Competition Policy & Economic Growth
Dear Reader,

The Competition Commission and Competition Tribunal successfully hosted the 10th Annual Competition Law, Economics and Policy Conference in partnership with the University of Cape Town at The Look Out (Waterfront) in Cape Town from 5 to 7 October 2016. The achievement of this milestone signifies a coming of age of this prestigious event as well as its increasing influence in the competition law, economics and policy discourse on both the African and international map. Numerologists ascribe the number 10 to various attributes which include leadership, independence, originality, and adaptability, all of which resonate with what the Annual Competition Conference come to represent.

The 10th Annual Competition Conference took place at a very interesting and challenging time in the South African economy. South Africa’s economic growth outlook has persistently remained and continues to be very low. The focus of the conference was on “The Role of Competition Policy in Economic Growth”, a reference to the need to understand the role of competition policy (and enforcement) in promoting inclusive growth in times of economic distress. This is in line with the Commission’s strategic goal of “Regulating for a Growing and Inclusive Economy”.

The lineup of this year’s speakers at the Annual Competition Conference continued the tradition of attracting high profile and leading international academics, policy makers, practitioners, competition agencies worldwide.

Strategic collaborations and relationships are a key pillar of the Commission’s advocacy role in relation to the furtherance and deepening of the appreciation of competition law, economics and policy in South Africa. It is in this light that the successful hosting of the Commission and the Competition and Regulation European Summer School’s (“CRESSE”) plays a critical role in the Commission’s suite of advocacy instruments.

Although the relationship between the Commission and CRESSE dates back about 10 years, the formalisation and deepening of our links was crystallised in the last 2 years through the establishment of the joint workshop.

The objective of the joint workshop is to co-organize a capacity building and training on the latest developments in competition law, economics and policy. The joint workshop provides a platform in which leading international scholars, practitioners (including competition agency officials, competition lawyers and competition economic consultants) and other stakeholders (with a keen interest in competition enforcement) can engage in training and robust debates regarding developments in the field. As a result, the joint workshop involves presentations by international experts about the latest developments in specific competition policy topics, including issues concerning the enforcement of competition law.

The first joint workshop was held in 2015, as a precursor event to the 4th BRICS International Competition Conference, in partnership with the University of Kwa-Zulu Natal and CRESSE. Some of the participants in that workshop included Professor William Kovacic who taught on behavioural economics and its implications for antitrust agency decision-making; Professor Tom Ross who focussed on alliances and horizontal agreements; and Dr Jorge Padilla who explored the use and misuse of economic evidence in competition enforcement.

This year’s joint workshop, hosted in partnership with the University of Cape Town and CRESSE, saw even greater participation and attendance than the previous year.

The line-up of international scholars making presentations included some of the previous year’s participants such as Professor Joseph Harrington, (an expert on coordination and cartels,) who taught on information exchange; Professor Chiara Fumagalli, whose work and teaching on the economics of exclusionary conduct will culminate in a textbook to be published in the coming year; and Professor Ioannis Lianos who focused on economic evidence in competition law.

Given the success of this year’s joint workshop, we look forward to the next event with great anticipation.

Happy reading!

Editor in Chief
Dr Liberty Mncube
The question which is posed in a conference dealing with economic growth and the role of competition policy underlines the attention to be paid to the role of competition law and its relationship to economic policy. Open any standard competition law textbook and the general approach to competition law would generally accord with that which appears in the work by Richard Whish and David Bailey Competition Law 8th edition:

‘As a general proposition competition law of rules that are intended to protect the process of competition in order to maximise consumer welfare.

A central concern of competition policy is that a firm or firms with market power are able, in various ways, to harm consumer welfare, for example by reducing output, raising prices, degrading the quality of products on the market, suppressing innovation and depriving consumers of choice.’

The South African Act was couched in more ambitious terms. The Preamble provides the prism through which the legislation must be interpreted and its provisions vindicated. Take for example the first paragraph thereof:

‘The people of South Africa recognise:

That apartheid and other discriminatory law and practices of the past resulted in excessive concentrations of ownership and control within the national economy. Inadequate restraints against anti-competitive trade practices, and unjust restrictions on full and free participation in the economy by all South Africans.’

In a luminous reflection of the history of this country, Section 2 of the Act cites as a purpose of the Act that the promotion and maintenance of competition is ‘to promote a greater spread of ownership and particularly to increase the ownership stakes of historically disadvantaged persons.’ These concerns are reflected further in the public interest grounds which are relevant to the assessment of a merger as provided for in Section 12 A (3).

These objectives, viewed within the context of competition regulation, may not be incompatible with the traditional concerns of competition policy. David Lewis in *Thieves at a Dinner Table: Enforcing Competition Act* writes that the ‘primary impact of robust competition enforcement, including merger regulations, is indirect in nature. It is concerned with the defence and promotion of institutions, indeed of the most pervasive and powerful institutions of the economy, namely markets. He further observes that, notwithstanding the shortcomings of the market, markets can underpin ‘relatively efficient resource allocation and promote economic dynamism and opportunity.’ Competition law can establish core rules which effectively regulate the relationship between the citizenry and market power. It can share the key background rules, which we often take for granted, but which have critical influences on the rights of citizens; the nature of property rights in particular and the connection between these rights and excessive market and state power.

Already in 1943 Robert Hale wrote:

‘The market value of property or of a service is merely a measure of the strength of the bargaining power of the person who owns the one or renders the other, under the particular legal rights with which the law endows him, and the legal restrictions it places on others.’

As Hale noticed, when a party has to settle for X % rather than Y% of the joint product, both the state and the exercise of market power is deeply implicated in the outcome. Regulating the rules as envisaged in competition law forms an important component in promoting the broad objectives as set out in the South African Competition Act and, in the concerns of competition law and policy viewed more broadly.

It is trite that markets are hardly autonomous mechanisms which inevitably work themselves pure.

In this connection Joseph Stiglitz has noted that a successful firm may not be the one which is able to produce products which meet the satisfaction of consumers at lower costs alone but rather the firm that is more able to exploit market power, including taking advantage of consumers. He also noted that while Schumpeter correctly spoke of the importance of innovation, his inability to probe the effects of power meant that he did not deal adequately with the problem of the permanence of the temporary that is how the temporary monopolist was able to perpetuate the condition to the jeopardy of aggregate welfare. (See Stiglitz in Capitalism: Economics and Policy for Sustainable and inclusive growth).

The nature of the market affects distribution and hence has much to do with inequality, an obviously pressing issue in this country. In his recent book on this subject Anthony Atkinson has written persuasively about the role of competition policy in dealing with pressing distributional problems. As he notes this does come with significant challenges:
‘Where there is inequality, and a limited number of suppliers, firms may not supply the lower-quality goods that are sought by poorer families, and these families are therefore excluded. The cheaper cuts of meat may no longer be on the shop counters; products may be packaged in sizes that are too large. Of course, competition policy cannot micromanage the contents of supermarkets, but it can influence how firms situate themselves in the market. The viability of small local shops depends on how the large firms are regulated. Setting access prices for rival suppliers may have consequences downstream for the products available to consumers. Regulatory bodies need to be aware of the implications of competition policy for different income groups. Paradoxically, measures to prevent monopoly may reduce services, as when banks are required by competition authorities to divest branches and the banks decide to close those in poorer neighbourhoods.’

Viewed within the context of the South African economy, competition policy should thus be concerned with inequality and economic growth. A 2006 paper by Philippe Aghion, Matis Braun and Johannes Fedderke noted that mark-ups are significantly higher in South African manufacturing industries than they are in corresponding industries worldwide. Competition policy in concentrating upon a reduction of mark-ups would have largely positive effects on productivity growth in South Africa. Thus a 10% reduction in South African mark-ups would increase productivity growth by between 2% to 2.5% per annum.

A 2016 report by the World Bank entitled South Africa: Economic Update: advocates promoting faster growth and poverty alleviation through competition. It noted that in the prevailing economic climate (it is unlikely that GDP will grow at all during 2016) it is important for South Africa to look to other avenues, outside of the fiscal space to stimulate faster growth. Thus they write that ‘with this study we offer evidence for one such route competition policy, and hope this will enhance debate and will reinforce the case for the bold policy decisions needed to revive the country’s economy for faster growth more jobs and poverty eradication.’ (Guang Zhe Chen: World Bank Country Director for South Africa) To take but an example from the report it shows how the prevention of a regional cartel reduced cement prices to users by between 7.9% to 9.7%. The report estimates that value added growth in industries which use professional services intensively could grow by between 1.4 – 1.6 billion which adds between 0.4 to 0.5% on to GDP growth.

