

FAIRBRIDGES WERTHEIM BECKER

Est. 1812



THE NEED FOR COMPETITION LAW COMPLIANCE



SA FEEDLOT ASSOCIATION
SA VOERKRAALVERENIGING

SA FEEDLOT ASSOCIATION CONFERENCE

29 July 2025

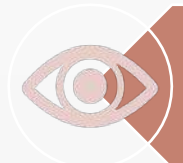
Failure to comply with competition law poses five threats to firms:



Administrative penalties
Possible civil claims for damages



Intrusive investigations and wasted resources



Reputational damage and negative publicity



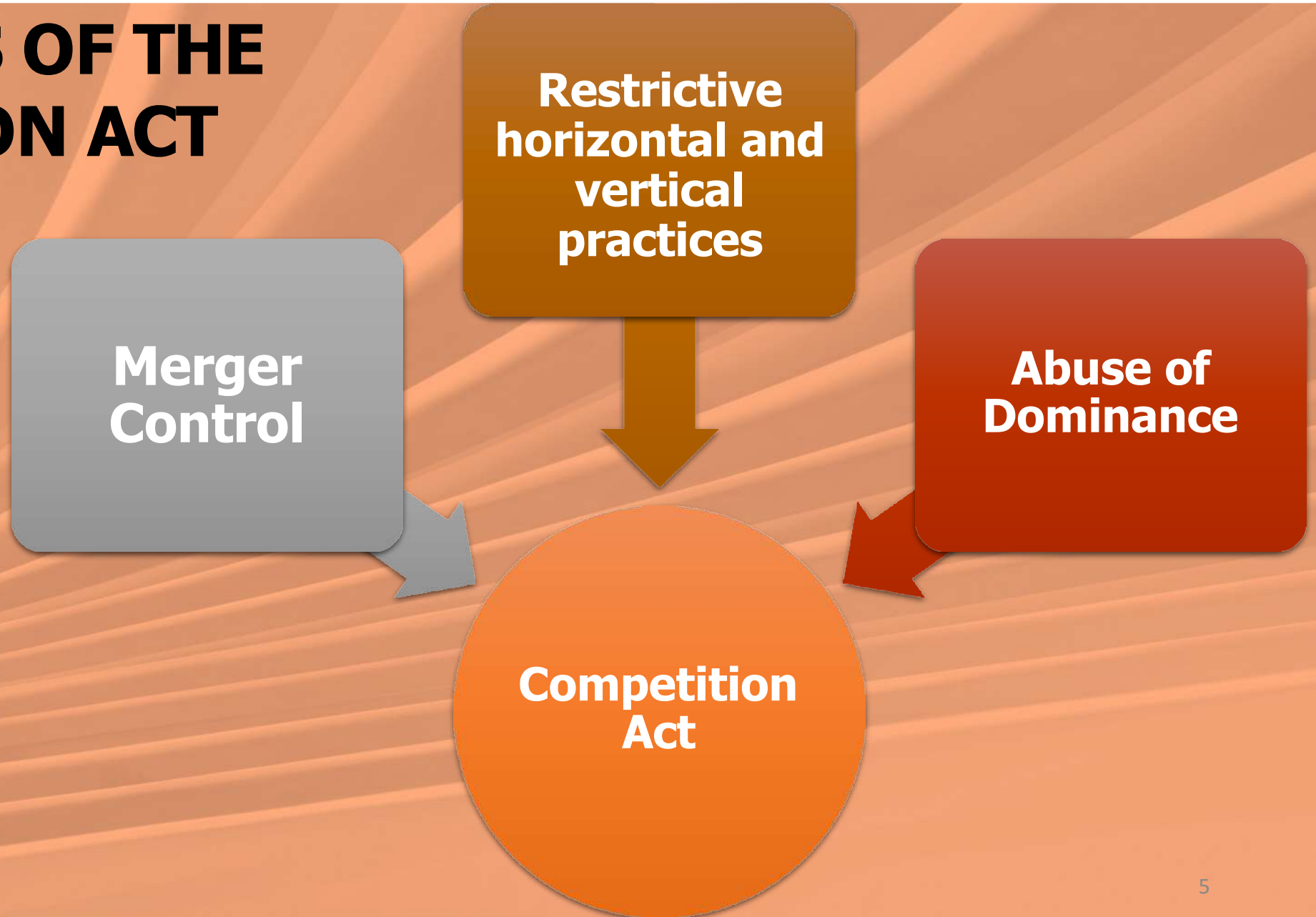
Criminal liability for directors and managers involved in hard core cartel activity

