only 2 per cent and 8 per cent respectively of their shares to employees in 1996 as part of early BEE deals (van Sittert, 2002). Furthermore, by the start of the long-term HDST rights allocation process in the mid-2000s, Ponte and van Sittert (2007) estimated that white-owned 'pioneer companies' (defined by the authors as incumbents that already owned quotas in 1987) directly controlled 84 per cent of the HDST quota. In 2006, I&J and Sea Harvest together controlled approximately 64 per cent of the access to the HDST TAC, while four other pioneer companies controlled almost 20 per cent.

This imbalance in the allocation of rights to incumbent players was evidently untenable for the government although it seemed to recognize the risks of intervening in the sector in a manner that would disrupt profitability, employment and tax and export earnings. At the same time, I&J and Sea Harvest had attempted to remove the threat of more radical redistribution by trying to enhance their BEE profiles — I&J through its parent company selling a 20 per cent shareholding to a BEE consortium of black-owned companies in 1998, and Sea Harvest through its parent company, Tiger Brands, selling 27 per cent of its own shares to a consortium led by the BEE company Brimstone, which included an effective sale of 10.8 per cent of shares in Sea Harvest (van Sittert, 2002). While the profiles of these firms had improved by 2005, they were still below the targets that were embodied in the BEE Act of 2003.

This period also reflects the difficult trade-offs facing government at the time. The outcome of this balancing exercise is illustrative. The version of the MLRA released in 2005 reflected successful efforts by industry to lobby government for a more modest transformation and allocation process. The details of this compromise position included: (1) the allocation of quantum would be determined in reference to the quantum already held in 2005; (2) a redistribution of at least 10 per cent of the TAC would take place to the benefit of existing holders of small allocations that had transformed and performed well during the period since 2001;¹⁴ and (3) there would be an allocation of an additional quantum to achieve objectives of transformation and performance. These changes turned a potentially revolutionary

14. A medium-term rights allocation had been put in place from 2001 with a five-year timeline for transition to long term allocations.

redistribution process (encompassing up to 50 per cent of TAC) into a relatively marginal one. The BEE scorecard was divided so that 24 per cent of points were allocated to ‘investment’ (the larger the investment over the industry average, the higher the score) and financial performance, and 26 per cent to job creation, safety and value addition. Thus, for 50 per cent of the score, larger companies were more likely to perform above average. The remaining 50 per cent of the score was related to transformation, according to the seven elements under the B-BBEE Act discussed above (Ponte and van Sittert, 2007).

An additional provision was that rights could not be transferred without the approval of the DFFE and could be traded only in accordance with the principles set out in the Policy for the Transfer of Commercial Fishing Rights of the MLRA. In its decisions, DFFE considers: (1) whether the transfer would lead to a consolidation of fishing rights 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 DFFE 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). While this provision was presumably put in place to ensure the power of the state to shape the distribution of quotas and drive transformation, it is rendered ineffective if the primary allocation of quotas — the main determinant of participation in the sector — is already skewed towards the main firms. Our estimates using DFFE data show that the combined share of I&J and Sea Harvest changed marginally, from approximately 63 per cent of TAC prior to the process, to around 54 per cent in 2008, with a vast pool of smaller players sharing the difference.¹⁵

The Fishing Rights Allocation Process (FRAP) of 2020–21

A new process for allocating long-term rights was supposed to come into force in 2020 but was then postponed to 2021 (referred to hereafter as FRAP 2020–21). Our analysis of the state of the industry after the 2005–06 process demonstrates significant shifts over time in the relative power and interests of different actors that have sought to shape the process.

South Africa has gone through an extensive hollowing out and capture of the key agencies of the state, and the issue of state capacity has been at the forefront of policy debates since around 2009 (Bhorat et al., 2017). The fisheries sector has not been immune to these changes, and there has been a significant weakening of the institutional power of the agency in charge of fisheries regulations. According to some of our sources, once the

15. Data were obtained via email correspondence with DFFE.

2005–06 rights allocation process ended, the regulatory capability of the institutions in charge, including the Marine and Coastal Management regulatory agency that was in place in the 2000s, essentially imploded.¹⁶ High turnover of senior staff, and limited resources with which to handle a very expensive FRAP process, are compounding the situation.¹⁷ As a result, 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. This has allowed an internalization by industry of functions that were previously the domain of the regulatory agency, bolstered by the industry's key role in obtaining and maintaining MSC certification for South African hake and other fisheries, which has further strengthened the power of the main players (see below).