The report notes that by attacking cartels in the wheat, maize and poultry and pharmaceutical industries some 202 000 people stood to be lifted above the poverty line, the poverty rate would be cut by 4 percentage points, savings gains for the bottom 40% of the population would be 3.4 times larger than that for the top 40%.

These findings also support the penetrating analysis of the relationship between competition law and inequality by Professors Baker and Salop. In their article, they note that, by aggressively embracing a consumer welfare standard, increasing enforcement agency budgets, targeting enforcement remedies to benefit the less advantaged, adopting more interventions as to anti-trust and regulatory standards, recognising the key role of abuse of dominance as an antitrust offence and by adopting a reduction of inequality as an in explicit antitrust goal, antitrust can make a contribution to addressing of inequality. These compelling arguments in favour of a competition regime that embraces a range of distributional objectives compels an analysis of the limits of adjudication by competition authorities.

I have finally arrived at my purpose in this presentation. It is not to provide a comprehensive exposition of a competition policy that may enhance the ambitions of the drafters of the Act nor what may be best suited to a South African economy of the 21st century. My objective is far more modest: it is to view this debate about growth, inequality and competition policy as set out in the Act but through the eyes of a judge pondering the possibility of what this vision is possible by way of adjudication.

THE LIMITS OF ADJUDICATION

Turning therefore from the questions of competition policy to the narrower issue of competition law and regulation, error is a major concern in this field, particularly if the goals are expanded to vindicate the full vision of the South African Act and the approaches adopted by both Atkinson and Salop and Baker. Competition law and hence competition regulators are called upon regularly to deliver answers to, what are, often insoluble problems. Economic conduct by its nature is dynamic and policy makers are often denied crucial information about future effects which, combined with the limitations of existing economic theory, often prompt decision makers to have to adjudicate in a climate of considerable uncertainty.

It has often been said that courts and regulatory agencies have reacted to this vulnerability to error by adopting a bias in favour preventing false positives (the type 1 error) believing that procompetitive behaviour erroneously condemned will result in a permanent loss of the benefits of that behaviour. Hence anti-competitive conduct is wrongly permitted, based often upon the idea of the self-correcting nature of the market. In this sense the law might err on the side of under enforcement, in its failure to condemn under enforcement or under regulation.

THE DEBATE REGARDING TYPE 1 AND TYPE 2 ERRORS

The debate about dealing with type 1 and type 2 errors needs to take account of a doctrine developed many years ago by Lon Fuller (The forms and limits of adjudications: 1978 Harvard Law Review 353). Fuller wrote of the concept of polycentricity. For him a polycentric problem was one that comprises a large and complicated web of inter dependent relationships so that change to one factor produces incalculable changes to other factors. The relationships have interacting centres, the points where the strands of the web intersect so that different parties interact with each other by means of negotiation, exchange or in other different ways. Fuller used the image of a spiders web to convey the notion that the pulling on one string would distribute new and complicated tensions throughout all the other strands of the web. Take the setting of an appropriate price of wage. The setting of the price can affect the supply or demand for the commodity or employment which, in turn, affects a multitude of other costs and relationships. And for each of the separate consequential effects of the price determination, for the example a layout decreased demand for the commodity (in turn further effects of relationships associated with that factor (production, transport, insurance and advertising). These sets of considerations are important when the limits of competition law are taken into account, particularly when the tests to be adopted extend beyond traditional considerations.
It is now possible to explore the various components of standard competition law through the prism of the limits of adjudication. Clearly, some areas of competition law fit the adjudicative process better than others. While procuring evidence for cartel enquiries often presents difficulties (see however the extremely helpful article by Joseph Harrington “Thoughts on why certain markets are more susceptible to collusion in some policy suggestions for dealing with them: 2015), the South African authorities have had considerable success in this regard. It is an area where, if necessary, further resources should be provided in order to deal with the problem for all of the obvious reasons which are set out earlier in this paper with regard to the positive consequences that follow from the curbing of cartel activity.

In this connection a measure of concern must be voiced as to the effect of s 73 A of the Competition Act, that is the provision dealing with the criminalisation of cartels and its possible effect on the advantages of the amnesty program which has proved so important in the success of litigation of cartels. Particularly in the light of a National Prosecution Authority which is extremely thin in the kind of expertise required to deal with the complexity of cartel defences.

Similarly, certain forms of abuse of dominance have been pursued with considerable success as is now evident from the cases against South African Airways and the decision to award more than R 100 m in damages in the Nationwide case. This must act as a deterrent to firms which wish to employ relatively crude measures to perpetuate dominance.

I am less convinced about the role of competition law in excessive pricing cases. I fully understand that an excessive price for an input (steel, plastic) has a significant effect on downstream manufacturers and particularly small and medium size enterprises which should be a key concern for those concerned in the development of the South African economy. But the resources required to litigate such a case, the economic expertise needed to provide the foundational economic theory for the case, are both complex and can prove to be extremely resource intensive. Let me be clear: it is possible to litigate successfully if one is armed with significant economic expertise, particularly in the light of the reverse evidential burden created by the Competition Appeal Court in the Mittal excessive pricing case. The question which must however be asked is whether this is the kind of litigation which should be given priority by our competition authorities in combatting competitive mischief within the South African context and the overall objectives as I sought to sketch them earlier.

The same considerations may well hold for the essential facility doctrine which has met with sparse success in comparative jurisdictions but again may have a significant impact on broader questions of the economy. It would have had a significant role in the Treatment Action Campaign case dealing with generic antiretrovirals which was settled and hence may still do in respect of an overly protective intellectual property regime.

Effective merger control remains important, particularly if the objective is to ensure a prevention on the strengthening or creation of a dominant position which can create or strengthen pro-collusive conditions and which would therefore have significant effects on prices, innovation and economic growth. Again these are difficult questions to answer, particularly within the context of a dynamic effects of a market. The added difficulty includes the public interest considerations which, given the legislation, must be vindicated within the South African context. But the competition regulators in South Africa have sought, difficult though it is, to strike a balance between traditionally cognisable competition considerations and the public interest factors set out in s 12 A (3). This jurisprudence has provided a measure of certainty in the approach adopted to mergers, notwithstanding the complaints that have been raised by those who consider that these factors should find no place in a merger enquiry. The only caution that I would offer in an attempt to develop a more coherent approach to public interest is to guard against the idea that a comprehensive industrial policy can be snuck into our competition jurisprudence which would then confine significantly different, albeit related, areas of policy with major pressures being placed upon adjudicators. Nothing raises greater polycentric burdens. There is also the more basic issue – predicting the possibility of substantially lessening or preventing competition. Here the experience of the Competition Appeal Court cries out for the intelligent use of the hot tub approach to expert evidence and hence the attempt to reduce the issue of a manageable formal rather than attempting to follow the style of a James Joyce novel.

CONCLUSION

For competition authorities such as in South Africa, a clear set of priorities needs to be formulated, given limited resources as well as the narrow scope for successful adjudication. But, in key areas of cartel regulation, abuse of dominance and merger control, a developing jurisprudence has taken place which, notwithstanding some of the errors that have been committed in the past (not least of all by the Competition Appeal Court) it is possible that both from the perspective of economic growth and greater equality, competition policy and law can play a significant effect.

I conclude with an invocation of some history in this field. It was President Roosevelt who said in 1938;

‘The liberty of a democracy is not safe if the people tolerate the growth of a private power to a point where it become stronger than the democratic state itself … amongst us today the concentration of private power without equal in history is growing.’

He wrote that in 1938. It is far more applicable in the year 2016. It is also forgotten under the welter of academic weight exerted by the Chicago School of Economics that when the Sherman Act was being piloted through Congress, Senator Sherman said:

‘The popular mind is agitated with problems that may disturb social order, and among them none is more threatening than the inequality of condition of wealth, and opportunity that has grown within a single generation out of the concentration of capital into vast combinations to control production and trade to break down competition.

Further, in his celebrated 1945 judgment in the Alcoa case, Judge Learned Hand expressed the opinion that “among the purposes of Congress in 1890 was a desire to put an end to great aggregations of capital because of the helplessness of the individual before them.”

These three references to US antitrust history provide a reminder that there may still be a potential path to negotiate the ambition of the South African, Act.
Chairperson of the session and Chair of the Tribunal, Norman Manoim. Honourable Minister of Economic Development, Ebrahim Patel. Justice Dennis Davies, President of the Competition Appeal Court. Esteemed guests, Colleagues, Ladies and Gentlemen

It is good to see this 10-year-old event grow to the stature it has become, an event for reflection with both our local and international counterparts on the meaning of what we do day to day. Some of the battle hardened people take little time to check the rational for the war, and whether, they are in fact winning the war.