1.

PROVISIONS OF THE COMPETITION ACT AT A GLANCE



CORE AREAS OF THE COMPETITION ACT



2.

HORIZONTAL AGREEMENTS



- **Competition authorities are concerned about conduct where two or more competing firms collude, for the purpose of reducing rivalry between them**

- **The Act draws a distinction between lawful, independent behavior and illegitimate collusive practices**

- **Each firm must therefore determine its policy in the market independently**

- **Any contract between competitors which touches on pricing, markets, customers and volume output is extremely risky**

- **Tacit co-ordination / conscious parallelism is not a contravention of the Act e.g., “price leading and price following” in a commodity industry**

Prohibited horizontal practices cover the following:

- Agreements
 - Contracts, arrangements or understandings whether or not legally enforceable
 - Could cover a wink or a nod
- Concerted practices
 - Cooperative or coordinated conduct which replaces independent action
Any scheme designed to eliminate uncertainty as to market conduct
- Decisions of associations
 - For example, trade or industry associations

Prohibited horizontal practices: Cartel Activity

- Directly or indirectly fixing a purchase or selling price or any other trading condition
- Dividing markets by allocating market shares, customers, suppliers, territories, or specific types of goods or services
- Collusive tendering

1. Directly or indirectly fixing a purchase or selling price or any other trading condition

Firms must independently set their prices, discounts, allowances, rebates, and credit terms

Includes fixing any component of a price, establishing percentages by which prices are increased, and establishing mandatory price ranges

Indirect price fixing takes place through exchange of information which allows firms to co-ordinate their pricing (danger of trade associations)

2. Dividing Markets

- This occurs when competitors allocate any of the following between them:



Market
Shares



Customers



Suppliers



Territories



Specific
Goods or
Services

Competitors agree on the terms of their bids to allow one of them to be successful, with the intention that the successful firm either "sub-contract" part of the work to the unsuccessful firm(s) or it agrees not to be competitive in the next bid

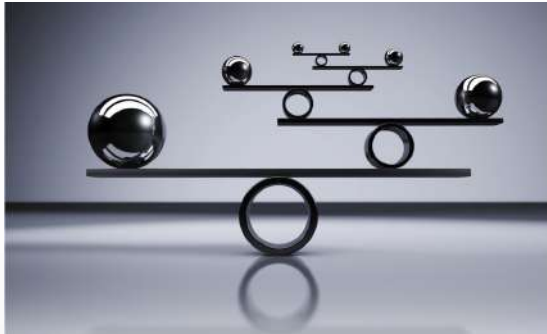
Competitors agree between them who will bid and who not

3. Collusive Tendering

Simply having the discussion is enough to amount to a contravention

May also amount to fraud in terms of common law and contravention of Anti-Corruption Act

Suspicious Behaviour:



Price increases or decreases being implemented around the same time by competitors

Similar pricing by competitors

Exchange of price lists between competitors

Market shares of competitors remaining constant over extended periods of time

Detailed public announcements relating to pricing or trading terms which include more information than usual

Significant interaction at trade associations

Benchmarking / Industry Associations

- By definition trade associations are meetings of competitors and are thus a common target for competition authorities
- Trade associations can serve legitimate and useful purposes, but they provide ample opportunities for informal gathering and exchange of information
- The association must have a clearly stated competition law policy to prevent infringements