On the other hand, the industry association's position on the core rationale for avoiding a drastic reallocation of quotas has not changed significantly. The key differences going into the FRAP 2020–21 were that the companies had made additional investments in local capacity, and that they had significantly improved their BEE transformation scores along various parameters, as discussed below. The problem for the main companies during the 2020–21 process was that the primary weapon in the arsenal of the state to reallocate quotas remains in place despite any perceived or actual institutional weakness it may have. This presents a challenge for the lead firms because there has been consolidation of quotas through mergers and acquisitions approved by the competition agencies which, whatever their concerns, have no mandate to intervene on quota allocation issues, which are the purview of DFFE (Mnisi and Lekezwa, 2014).

As of 2019, the three largest conglomerates in the HDST industry directly or indirectly held access to 89.4 per cent of the fishing rights allocations in the HDST sector, indicating a major process of consolidation (see details in Vilakazi and Ponte, 2020). In addition, Brimstone Investments (44.9 per cent white-owned) owns and controls 54.9 per cent of the issued share capital in Sea Harvest and 25.1 per cent of the issued share capital in Oceana. This implies that Brimstone indirectly holds a dominant footprint in the HDST sector (58.37 per cent of the TAC). As such, while the allocation process sought to achieve redistribution, *control* over rights has effectively remained concentrated.

The majority of vessels are thus still owned by a small group of larger companies (Fiandero et al., 2019), which are also vertically integrated into processing (both off- and onshore), including domestic and international marketing of fish,¹⁸ and which exercise significant power, especially when it comes to accessing value addition from processing onshore. These observations imply that while Table 1 suggests that the HDST industry comprises 44

16. Interviews, industry experts, online, 28 August 2019 and 26 March 2020.

17. Interviews, industry expert and industry participant, online, 5 May and 27 May 2020.

18. Interview, industry participant, online, 17 June 2020.

Table 1. Official HDST Rights Holders and Shares of Total TAC in 2018

Rights holders	Proportion of TAC (%)
Irvin & Johnson Ltd (I&J)	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 Seeprodukte	0.36
Anglo Mar Fishing Rights Company	0.36
BP Marine Fish Products CC	0.24
Azanian Fishing	0.24
Pellrsrus 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: Authors' elaboration based on data from the Department of Agriculture, Forestry and Fisheries (DAFF, 2018) and from SADSTIA; see: www.sadstia.co.za/about/members/

rights holders, it is more analytically appropriate to examine the 10 HDST harvesting 'clusters' shown in Table 2. If we expand this approach to on-shore processing, the funnel is even narrower, with the largest three HDST groups controlling almost all value-added production and export-oriented

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	44.74
	Combined Fishing Enterprises CC	
	Pellsrus Historical Fishing Corporation CC	
	Vuna Fishing Company (Pty) Ltd	
	Seavuna Fishing Company (Pty) Ltd	
	SA Fishing Empowerment Corporation (Ziyabuya Fishing Eastern Cape (Pty) Ltd)	
Oceana	Nalitha Investment (Pty) Ltd	
	Amawandle Hake (Pty) Ltd (Vaxograph)	13.63
	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	
Eyethu	Snoek Wholesalers (Pty) Ltd	
	Eyethu Fishing (Pty) Ltd	3.34
Echalar	Khoi Qwa Fishing Development Co. (Pty) Ltd	3.78
	Mayibuye Fishing (Pty) Ltd	
Da Olim	Offshore Fishing Company (Pty) Ltd	
	Tradeforth 13 (Pty) Ltd	
	Impala Fishing (Pty) Ltd	1.51
Basani	Rainbow Nation Fishing CC	
	Usuthu Fishing CC	
	Visko Seeprodukte (Pty) Ltd	1.54
Dyer Eiland	ZWM Fishing (Pty) Ltd	
	Dyer Eiland Visserye (Edms) Bpk	0.33
	EFH Walters Trawling (Pty) Ltd	
Suidor Cluster	Engelbrecht Visserye	
	Suidor Fishing (Pty) Ltd	0.13
Ntshonalanga	Ntshonalanga Fishing SA (Pty) Ltd	0.38

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.