Yesterday we had workshops on various topical issues in competition law. This was the technical aspect of this conference, and I thank all our speakers for the very high pedigree at which they have placed our conference. I am also very happy with the diversity of stakeholders who find this conference useful, judging from the attendance. This annual conference always reminds us about the importance of lifelong learning. We must in future years devise plans to ensure that we have students participating in numbers. It is crucial that we keep expanding the boundaries of knowledge. I have always thought it cynical to suggest that people would be engaged in a cartel without being aware that they are breaking the law. Well, recently we were settling a strange case at the Tribunal, where in a situation of a price war, the loser complained to the Commission that its competitor was charging below costs and therefore engaged in predatory pricing. As we were looking at the complaint, he then wrote to us saying let us forget about the complaint because they have now agreed on the price with the respondent. Of course, we now had a new case! I wish that more businesses would attend and learn with us.

During the next two days, we will in part be evaluating the effectiveness of our competition system. While on that, let me congratulate the South African competition authorities’ staff for a very favourable rating by the World Economic Forum Global Competitiveness Report, which put South Africa as no 7 in the world for effectiveness of its antimonopoly enforcement. I would not be punting this so much, if it was not for my daily witnessing of the kind of dedication it takes to produce this kind of result.

The SA competition authorities are now well known for their aggressive enforcement against cartels, which will be stepped in the coming period. Minister, and Chair of the Competition Tribunal, I honestly don’t know how the system in future will cope with the number of investigations and prosecutions. For us, we cannot slow down investigations because we are busy prosecuting.

Our fines have been increasing since the establishment of the authorities. In 2007, we battled to have a firm agree to settle a cartel for R100 million, because this psychological barrier in fines had never been reached before. The firm was prepared to settle at R 99 million though. A month ago we settled with a R 1.5 billion fine, which is subject to a Tribunal confirmation.

You will also be aware that the criminalisation of cartels has come into effect. We are working with the criminal investigation and prosecution authorities to make sure that cartelists are successfully prosecuted. We are also working closely with Minister Patel to make sure that if there are any legal impediments to successful prosecution, that they be addressed.

People have been asking about whether prosecution of abuse of dominance in particular excessive pricing, is dead, following decisions of the Competition Appeal Court. Those posing this question only need to look at our record, and they will see our determination and tenacity in litigation. In the last financial year, we have referred an exclusionary conduct case to the Tribunal, and are currently investigating others. We have in the past three months initiated two major excessive pricing cases. We have also reprioritised our investigations and are focusing on the most important cases. The nature of our economy demands that we do this.

We are currently doing three market inquiries, in the private healthcare, LPG and the retail sectors. Both the private healthcare sector and LPG inquiries are in the very advanced stages. We have done and continue to do major advocacy work on school uniforms, amongst others. Advocacy remains a key aspect of our work, sometimes even behind the scenes. Sometimes we win, sometimes we don’t. Like so many in our country, we are concerned about various factors leading into higher process as a result of ineffective or slow regulation and policy making. Telecommunications is a good example of this, and let me just leave it there.
In the area of mergers, I am very delighted that we were able to successfully defend our case in the merger to a monopoly in undulsites mining. We like winning, but this case, and others, reflect our growing capacity to handle complicated cases economics based cases internally. Of course, the largest of the mergers we handled involved the acquisition of what was considered to be a SA champion, the SABMiller Inbev merger, where various public interest and competition conditions were imposed. The requirement for the divestiture from Distell removes a historical link that was the result of carving out of the SA liquor industry with the support of the apartheid state, opening up a possibility for very interesting competition on especially ciders as well as at the distribution level. Also, if one thinks about it, nothing stops Distell from entering the beer market now. The public interest conditions, amongst others secures them and other competitors access to some of the essential inputs that are controlled by the merged entity, and promotes the development of independent farmers so that there would be a diversity at a supplier level.

I do not want to talk too much, after all, there is a politician who must speak after me, and Minister Patel always has interesting perspectives and insights on these matters. But let me leave you with a few ideas on the theme of the conference, Competition Policy and Growth. Competition in theory leads to the dynamism, growth and innovation. Of course, here I am not just concerned about growth, but also the levels of participation by various groups. The South African economy, even at its best of times, turned to be quite exclusionary. Despite the authorities best endeavours, our economy remains highly concentrated with low levels of dynamism, persistent unemployment, inequality and poverty. The effect of this is worse in an almost zero rate growth and employment scenario in most parts of the world. One can’t change this pattern through a single merger that gets notifiable, or even a single enforcement case – although of course these do help in opening up markets and protecting consumers, especially if interpreted within a developmental perspective. Faced with these levels of inequality and unemployment, should we be thinking differently about competition policy and the wider economic policies? If policy making is outcomes based, then the answer is yes.

The Centre for Competition Regulation and Development (“CCRED”) at the University of Johannesburg, in partnership with National Treasury, has recently conducted several studies on barriers to entry in key sectors of the South African economy, including agro- processing, telecommunications, banking and liquid fuel. It is evident from these studies, as well as from previous work that the competition authorities have done on priority sectors, that barriers to entry in the South African economy are a significant obstacle to economic growth, particularly when considered in light of the high concentration levels in the South African economy. Our own studies show that 70% of the sectors of the economy has dominant firms. Indeed, it is hard to think of any significant sector in South Africa that is not controlled by a monopoly or oligopoly. The trouble with this structure is that incumbents play a gate keeping role to the economy, at a horizontal and vertical level. As CCRED rightly points out, one can’t address these problems with one policy tool. Access to finance for entrepreneurs? Well, how are they going to access markets? And what about inputs? And what about regulatory red tape? If all these policies are integrated, then your DFI’s would dedicated resources to new entrants challenging monopolies, but the evidence shows that they actually prefer to invest in monopolies and long established sectors.

What we need is an appreciation of incentives and disincentives for firms, and how these should be created to direct them towards investments in the productive sectors of the economy, away from grandfather industries with little growth and distributional prospects. For example, banks.

Let me end with collaboration among competition authorities, a topic that will have a panel looking at globalisation. There has been a sharp increase in the international dimension of competition law cases lately. Between the years 2013 – 2016, the Competition Commission dealt with 36 merger notifications with an international dimension. The Commission is also conducting cartel investigations in areas such as foreign exchange, shipping lines and automotive components with a huge international overlap. Emerging issues, such as Big Data, Disruptive technologies and Multi-sided markets have exposed the limitations of the inward looking nature of competition enforcement. What then should be the role of ACF, BRICS, SADC, ICN, OECD and UNCTAD in these.

IN CONCLUSION

The first thing needed is better coordination of policies. There is inconsistent application of competition principles across the sectors in South Africa and there is a need for an overarching competition policy.

Second, the strengthening of competition authorities.

Third, globalisation calls for better coordination of competition law to effectively stamp out cross-border cartels, facilitate better coordination in merger transactions and successfully tackle increasingly complex firm conduct resulting from big data and disruptive technologies.
The Competition Commission and Competition Tribunal jointly host an annual conference on competition law, economics and policy. The leading idea underpinning the conference is to inform competition policy developments in South Africa and to create optimal conditions for a stimulating exchange of views.

The theme of this year’s annual conference was the “role of competition policy on economic growth”. Economic literature has shown that competition is a critical success factor in driving economic growth by encouraging productive and allocative efficiency, and innovation, among others. Given the current economic climate, the role of competition as a driver of economic growth is of critical importance.

The aim of this year’s conference was to critically assess the effectiveness of competition policy in contributing to a growing and inclusive economy in South Africa and to also highlight the challenges that lie ahead.

In keeping with the theme of the conference, the Minister of Economic Development, Mr. Ebrahim Patel, gave the keynote speech in which he stressed the effect of the high levels of inequality on economic growth in South Africa.

He argued that the high levels of concentration have pushed up prices of basic necessities and the suppression of smaller enterprises has slowed overall economic growth, further adding to inequalities.

The conference also had panel discussions with internationally renowned experts in the field. The panel discussions explored the role of competition as a catalyst for stimulating and fostering economic growth; challenges of competition enforcement in a globalized world; and the effectiveness of competition enforcement in South Africa. In addition, the conference had parallel sessions where a number of scholars, private practitioners and competition officials presented papers on the effectiveness of competition enforcement, mergers and prohibited conduct.