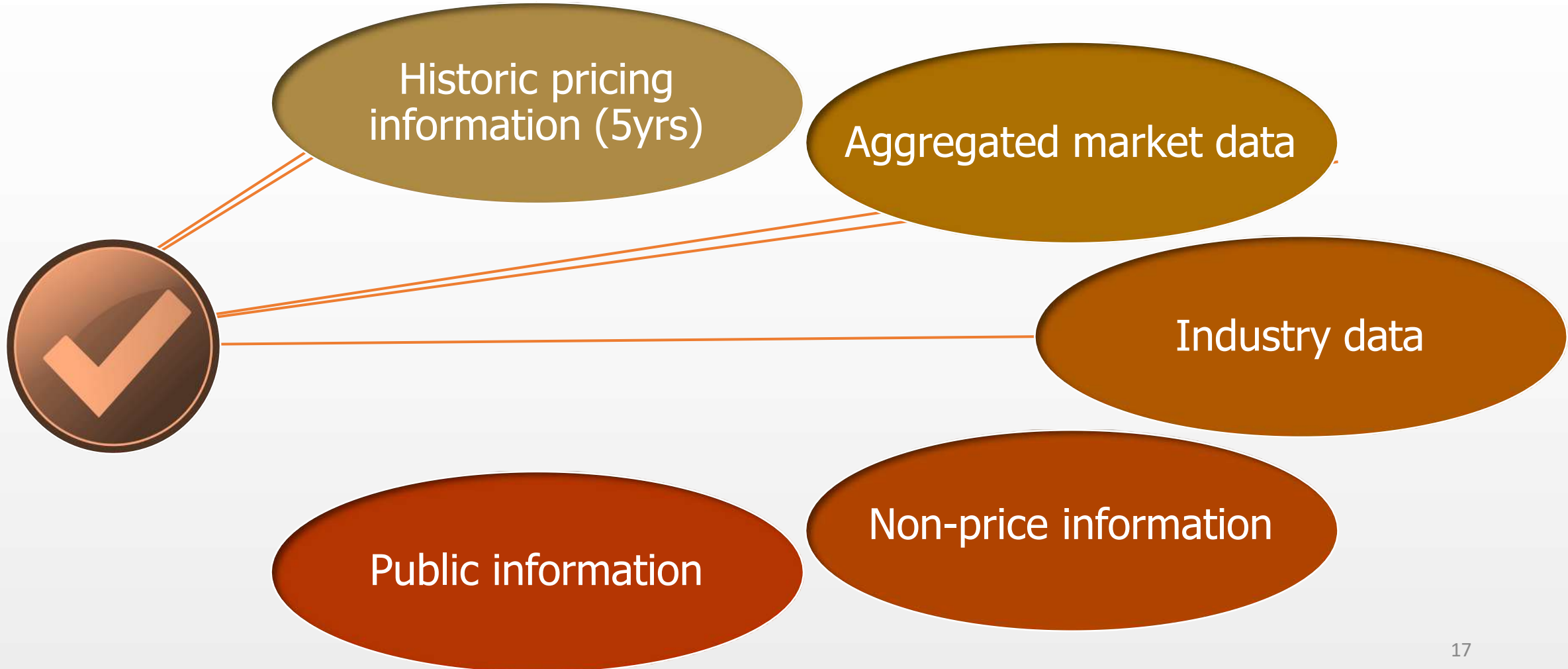
Benchmarking / Industry Associations (cont.)

- Must enhance efficiency
- The aim should be to determine “best practices” to improve operations
- Risks: Sharing of prices, investment plans or research and development projects
- If the discussion at an industry association meeting relates to anti-competitive conduct, raise an objection and exit. Have your objection and exit recorded in the minutes

Industry Associations: **What Must Not Be Discussed?**

- Company prices, price changes, price differentials, mark-ups, discounts, credit terms
- Company plans or statistics on costs, production, capacity, investment, inventory, sales
- Changes in production volumes or capacity
- Bids or responses to bids
- Customer and supplier details

What Information Can Be Shared?