Source: Authors' elaboration based on data from DAFF (2018) and SADSTIA (see: www.sadstia.co.za/about/members/) as well as interviews with industry experts and participants, 26 March and 3 April 2020.

processing and marketing, and with only a few other small processors packaging fish for the domestic fresh fish market.¹⁹

In early 2019, SADSTIA called for a 'sensible' rights allocation (Phakathi, 2019) 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 HDPs²⁰ who have invested in the industry, including employees who are invested via employee share

19. Interview, industry participant, online, 3 April 2020.

20. HDPs refers to historically disadvantaged persons, a term referring to any person, category of persons or community disadvantaged by unfair discrimination before the Constitution of

schemes' (Maritime Review Africa, 2019). SADSTIA had good reasons to be worried — and the company equity partners under the various empowerment deals were worried too, it seems (SADSTIA, 2020).²¹ The 2015 allocation of fishing rights in 10 other commercial fisheries indicated that DFFE was looking to regain some level of institutional power over the industry by 'shaking things up'.²² During the 2015 process in these other fisheries, 30 per cent 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, a medium-sized white-owned firm (unlisted), 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 which had a considerably higher transformation score backed by its links to Brimstone.

The argument made by SADSTIA for caution in reallocating quotas, despite the major firms still exercising some control over the majority of TAC in HDST, is mirrored in the 2018 economic study it commissioned (SADSTIA, 2018c; see also Leiman, 2015). The study noted that: (1) taking away quotas from (larger) operators who have onshore value addition processing plants would have a negative impact on jobs, as new entrants usually pool 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 — 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, and is best achieved by a small group of consolidated companies; (4) super-market chains in importing countries have minimum volume requirements (another argument against fragmentation); and (5) the HDST industry has already transformed quite radically, with historically disadvantaged persons (HDPs) holding 65 per cent of shares in the firms harvesting 90 per cent of the quota, up from 30 per cent in 2005.

This set of positions, however, ignores at least three points. First, the transformation of the industry was itself driven by threats of a more radical redistribution of quotas that had first been aired in the early 2000s (in relation to HDST) and again around 2015 (in relation to other commercial fisheries), when the same arguments had been used to avoid new entrants. Without such a threat, it is unlikely that transformation would have occurred to this extent. Second, an exclusive focus on fishing, a lower profitability function in the value chain,²³ means that transformation discussions tied to quotas are too

the Republic of South Africa, 1993 (Act No. 200 of 1993) came into operation. The term effectively encompasses black people as per the BEE legislation.

21. Interview, industry participant, online, 17 June 2020.

22. See: www.dawsons.co.za/pre-frap-2020-restructuring-fishing-news-industry-apr-2018/

23. Interviews, industry participants, online, 3 April and 17 June 2020.

narrow. The financial reports of Oceana (2019b) and Sea Harvest (2018) indeed 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.

Third, merger and acquisition activities in the industry have restructured HDST in ways that make it more concentrated, which is not reflected upon in the SADSTIA discourse on the threats of (so far very limited) fragmentation. The 2018 acquisition of Viking by Sea Harvest and of Foodcorp by Oceana in 2014 are clear indications of this trend (for details on the major merger transactions, see Vilakazi and Ponte, 2020), amounting to a reallocation of rights held by competitive, medium-sized players to relatively larger players. Effectively, by 2018 Oceana had grown to become the third largest group, and I&J and Sea Harvest had direct control of approximately 61 per cent of the TAC, which mirrors their starting position of 63 per cent in 2005 before the long-term rights allocations. The process of consolidation has created an embedded oligopoly that strengthens the power of a small group of existing rights holders, in HDST and elsewhere — a status quo which has generated significant concern for government and other actors in the industry, particularly small black-owned participants, as we discuss below.