Overall, the conference aimed to create a new body of literature that is focused on the role of competition policy on economic growth as well as the impact and effectiveness of competition enforcement in South Africa. Furthermore, the conference created a platform that will allow closer alignment between competition authorities, practitioners and other stakeholders in South Africa.
CONFERENCE IN PICTURES

Competition News

10th Annual Conference
Dr Mark Ivaldi, from the University of Toulouse, responded to the first question by highlighting the large number of studies and research that have been conducted showing that competition does fostering economic growth. This included research in South Africa in the manufacturing sector (a 10% reduction in the mark-up will increase productivity economic growth by 2.5% per year) and similarly, in BRICS countries, cartel conduct impacted negatively on economic growth. However, this raised questions around how economic growth should be measured and whether other aspects should be included in welfare such as inequality and unemployment. Anticompetitive agreements injure the poor by increasing prices and can also reduce employment through lower output and subsequently corporate restructuring. These were important issues in both developed and developing countries and the question needs to be documented and analysed.

Professor of Economics at the University of Johannesburg, Dr Simon Roberts, similarly pointed to the growing body of research indicating the effects of anticompetitive conduct on low income households. However, notwithstanding the Competition Commission’s record of enforcement, Dr Roberts highlighted that South Africa suffers from low levels of economic growth while other countries with historically weak competition enforcement exhibit high levels of economic growth. By raising this point, Dr Roberts suggested that we focus on how we understand the nature of competitive markets including routes to market, brand building, development finance to find entry and switching habits of consumers. Consequently, other areas of microeconomic policy in the set of industrial policy tools are an important instrument in achieving policy objectives.

The Brazilian experience, as discussed by Mr Marcio de Oliveira Junior, Acting President of the Brazilian Competition Authority, indicated Brazil’s falling economic growth rates over the past forty years. Yet, Mr de Oliveira argued that competition policy remains indispensable. Despite low levels of economic growth, competition policy is important to deliver benefits to consumers in particular in the form of lower prices and higher quality of products.

Dr Liberty Mncube, Chief Economist Competition Commission South Africa, noted, in line with Dr Ivaldi, that a better understanding of term ‘economic growth’ is required to adequately answer the question around competition policy and economic growth. Often, competition enforcement is measured by the competitive process and ensuing consumer benefits which is evidenced in South Africa by multiple pieces of research. However, it is not only the pace of economic growth that matters but the pattern of economic growth too. Dr Mncube thus made the case that the term economic growth cannot only consist of productivity but must keep sight on poverty and inequality. And if abusive market power results in reduced consumer benefits by extracting consumer rents, there is an increase in inequality caused by the firm’s conduct as the return of market power go disproportionately to the wealthy.

However, Mr Francis Kariuki, the Director General of the Competition Authority of Kenya, argued that generally, competition enforcement cannot act as a catalyst for economic growth. Competition enforcement consists of enforcement and advocacy to regulators to reduce barriers to entry. The Kenyan experience suggests that notwithstanding competition enforcement, industries whose barriers have been removed are subject to higher growth due to higher levels of entry and innovation. This resonate with Dr Roberts’ key points and later by Dr Mncube, who also suggested a more holistic approach to resolving these concerns.

Similar to the previous speakers, Ms Tania Begazo, Senior Economist: Trade & Competitiveness Global Practice at the World Bank Group, highlighted that competition fosters economic growth with positive effects on low income consumers. In particular, competition in input markets will result in positive industry development downstream by reducing costs, thus contributing to the goals of industrial policy which target specific markets supplying low income consumers and/or are susceptible to possible employment gains.

Dr Ivaldi noted further that the importance of competition policy can also be viewed within the industrial policy framework by remarking on the U-shape relationship between innovation and competition: at low levels of competition, more competition will spur innovation and economic growth, but at high levels of competition, more competition will not result in additional gains from innovations and hence there is less economic growth. Thus, competition policy focusing on highly uncompetitive industries will result in increased innovation and economic growth.

Despite the benefits of competition and the distribution of those effects on low income consumers, Dr Mncube, reflecting on South Africa’s current socio-economic position, noted that some of the default microeconomic tools such as competition policy become much more apparent. First, the assessment typically undertaken may also be affected by the adverse economic conditions, for example, the failing firm defence or creating national champions during times of economic distress. Second, market participants themselves may also change their behaviour and lean towards more anticompetitive practices in an attempt to maintain once existing monopoly rents. Third, regulators may adopt a more protectionist approach for ailing industries, and market participants in those industries are more likely to seek protection. Competition authorities must remain vigilant and intervene in markets necessitating their involvement.

Dr Roberts further added that the importance of competition policy in a broader policy framework becomes more obvious when the objectives of industrial policy have been captured by the incumbent firm. Based on the concern raised earlier by the speakers regarding barriers to entry, and the practical problems that potential new entrants have to overcome, industrial policy is crucial to ensure that an all-inclusive approach is undertaken to improve the odds of successful and competitive entry by new players.

*Competition policy and economic growth by Ricky Mann.*
GLOBAL GOVERNANCE OF COMPETITION LAW

Panel Coordinator – Yasmin Carim, Policy Lecturer – By Prof. Ionis Lianos Panellists – Hardin Ratshisususu (Deputy Commissioner, CCSA), Prof. Frederick Jenny, Nicola Theron, Siyabulela Tsengiwe (Chief Commissioner, ITAC), Prof. Andrey Tsariskovskiy, and Prof. Hassan Qaqaya.

The lecture sought to provide a definition of the term ‘convergence’, among other things. Prof. Lianos borrowed from the work of David Gerber and defined convergence as necessarily referring to the process of movement towards a centre called a convergence point. He argued that the discussion of competition law convergence, at a global scale, seemed to indicate the process by which the characteristics of individual competition authorities increasingly resembled some set of the characteristics representing the convergence point or model.

He highlighted that for Gerber, this model was the so called ‘economics based model’ for competition law or “Neoclassical Price Theory Frame Model for competition law”. There are many reasons put forward which explain the development of that particular model. However, he was of the view that it largely relied on economic consensus methods and their overall narratives. Prof Ioanis argued that there were several problems with achieving global policy convergence as defined above. Firstly, there are still important differences between competition law systems. There are also important differences in the way in which the various concepts, frameworks and tools generated by these international institutional networks are implemented in practice.

Secondly, in the last two decades, new competition law regimes of global significance had emerged in China, India, Brazil, Russia, South Africa, Mexico, and Turkey. To a certain degree these regimes were developing their processes and attempting to integrate the specificities of their economies and institutional capabilities.

He argued that although, at the beginning, a process of initial convergence to the original model is experienced, this phase is usually followed by a phase of divergence once the economic, legal, and political cultural specificities begin to kick in.

Thirdly, Prof Ioanis stated that there was a more important change in the global economy, with the share of the EU and the USA in the global economy having declined from 60% in 2003 to roughly 45% in 2013. He indicated that this figure was expected to decline further to between 30-35% by 2030. He was therefore of the view that this increased the leverage of the BRICS competition authorities and other countries in the global governance of competition law and policy.

Fourthly, and most importantly in terms of political and economic significance, Prof Ioanis was concerned over China’s absence from the main fora aimed at advancing global discussions on competition law and policy, such as the International Competition Network (ICN) and the Organisation for Economic Co-operation and Development (OECD). He asserted that China’s absence in such discussions may have some impact on legitimacy, in terms of the representativeness of the work accomplished in this particular fora.

Prof. Frédéric Jenny interpreted the concept of convergence slightly differently, suggesting that convergence needed to be viewed as cooperation between competition authorities as because it results from cooperation.

He argued that competition authorities converged on priorities, instruments, remedies etc. He further argued that there had been a development of ideas through cooperation. The speaker pointed out that in the 1990s, the World Bank was against the development of competition law. However, competition authorities grew and wanted to be independent and that they now find cooperation/convergence as the best way to retain sovereignty.

Hardin Ratshisususu focused on competition law and enforcement challenges in an increasingly globalised world, with a strong focus on cross border cartels and the complexities of enforcing competition law in this regard. He argued that enforcement is
becoming difficult for agencies as they work in silos. The speaker was concerned that agencies across the world appeared to be competing against each other when, in fact, there was a need for them to cooperate. He cited an example of global automotive cartels prosecuted independently by respective authorities in countries where they were detected.

He was of the view that frameworks were needed to enable competition authorities to jointly investigate global cartels since these cartels viewed the world holistically. He also cited the AB Inbev merger as an example, stating that AB Inbev’s incentive was clear in that they sought to be a global company. He suggested that there was a need for convergence among competition authorities globally.

Hardin Ratshisusu argued that Competition Law was introduced in the context of economic reforms. Countries moved from a state where governments were playing a bigger role in a situation where markets had been allowed to operate without state intervention. The speaker was also of the view that regional trade agreements and cooperation could play an important role on a global level, citing COMESA as an example. However, there was a challenge at enforcement level and a lack of capacity presented a major challenge for agencies.