3.

INVESTIGATIONS AND PROCEDURES



Investigations And Procedures

- The Commission finds out about anti-competitive practices through
 - Complaints from customers/third parties/competitors/employees
 - Leniency applications (Whistle-blowing)
 - Routine industry investigations
 - Lead from another investigation in the same or different country
- The Commission has wide powers to summons anyone who it believes has information on the subject of the investigation
- The Commission has wide powers of entry, search and seizure, known as dawn raids

Investigations And Procedures: Consequences

- ongoing reputational damage
- processes can be slow: 5 years plus
- major drain on management time, energy and resources
○ massive invasions into ordinary business activities: interviews, discovery and the like
- fines/penalties under the Act
- damages claims from aggrieved customers/competitors

4.

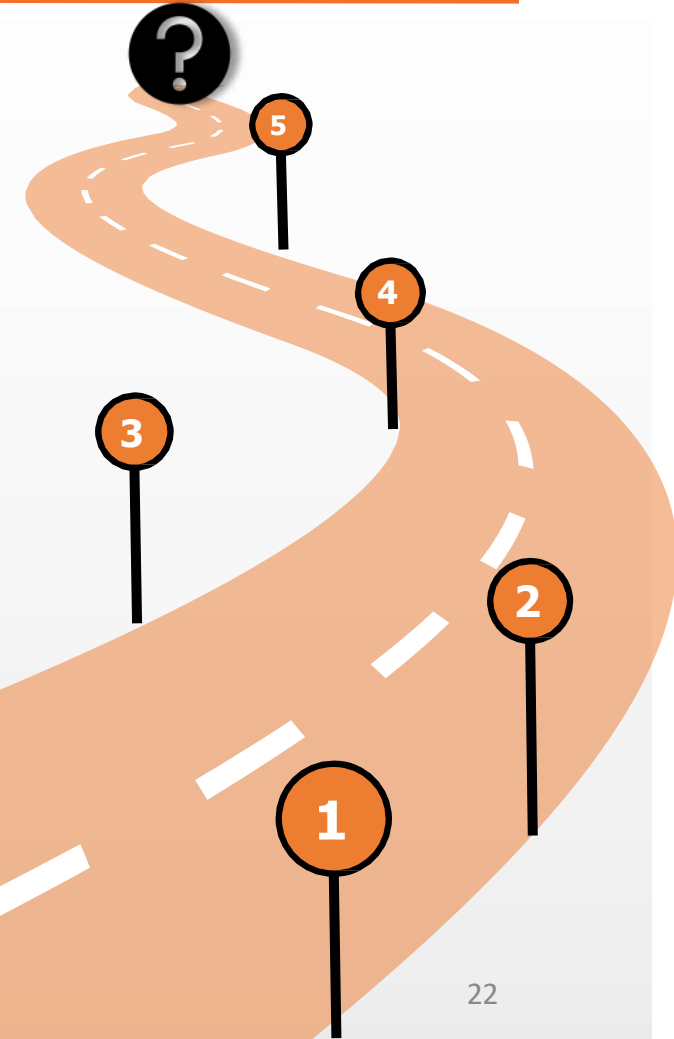
COMPETITION COMMISSION'S INVESTIGATION: BACKGROUND & STATUS



SA FEEDLOT ASSOCIATION
SA VOERKRAALVERENIGING

BACKGROUND & STATUS OF COMMISSION'S INVESTIGATION

- ① **2013**
 - Dawn raid and commencement of investigation
- ② **3 August 2020 – Detailed information request**
 - Calfex Market Reports
 - Month-End Livestock Movement Reports
- ③ **3 August 2023 – Basis Information Request**
- ④ **18 October 2023 – Email**
 - Are above reports still being circulated to the members?
- ⑤ **4 June 2024 – Email**
 - Requested membership and Exco list



THANK YOU

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