Inclusion and Transformation

At a superficial level, the picture of inclusion in HDST has changed considerably since the early 2000s in terms of transformation as measured by the BEE scorecard system. The sector stands out favourably relative to many other sectors in terms of its performance on BEE parameters over time, most likely reflecting the additional impetus to transform which arises from the incorporation of BEE criteria in quota allocation parameters, amongst other factors (B-BBEE Commission, 2017, 2020). As noted, at the time of writing, HDPs held approximately 65 per cent of the shares in the firms that harvest 90 per cent of the HDST catch (Fiandeiro et al., 2019). The top three firms in the HDST fishery are Level 1 BEE contributors, which is the highest attainable level, and the fourth is a Level 2 contributor.²⁴ The industry overall scores high on transformation of management, skills development and socio-economic development, and enterprise and supplier development (Empowerdex, 2018; Fiandeiro et al., 2019; Oceana, 2019b). The HDST sector also performs well relative to others on transformation scores; in 2016, it was in the top four sectors within the fishing industry on overall empowerment indicators (SADSTIA, 2019b) and was the highest

24. The BEE status of a company under the 2013 amended legislation is calculated according to a score based on five (previously seven) elements. A company achieving a score of 100 points and above has a Level 1 status; a company scoring between 95 and 100 points has a Level 2 status, etc.; there are eight levels in total.

ranked among a selection of lead firms in key sectors in 2018 (Empowerdex, 2018). In terms of transformation, it appears that the government got exactly what it asked for — a substantial improvement in the BEE scores of the major operators.

But let us delve deeper. Sea Harvest acquired Viking under the guise of a BEE consortium it led, which comprised three other organizations — SeaVuna Fishing Company, Nalitha Investments and South African Fishing Empowerment Corporation (SAFEC) (DAFF, 2018). Both Nalitha Investments 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’ (ibid.: 1). SAFEC’s only two directors at the time were Brimstone executives (managing director and chief operating officer), while a former executive at Oceana Group was involved in Nalitha Investments (FINSA, 2018). The cases of SAFEC and Nalitha Investments suggest that relationships and existing networks in the industry may be needed for new entrants to integrate into value chains in the sector. 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 DFFE.²⁵ Progress in relation to the position of smaller, black-owned rights holders has been much less impressive.

Some in the industry also question the substance of social development achievements, noting that incorporation of small and medium enterprises and/or black-owned businesses has largely been in ancillary activities such as cleaning, fuel, transport and laundry and not core fishing-related functions.²⁶ This is effectively confirmed by the lead players, although they claim it as a key part of the industry’s socio-economic contribution.²⁷ Some in the industry are of the view that the main players have simply done what they were asked by the government through its B-BBEE policy. But the policy itself has been critiqued as focusing on narrow measures of transformation rather than addressing the substantive barriers facing new entrants who attempt to participate in value-adding levels of different value chains (Mondliwa and Roberts, 2020; Vilakazi and Bosiu, 2021).

In addition, our interview material suggests that the terms offered to smaller firms by the vertically integrated players are often not viable, and certainly not negotiable, including the provision that the small-scale rights holder will have no say over when their fish is caught and sold for them.²⁸ Black-owned companies are reluctant to voice their concerns for fear of being ‘targeted or eliminated’ or facing litigation, given their dependence on the main companies for processing and marketing.²⁹ These power

25. Interview, industry expert, online, 25 June 2020.

26. Interviews, industry participants and expert, online, 17 June, 26 June and 15 May 2020.

27. Interview, industry participant, online, 17 June 2020.

28. Interviews, industry participants, online, 3 March and 7 April 2020.

29. Interviews, industry participant and expert, online, 26 March and 3 April 2020.

asymmetries are exacerbated by the fact that the smaller rights holders are not well represented or organized such as to exercise any form of *institutional* power, and that the government has generally not been responsive to their complaints.³⁰ After approximately two decades of targeted transformation initiatives, less than a third of HDST players are fully black-owned, even fewer have their own freezer vessels or packing facilities, and only some black-owned firms have managed to make 'entry level' investments to demonstrate their readiness for allocations in the FRAP 2020–21 process, also due to lack of finance.³¹ These practices and constraints trap smaller rivals in a low-growth, low-investment and high-debt cycle, leading many to simply trade away their rights.