The speaker was of the view, however, that cooperation in terms of regional trade agreements and competition law could be successful despite these challenges. He cited Latin America (Peru, Colombia, Chile and Ecuador) as an example where the emphasis was on voluntary cooperation e.g. competition authorities did not share confidential information. In addition, a country would share information on mergers where such transactions would affect trade in another country.

Nicola Theron noted that South Africa had improved in terms of trade liberalisation since it joined the World Trade Organisation and this had, in turn, resulted in benefits for consumers. The speaker also noted that the competition authority in South Africa had been successful in enforcing competition policy and this had been beneficial to consumers.

Improved interaction, or even a memorandum of understanding, between ITAC and the Competition Commission was necessary to ensure competition benefits and trade benefits did not cancel each other out.

The speaker was of the view that challenges emerged when there was dominance in the domestic market and the objective was not to protect the dominant domestic player against import competition. She noted that there were instances where the Commission had been successful, such as with the soda ash cartel. However, a firm had approached ITAC and applied for anti-dumping duties to seek protection from import competition, thereby reversing the benefits of the success of the Commission.

Global Governance of Competition Law by Qhawe Mahlaelela
COMPETITION POLICY AND ECONOMIC GROWTH

Chairman: Emeritus Prof. Halton Cheadle (University of Cape Town).

Judge Dennis Davis opened the panel discussion on the second day of the Annual Conference with a talk on the role of the court in addressing the conference’s themes. The central argument being that the law could make a significant difference in spurring economic growth and equality. However, given the complexity of adjudicating competition cases with multiple goals, he emphasized the need for a clear set of priorities along with a narrow scope for adjudication, better economic evidence and wider exposure to competition work.

Judge Davis asked that the law move beyond the cognisable aspects of competition, and expand its goals to match the vision of the South African Act. Our Act transcends textbook approaches to competition, giving historical context to its objectives. He asks that cases be judged in terms of their broader effects.

The second speaker, David Lewis, spoke on the effectiveness of the Competition Act in promoting competition. He argued for the need to test the effectiveness of competition enforcement. His talk put forward four questions that would serve as an indicator for its success.

First, whether competition law impacted the structure of the market and the behaviour of market participants. Whist noting the difficulty in answering this question, due to the lack of a counterfactual and the multiplicity of factors influencing behaviour, he gave a tentative nod to the question – that it has had an effect. The second test was whether it changed government’s conduct. Without a definitive answer, he calls for the need for industrial policy to take a market friendly approach. Thirdly, that it should extend the rule of law to groups that feel exempted from the law. Lastly, his suggestion for making competition law more effective is extending the authority’s remit – beyond competition issues – to examine and engage issues of industrial and trade policy, as well as corruption.

He concluded with a comment on the importance for the visibility of competition issues in society. Specifically, the need for the public to be aware of the competition authority’s existence and purpose.

The third panellist, David Unterhalter, spoke to some changes to the Competition Act and Industrial Policy. He suggested the need to reflect upon the complexity of developing competition law and industrial policy given the country’s position within the global context.

The first amendment related to cartel enforcement. He recognised the successes in this area, particularly the corporate leniency programme. What he took issue with was the definition of cartels, that the Act did not adequately delineate hard-core cartels from other forms of collaboration, and felt that it affected how we apply cartel conduct.

Second, merger policy needed to strike a balance between decisions that support exporting and inward looking behaviour. He also urged for greater effectiveness around abuse of dominance. That in allowing high levels of domestic concentration for international competitiveness, it would potentially be used as a mechanism for abusing dominance.

Professor Michael Katz, a specialist in corporate and commercial law, focused on the technical aspects of the Competition Act. In his view, South Africa had an effective Competition Act but felt that the concept of control was defective and required revision. He offered a comparative analysis between Company and Competition Law’s treatment of the issues around control and concluded that Company Law was superior. He stated that this issue had obstructed mergers that would have been beneficial to the economy.

The final speaker, Menzi Simelane, was in agreement with the panel that competition enforcement has been effective. What he wanted to see, going forward, was evidence of the success. His suggestion was that the competition authorities periodically reflect upon their work and report on specific changes in the market. Also, with consideration for the increased investigations conducted by the Commission, he felt that greater capacity was required. His final recommendation was for greater co-operation between the competition authority and other regulators in the market.

Competition policy and economic growth by Amanda Musandiwa.
CONFERENCE IN PICTURES

10th Annual Conference

Competition News
The history of the South African economy has not been a pretty picture for a very long time. It is punctuated by pre-1994 institutionalized race-based practices, overconcentration of control and ownership, unemployment, below-par economic performance, and unjust restrictions on free participation in the economy.

An incredibly complex system persists of one-sided economic ownership and control of the economy that denies the majority of the population its equitable share and participation in it. Our fundamental objectives are, among others, to contribute towards the freeing of economic opportunities through the eradication of artificial barriers aimed at blocking the previously disadvantaged majority. Our economy still has unacceptably high levels of concentrated markets, excessive manipulated pricing and cartels that stifle healthy competition and economic growth. That is intolerable.

Our country’s economy has generally been underperforming and has been disturbingly stuck at the bottom-end, incapable of breaking free. The country continues to have big challenges – unemployment remains excessive and it is hampered by unacceptably high levels of inequality and insignificant economic growth, among many other factors.

South Africa’s economic growth outlook remains highly uninspiring and consequently the Reserve Bank has revised the growth forecast from 0.6 percent to zero percent, while global growth for 2016 is projected at 2.4 percent.

What we can be achieved, however, is phenomenal, if everyone in government and business puts their shoulder to the wheel and contributes effectively. One of the most crucial instruments at our disposal in this endeavor is our effective, sound and dynamic competition policy. Therefore, as we all seek solutions to our quandaries, it is essential to reflect on the role of competition policy in the attainment of economic growth.

If properly enforced, competition policy can play a central role in economic growth, especially in times of zero economic growth and fiscal constraints. In such times, default instruments such as macroeconomic tools are insufficient and are restricted by the need for fiscal consolidation.

Effective competition provides incentives for companies to be more efficient in their use of resources leading to lower costs, lower prices and higher sales. Effective competition has the effect of driving less productive firms out of the market while allowing more efficient firms to expand or new firms to enter.”

When productive businesses replace less productive ones, overall efficiency in a sector rises. Increased efficiency means that the sector can reduce prices, sell and produce more. When the buyers are other enterprises, the lower price makes these firms more competitive, which in turn enables them to expand. When the buyers are private consumers, the lower prices will imply higher real income and potentially increased consumption.

Effective competition also provides an incentive for businesses to innovate in order to differentiate themselves from competitors by offering more attractive products and services. New products can open up new markets and induce economic growth. In sum, the behaviour of enterprises seeking to expand their market share and earn higher profits through increased efficiency and innovation creates economic growth.

Put differently, when customers can choose between different providers, they benefit and so does the economy as a whole. Their ability to choose forces firms to compete with one another. Choice for customers is a good thing in itself, but competition between firms also leads to increased productivity and economic growth.

It is important to recognize that competition law interventions rarely target productivity growth directly, instead they focus on promoting competition itself, often measured by lower prices, entry or other consumer benefits, and in doing so, contribute to productivity growth and therefore to economic growth overall. Distortions of competition manifest themselves in higher prices and profits, and lower quantities sold. A strong resolve to stamp out anti-competitive practices will ensure cheaper inputs for firms in other sectors and by creating a level playing field among all market participants. This will allow the most efficient firms, including SMEs, to gain market share.

Following the uncovering of the cement cartel, there have been many positive outcomes in the cement industry, with evidence that various new cement manufacturers have entered into regions that were previously allocated to other cement manufacturers.

There is also evidence of strong competition in the inland regions where cement manufacturers and independent cement blenders are supplying cement. Sephaku, a relatively new entrant that commenced cement production in 2014, has made a competitive impact in this market by supplying cement to most of the regions. Furthermore, cement importers have grown in terms of their competitive impact, especially in the coastal regions.

The purpose of merger control is to prevent and/or remedy anti-competitive mergers before any harm is done to prices, innovation, and economic growth. Effective merger control ensures that markets remain competitive and enables the most efficient firms to grow.

For example, in January 2007, the Commission recommended that the proposed merger between Pick n Pay Retailers (PnP) and Fruit & Veg City Holdings (FVC) be prohibited. FVC has experienced substantial growth and evolution over the past ten years since the merger was abandoned, which would likely not have occurred if the proposed merger had been approved.

This is evident from the increase in the number of stores that FVC has rolled out since 2007, in particular the rebranding and rolling out of the Food Lover’s Market brand from only two stores in 2007 to 75 stores by 2016 and the rolling out of 220 FreshStop stores during the same time period.

We must continue to be aggressive in advancing our mission to undertake competition regulation for a growing and inclusive economy.
The Commission reaffirmed its intention to beef up cooperation with BRICS and African competition authorities when it signed memoranda of understanding with the Federal Antimonopoly Service of the Russian Federation and the Competition Authority of Kenya on 6 October 2016.

The signing ceremonies took place during the 10th Annual Competition Law Economics & Policy Conference held in Cape Town.

The MOU between the competition authorities of South Africa and Russia develops and strengthens cooperation in competition law enforcement and policy development. In terms of the agreement, the two authorities will share non-confidential information on issues relating to competition policy and law enforcement. They will be able to do joint investigations and research, capacity development and staff exchanges, among other activities.

“As BRICS partners, South Africa and Russia will be combining forces to influence international discourse around competition so that it better meets the needs of developing countries. This is indeed very significant given the fact that BRICS nations make up 43 percent of the world's population,” said Commissioner Tembinkosi Bonakele.

The MOU on bilateral cooperation between South Africa’s Competition Commission and Kenya’s Competition Authority enables the agencies to share information and conduct joint investigations and enforcement activities, subject to their respective national laws and regulations.

“The cooperation agreement makes provision for exchanging information relating to cross-border mergers which may increase the efficiency of the respective investigations and increase the overall transparency of the merger review process,” said Commissioner Bonakele.

“Regarding similar or the same anticompetitive practices investigated or prosecuted by both countries’ agencies, we will endeavour to cooperate and coordinate investigations where ever possible,” he added.

“The MOU with Kenya formalises an existing relationship of trust, cooperation and support which has lasted for more than a decade. Both agencies have much to offer and to learn from each other,” he said.
One of the objectives of the Commission’s Annual Competition Conference is to develop a body of knowledge focussed on competition law enforcement in developing economies such as South Africa. In line with this objective, this year’s conference saw the launch of a special edition book published by Competition and Regulation European Summer School (“CRESSE”), in partnership with Springer Publishing. The book, titled “Competition Law Enforcement in BRICS and Developing Countries”, was edited by two pre-eminent scholars, Professors Professor Yannis Katsoulacos (Athens University of Economics and Business and CRESSE) and Frédéric Jenny (Essec Business School and OECD Competition Committee).

The book encapsulates an emerging discussion that has captured the competition enforcement fraternity globally, relating to redefining the scope and role of competition enforcement, particularly in developing economies. The policy dimension in developing economies has shifted and calls for a need to understand the role of competition in not just promoting growth, but to also focus on its distribution effect. In this regard, the BRICS competition authorities are uniquely placed to promote and expand the appreciation of competition regulation that recognises the specific needs and demands of the developing world.

It is within this context that CRESSE decided to organise a plenary session devoted to competition policy developments in BRICS and developing economies five years ago. The body of knowledge developed through these sessions, particularly in the last two years, has culminated in the publishing of this special edition, which is a compilation of articles and thought leadership developed by policy makers and practitioners (both in the public and private sectors) in these countries.

The Competition Commission (the Commission is proud to have contributed a number of articles to this eminent and trailblazing publication. The Commissioner, Tembinkosi Bonakele’s article on “The Nature and Use of Economic Evidence in Competition Enforcement (with Special Emphasis to the Case of South Africa)” provided valuable insight into South Africa’s learnings to date. Dr Liberty Mncube and Sunel Grimbeek’s article on “A History of Collusion: The Persistence of Cartels in South Africa” speaks to the resilience of cartel behaviour in the South African economy and the need for more rigorous enforcement going forward. In the same vein, Dr Hariprasad Govinda et al.’s article on “Estimating the Benefits of Anti-cartel Interventions: The Case of the South African Cement Cartel”, demonstrates the beneficial outcomes of the Commission’s enforcement activities in the South African economy. Lastly, Yongama Njisane and Ziyanda Buthelezi’s article “The Incorporation of the Public Interest in the Assessment of Prohibited Conduct: A Juggling Act?” explores the scope and interplay between public interest and antitrust enforcement from global and South African perspective.

The success of this book has led the Review of Industrial Organization journal to devote a Special Issue on the topic “Competition Policy in developing countries” and articles from the 2016 and 2017 CRESSE conferences will be published.
During the Conference in Cape Town the subject of globalisation and competition policy came under sharp scrutiny as regulators, economists, lawyers and academics wrestled with how to attain a growing and inclusive economy through effective competition enforcement.

While the subject is not new, it has proven to be controversial in exposing divergences in approaches to competition policy across jurisdictions. As early as 1947, the United Nations Conference on Trade and Employment attempted and failed to adopt the Havana Charter, which encompassed aspects of international trade and competition policy.

As recently as 1996, the World Trade Organisation (WTO) developed a working group on the interactions between trade and competition policy. This, to look into the clarification of core principles including transparency, non-discrimination, procedural fairness, provisions on hard-core cartels, modalities for voluntary cooperation and support for progressive reinforcement of competition institutions in developing countries.

The working group has been inactive since 2001, which coincidentally saw the establishment of the International Competition Network (ICN) in the same year. The ICN is a network of competition authorities across the world.

These developments reflect the importance of international trade and the global economy - as well as the concomitant prevalence of cross-border anti-competitive conduct. This directly affects the work of the Competition Commission (the Commission) which, in the previous three years alone, has assessed approximately 36 mergers - also notified in other international jurisdictions - as well as cartel conduct which permeates borders including investigations into markets relating to foreign exchange, deep sea transportation and automotive components.

A gap currently exists in relation to a global and concerted approach to dealing with cross-border anti-competitive transgressions. This gap exists within the parameters of divergence across countries in terms of approaches to national competition policies. This raises the questions of what is, or should be, the approach to international competition policy and within that, how to define the terms and the scope of principles such as convergence, harmonisation and cooperation.

The current work undertaken by international organisations such as the African Competition Forum (ACF), ICN, United Nations Conference of Trade and Development (UNCTAD), World Bank and Organisation for Economic Cooperation and Development (OECD) is critical in developing a voluntary and concerted approach to competition enforcement mainly through guidelines, peer reviews and capacity building.

There are, however, some limitations on the extent to which these organisations foster global cooperation in the enforcement of competition law. With rapid changes in the dynamics of firm behaviour (through fast-moving and innovative markets brought about by digitalisation and big data, complex anticompetitive stratagems and global cartels) there is a need for a non-voluntary international framework to tackle cross-border anti-competitive conduct.

This is in the face of global statistics which reveal that top global companies have manufacturing components, final assembly, warehousing, customer service and product development taking place outside their home country. This suggests that at a domestic level, local firms, in particular small and medium-sized ones, are integrated into global supply chains. This was an issue at the forefront of the competition authorities in South Africa at the time of the mergers between Wal-Mart Stores Inc. / Massmart Holdings Limited and recently between Anheuser-Busch InBev / South African Breweries Limited.

The impact of such increased cross-border economic activity within South Africa is a concern encompassed not only within trade policy but also competition policy and the Competition Commission’s approach to competition law enforcement.

The difficulty which arises in answering the questions of the scope of convergence, harmonisation and cooperation as well as the approach to international competition policy is epitomised by the divergence in competition policy across the globe.
South Africa’s competition policy encompasses equal access to markets, efficiency, consumer welfare as well as socio-economic goals such as employment and the greater spread of economic ownership. This approach, although not unique to South Africa, is divergent from the approach adopted by most competition authorities in the developed world.

These jurisdictions focus exclusively on competition issues and are of the position that issues beyond these ought to be dealt with through other policy instruments and not competition regulation. This divergence invariably creates challenges towards the adoption of a unified global approach to competition policy.

Another difficulty which arises is the divergence in the capacity and capabilities of competition law institutions across jurisdictions, with Western Europe and the United States of America having more mature competition authorities compared to the growing South African competition authorities and infant competition authorities elsewhere in the world.

Again the divergence in capacity and capabilities of competition authorities across jurisdictions raises challenges in relation to the likelihood of a global approach to competition policy and enforcement, which may bring about convergence and greater harmonisation.

However, all is not lost, because there is a great amount of harmonisation and an equal amount of co-operation at multilateral and bilateral levels.

This is seen not only in the development and strengthening of competition enforcement within most regional trade blocs but also through bilateral cooperation between individual competition authorities.