Several participants highlighted the deep power inequalities that underpin many of these arrangements, especially when large vertically integrated companies are involved.³² '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 — 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.³³ 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'.³⁴ As a small quota holder stated, 'we black guys chase only the quotas, but [we] 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'.³⁵ Another argued the need for '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'.³⁶

Demands by smaller HDST quota holders to have a share in the processing and marketing of hake domestically and internationally are often ignored, as 'the legal cost to challenge these is steep and SMMEs [small, medium and micro-enterprises] 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'.³⁷ At the same time, the lead firms and others advocate

30. Interviews, industry participants, online, 3 March and 7 April 2020.

31. Interviews, industry participants and experts, online, 3 March, 7 April, 17 June 2020.

32. Interviews, industry participants and expert, online, 26 March, 3 April and 15 May 2020.

33. Interviews, industry participant and expert, online, 26 April and 15 May 2020.

34. Interview, industry participant, online, 7 April 2020.

35. Interview, industry participant, online, 3 April 2020.

36. Interview, industry participant, online, 7 April 2020.

37. Interview, industry expert, online, 26 March 2020.

that margins are not substantial in processing activities anyway, and that required scale could not be achieved without concentration at this level.³⁸

A Last Chance? Value Chain Participation and Transformation in the Hake Fishery

The analysis in this article suggests that, even in one of the most regulated sectors of South Africa's economy, the power of the state to regulate and transform the hake value chain has been dampened. Large incumbents retain disproportionate power vis-à-vis smaller players in the industry, both at the fish capture level and downstream in the value chain. Despite the strong instruments the state has at its disposal, lead firms and their industry association have been able to limit the potential regulatory effect of quota allocations and BEE processes and have managed to build now broadly accepted principles on how the industry should be run and how it should look. This has allowed incumbents to preserve their power, also through consolidation via mergers and acquisitions (largely approved by the competition authorities despite the concerns they have raised) and the involvement of a relatively small number of empowerment groups.

These dynamics emerge from two broad rationales, one related to the interaction between competition and production efficiency and investment justifications, and the other connected to transformation imperatives (largely embodied through BEE instruments). The lead companies in this industry have put forward a clear position on the need for greater consolidation to achieve productive efficiencies and incentivize investments. They have not explicitly argued against the need for transformation in the industry — and, indeed, the levels of transformation as determined through the BEE scorecards have increased on some measures (Empowerdex, 2018; Fiandeiro et al., 2019). Yet various commentators have argued that not enough has been done to support the growth of smaller players in the industry, and that DFFE ought to restrict further consolidation of rights in HDST in particular (Mnisi and Lekezwa, 2014).³⁹ A key question for the future of the industry is whether the seemingly competing objectives of productive efficiency and broad-based transformation can be achieved in conjunction.

The other key factor relevant to our discussion is transformation in terms of BEE, including 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 relation to 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

38. Interviews, industry participants, online, 7 April and 17 June 2020.

39. Interview, industry expert, online, 10 September 2019.

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.⁴⁰ 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.

CONCLUSION

Transformation did not go far enough in the hake value chain in South Africa as it focused on fishing operations only and did not require the opening up of processing, distribution and marketing functions. Nor did it attribute sufficient shares of quotas to smaller players to enable them to emerge as effective challengers in the sector. Real value lies elsewhere in the value chain, and the lack of financial and industrial policy support for meaningful entry in these downstream functions signals a coalition of political and business interests that does not intend to disrupt the status quo.

What has gone wrong in South Africa's regulatory framework? It seems that a technocratic approach to competition, regulation and transformation through BEE has stifled the earlier ambition of the government to engender more extensive change. 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 so that their core interests would not be disrupted substantially (Chabane et al., 2006; Mondliwa and Roberts, 2020). In the case of competition law, this took the form of a compromise away from large-scale divestitures of large businesses, and very strict conditions to prove and penalize abuse of dominance (Chabane et al., 2006; Makhaya and Roberts, 2013; Mondliwa et al., 2021; Roberts, 2020). On BEE, companies were not compelled to comply, even though the state had some leverage in sectors such as fishing and mining where it also controlled rights of access to essential resources and could thus have enforced transformation. We argue that transformation, regulation and competition should go hand in hand to facilitate the effective participation of black-owned businesses as *competitors* in value chains.

This analysis also points to the power of lead firms in value chains to limit the effect of redistributive policies on their businesses and to shape the rules of the game in favour of maintaining the status quo. In South Africa, this has been matched (or allowed) by weakened capacity within the state. Asymmetric power relationships with smaller rights holders, as

40. Interview, industry expert, online, 26 March 2020.

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 or processing facilities of the main players do not seem to be favourable and scale economies in processing and vessel ownership mean that there are few alternatives available.

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, the power of the former becomes entrenched and the possible dynamic gains to the economy are lost. We conclude that as long as rules protect incumbency, inequality will be sustained.

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