The Commission is a proponent of greater cooperation with its counterparts within the context of understanding the need for some level of convergence and harmonisation in the face of cross-border anti-competitive conduct. This cooperation is not only epitomised through the Commission’s active participation in the work of the ACF, ICN, UNCTAD, World Bank and OECD but also through the conclusion and adoption of memoranda of understanding with various jurisdictions including the European Commission, Namibia, BRICS and the Southern African Development Community.

In this vein, the Commission concluded and signed memoranda of understanding with the competition authorities of the Russian Federation and Kenya as part of the 10th Annual Conference in October.

This level of cooperation is invaluable to the Commission as it engenders a systematic approach to competition enforcement which mitigates for inconsistencies in the enforcement of competition law across jurisdictions, where the same firms are engaging in the same or similar anti-competitive conduct. It is also beneficial for business as it reduces uncertainties as well as the cost of doing business across multiple jurisdictions.

The global economy is becoming more concentrated and we are already seeing this in the latest global merger activities within the chemicals and agro-processing industries. Moreover, business conduct is becoming more complex within the context of digitalisation and big data. The discussion on globalisation and competition policy will therefore not dissipate but will become imperative with a need to strongly revisit the work the WTO sought to undertake as well as continuing the advocacy work within the ACF, BRICS, ICN, UNCTAD, World Bank and OECD. This, with a view to developing an international framework on cooperation leading to global convergence.
In 2017 the World Bank Group, in collaboration with the African Competition Forum, committed to a research project which sought to review the implementation of competition policy in Africa and evaluate competition issues that affect market outcomes in three important sectors for Africa's competitiveness: cement, fertilizers and telecoms.

This project culminated in a report which found that African countries can experience significant economic growth and poverty alleviation if competition in consumer markets and key sectors is increased. The report also shows how competition policy can help African countries boost inclusive and sustainable development.

Conservative estimates put forward by the report suggest that by addressing weak competition in principle staple foods across the three selected countries, approximately 500,000 people can be effectively lifted above the poverty line by lowering consumer prices.

The report found that in many cities in the selected countries, staple food prices including white rice, white sugar, frozen chicken, bread, butter, flour, milk, potatoes and eggs were at least 24% higher than in the rest of the world, even after taking into account demand and transport costs. In this regard, the report noted that rigorous enforcement against cartel conduct and addressing regulations that limit competition in food markets can reduce the cost of basic foods by 10%. Such actions could, for example, lift nearly half a million people in Kenya, South Africa and Zambia out of poverty and households could save over US$700 million a year.

On competition enforcement and effective market regulatory environments in the cement, fertilizer and telecommunications sectors, the report found that African consumers could save approximately US$2.5 billion each year through competition law enforcement, removal of non-tariff barriers and pro-competition rules in the cement sector, for example, to enable entry into limestone and clinker production. It also found that there is room to prioritize resources and use the powers and tools available more effectively to continue raising the relevance of competition policy within the broader developmental agenda in Africa.

In addition to showcasing the benefits of competition in particular sectors, the report has also highlighted Africa's progress in terms of the implementation of competition policies. The report found that countries or regional blocs with competition laws grew substantially from 13 to 32 over the past 15 years.
“The nature of the market affects distribution and hence has much to do with inequality, an obviously pressing issue in this country,” said Judge Dennis Davis at the recently concluded annual competition conference. His remarks challenged and provoked us on the issue on inequality, in particular, does the increasing concern with inequality call for a competition policy response? How does competition law enforcement square with inequality concerns?

The effect of competition on growth in general can be described in two different ways. One way is to describe the link between competition and the drivers of economic growth. Competition policy promotes growth drivers such as productivity, innovation, investments and lower prices.

Competition policy contributes to productivity and economic growth through three main channels: (a) competition induces firms to become more efficient to stay ahead of rivals (internal productivity); (b) competition allows high productivity firms to replace laggards (sectoral productivity); and (c) competition pushes firms to invest and innovate (dynamic efficiency).

However, I think it is important to recognise that competition law interventions rarely target productivity growth directly; instead they focus on promoting competition itself, often measured by lower prices, entry or other consumer benefits, and in doing so, contribute to productivity growth and thus economic growth overall.

For example, the uncovering of the fertiliser and cement cartels has led to entry in the fertiliser and cement markets. Competition leads to lower prices, including lower input prices, lower costs and more economic activity in follow-on markets.

The other way is to describe the link between competition policy and the challenge of poverty and inequality because the pace of growth is not everything, the pattern of growth also matters.

Desirable effects of competition may be compromised by the presence of high levels poverty and inequality.

Resolving the challenges of unemployment, poverty and inequality is at the core of government initiatives to foster inclusive economic growth. Inclusive growth is about both the pace and pattern of economic growth.
In his recent thought-provoking book called Inequality: What can be done? Professor Tony Atkinson makes the following proposal: “Proposal 2: Public policy should aim at a proper balance of power among stakeholders, and to this end should a) introduce an explicitly distributional dimension into competition policy”.

Some commenters would have you believe that distribution does not matter in competition policy, as reflected in the use of the total welfare standard.

I disagree. I consider that such a perspective is neither descriptively accurate nor normatively appealing.

Not only is such a perspective troublesome from an economic and moral view, it is equally and more importantly out of touch with developments in modern economics (in particular, advances in information asymmetries and game theory).

Using these developments in economics, many have rightly argued, including Professor Joseph Stiglitz, that the more successful firms may not only be those who are more able to produce products that consumers love and do so at lower costs; but rather firms that are better able to create and exploit market power, including taking advantage of consumers.

A few would disagree with the assertion that market power is one of the major sources of inequality. The monopolist’s monopoly rents come at the expense of consumers whose well-being decreases as returns from the abuse of market power accrue disproportionately to the wealthy. Others have already pointed out that inequality leads to poorer economic performance, including lower growth and more instability. I agree.

Market power creates barriers to entry, and inequality means fewer people have resources to enter markets.

Even more concerning is the thought that traditionally, strong unions may have appropriated some of the market power rents, but this possibility has weakened today by the decline of active private sector unionisation.

Some commentators have argued only for a consumer welfare standard for reasons which include the fact that it is readily administrable and more likely to engender political support. I find this perspective incomplete. While the consumer welfare standard helps, it is not justified for reasons based on inequality, and perhaps rightly so, as there are some markets where consumers are wealthy and firms are small or owned by historically disadvantaged people.

As you probably know, protecting buyers and their consumer surplus provides a poor approximation to preventing wealth transfers to those at the top of the wealth distribution.

I agree with the view that overcoming the inequality problem needs a strong embrace of issues of distribution. The key question, however, is: Distribution to who? Some jurisdictions use the consumer welfare standard but do not consider it distributive.

Fortunately for me, South Africa stands out on this issue in that the pursuit of distributive justice is permissible if not compelled by competition law and its unique responsiveness to issues of distributional equity and fairness.

Distribution is to consumers, workers, small firms, firms owned by historical disadvantaged persons and the poor.

While the effect of competition on inequality has not been studied extensively, and has often been assumed to be malign as competition creates winners and losers, Professors William Comanor and Robert Smiley used simple estimates of the prevalence of monopoly profits, together with data on the heritability of wealth, to suggest that in the US, more than half of the wealth of the richest 2.4 percent of households was ultimately derived from monopoly profits, through inheritance.

In February this year, the World Bank study showed that competition policy in South Africa has brought substantial benefits to households, especially the poor.

In my view, competition enforcement should account for inequality concerns by targeting resources towards products purchased by the poor and low income consumers. The Commission has already implemented a prioritisation policy which led to uncovering cartels in bread (staple food), wheat flour (key input into bread), and maize meal (staple food), among others.

Second, inequality might be addressed in individual cases by adopting creative and innovative remedies targeted primarily to benefit the poor. The Commission is already active in not just restoring competition in markets but also crafting remedies with distributional effects to reduce inequality. For example, the Pioneer Foods Settlement Agreement included a discount remedy and a fund to support small businesses.

Let me conclude by making reference to Judge Davis’s final remarks: “In key areas of cartel regulation, abuse of dominance and merger control, a developing jurisprudence has taken place which, notwithstanding some of the errors that have been committed in the past (not least of all by the Competition Appeal Court) it is possible that both from the perspective of economic growth and greater equality, competition policy and law can play a significant effect.”

I believe therefore that we must also continue to be aggressive in advancing our mission to undertake competition regulation for a growing and inclusive economy.
VOX POPS
EXTERNAL DELEGATES VIEW ON THE CONFERENCE

The Commission’s annual conference always provides an excellent opportunity for practitioners to step back from the specific factual, legal and economic questions posed in their on-going cases, and engage with the bigger picture – what are the trends in enforcement policy? Is the competition law enterprise achieving its intended objectives? What direction are the authorities and courts taking when interpreting new and previously untested areas?

The 2016 conference brought together particularly high calibre participants from all sectors of the competition law community in South Africa and internationally – regulators, economists, academics and lawyers. The discussion was interesting, the event was well organised and, as always, the opportunity to exchange perspectives on issues of competition law, economics and policy was beneficial for all involved. Every year I feel enriched for having attended the Commission’s annual conference, and the 2016 conference was no different.
- Neil MacKenzie

The Competition Conference in Cape Town this year was both a fitting tribute to, and evidence of the most developed Competition regime on the African continent. The quality of panelists, both local and international, and topics discussed kept the full house that was drawn to the event fully engaged. Well done to the organizers for putting together a world class event.
- Rookaya Ahmed

The 10th Competition Law Conference highlighted the pervasiveness nature of cartels notwithstanding the record penalties that were imposed on colluding construction firms in 2013. It is disappointing that the prosecuting authorities did not send speakers to the Conference to alleviate the fears that they do not have the skills nor the expertise to be able to prosecute cartel cases as envisaged in the Competition Law Amendment Act. Judge Davis’ concerns about the lack of diversity/representation in competition law briefs is welcome. Only time will tell if this trend will change anytime soon. While it may be unrealistic to expect a complete overhaul of the briefing patterns in the near future, we hope that this issue is dealt with the urgency it deserves. The role of the government (the biggest spender on legal services) to facilitate this change cannot be underestimated.
- Maphanga Maseko

Conference was very interesting in addressing the latest developments in South Africa and internationally. It combined vigorous debates with insightful papers.
- Tamara Paremoer

The Commission’s Annual Competition Conference has become invaluable to the South African competition environment, and this year the Commission again hosted it very successfully. It is one of the few events on the calendar for which economists and lawyers alike are willing to set aside the better part of three days to grapple with topical questions. The conference covered a range of themes, from whether big data could enable exclusionary conduct, to the estimation of overcharges in the cement industry. The presentations were of a high academic standard and provided well-researched, independent views. The conference was also a great opportunity to meet members of the Commission and some of the many international scholars who were invited to speak. It made one proud of what is happening in the realm of competition economics in South Africa.
- Helanya Fourie
The objective of the 10th Annual Competition Law, Economics and Policy Conference was to bring together renowned specialists in competition law and economics to debate issues that affect Competition Policy and Economic Growth. As a Compliance Trainee in a multinational financial institution with a passion for the growth of the African economy, in my view, the conference served as an ideal platform to interact with Competition Regulators and debate competition issues that affect multinationals in Africa. In the current year, there have been significant regulatory changes and trends that had an effect on the economic growth and stability, as well as the stimulation of competition in the African market. The criminalisation of cartel conduct in South Africa, the focus on Data Privacy Laws and the regulation that allows the capping of banking interests in Kenya surfaced as issues that warranted specific attention by the Competition Regulators during the conference.

Professor Frederic Jenny indirectly addressed the relationship between data privacy laws and competition regulations through his presentation on Enforcement issues in rapidly changing / high tech markets. He stated that Big Data would require redefinition of the market. This is particularly relevant in the banking industry as we have observed that there is a shift from the traditional banking model to a digital provision of financial services. He further made valuable observations on the potential competition issues that may be caused by the emergence of Big Data. These observations will surely assist in ensuring that market players observe data privacy laws when processing data. The highlight of the conference was the panel discussion on the relationship between Competition Policy and Economic Growth. The panel in this discussion submitted different opinions that were well substantiated. The majority of the panelists agreed that Competition Policy served as a catalyst for economic growth. Simon Roberts (Professor of Economics, University of Johannesburg) and Francis Kariuki (the Director-General of the Competition Authority of Kenya) were of a different opinion. They both stated that Competition Law is not a catalyst for economic growth and accordingly the task of growing the economy does not lie with competition authorities. In taking their respective opinions into consideration, I would like to question whether they would be of a different perspective in the instance (such as the law in Kenya that allows the capping of bank’s interest rates) wherein sector regulations affect the ability of market players to compete, and accordingly interfere with economic growth. As much as I enjoyed the engagements at the conference, they presented me with additional questions as to the power of the Competition Authorities. Do the authorities have ultimate power to ensure that there are no obstacles in the journey of economic growth?

Commissioner Tembinkosi Bonakele assured the audience that the competition authority in South Africa has taken a proactive role in eradicating and deterring cartel behavior in South Africa. This was also observed earlier this year with the criminalisation of cartel behavior; however one cannot help but wonder whether the National Prosecuting Authority is ready to take on such as sophisticated task of prosecuting cartels. One thing that I am certain about is that attending annual Competition Law, Economics and Policy conference broadens your knowledge and affords one an opportunity to participate in addressing issues that affect global economic growth.

- Thato Mkhize

Shawn van der Meulen, Mmadika Moloi and myself attended the conference on behalf of Webber Wentzal. Overall the conference was a well organised event, in a beautiful setting. It is commendable that the Commission’s team was able to organise such a fitting alternate venue on such short notice. The conference provided a public platform to discuss the need to develop legal frameworks to address uncertainties in a rapidly evolving area of law. The speakers were of a very high calibre and it was valuable opportunity to engage with, and learn from, reputable experts in the industry. Given the multi-faceted nature of competition law, it was interesting and refreshing to listen to perspectives from a variety of key industry participants.

The conference sparked thought-provoking discussions on topics such as the criminalisation of cartel conduct, the increased need for co-operation between competition authorities around the world, the need to monitor industries post cartels and the adoption of innovative approaches to deal with new issues in competition law enforcement. In this light, the conference also underlined the expectation that 2017 will be marked by significant developments and progressive strides. We thank the Commission for hosting us and for the positive experience.

- Elisha Bhugwandeen
Speaking at the Conference, the Minister of Economic Development, Ebrahim Patel, praised the Commission for its excellent work and successes achieved over recent years.

Many observers have also distinguished the organisation as one of the country’s most well-respected and best-functioning institutions. The Commission was equally pleased when our annual report was well received in Parliament by members of the Portfolio Committee on Economic Development recently.

However, Parliament urged us to increase our public awareness and enhance the visibility of the Commission.

Visibility and public awareness is crucial for the Commission – and the role and influence of the media in this regard must never be underestimated. A significant force in modern culture, the media is a means to transmit information through reporting or storytelling and plays a pivotal role in influencing society’s perception of what is important and what is not. In fact, the media possesses power to greatly influence public opinion and perception.

The media can showcase an institution’s successes which, in turn, raises its profile and builds awareness, public confidence and trust in the institution;

The media can help an institution grow public awareness and visibility around its advocacy campaigns, announcements and requests;

The media is an important tool for advocacy, influencing and educating specific target markets or wider audiences;

Public awareness, through the media, leads to public participation;

Media coverage can have a multiplier effect on the good work carried out by an institution. If people are made aware of the good work being carried out, they are more likely to give their support;

Media coverage around cases and investigations can serve as a deterrent to potential wrongdoers; and

Positive media coverage gives an institution, such as the Commission, better stakeholder attention than advertising because media coverage is generally accepted as more believable.

An effective communications and media plan yielded widespread coverage, and therefore awareness, of the Conference before, during and after the event. This, in turn, increased the visibility of the Commission, its work and successes beyond the walls of the Conference venue.

Newspaper wraparounds (Cape Argus and The Star); information supplements (Cape Argus, The Star, Mercury and Pretoria News); Cape Argus street posters welcoming delegates and a media briefing with the Cape Town Press Club also contributed to general awareness and media coverage of the event - and ultimately public awareness.
Coverage of the Conference cast the spotlight on Competition Law, cartels, price fixing, the Commission’s work and successes and international cooperation between competition agencies, among other topics.

Both mainstream and community media provided coverage of the event on print, broadcast and online media platforms. Several international news organisations provided online coverage following the event.

Live broadcast coverage from the event was featured on Power FM, SABC Morning Live and Fin24 online. SABC’s 24-hour news channel and several radio stations also provided general coverage.

CNBC Africa also conducted pre-recorded interviews which formed part of a special production on the Conference. This was aired several times on CNBC Africa’s TV channel.

The Commission’s website was updated daily, providing easy access to the latest media releases and photo highlights, while there was also live streaming of the event on YouTube. Live coverage was also executed daily on the Commission’s social media platforms (Twitter, Facebook, Instagram), highlighting the latest news / developments from the Conference. Coverage included daily photo highlights, media releases and links to media coverage of the event, among others.
The hashtag #10ACC16 trended in 3rd place on Thursday, 6 October 2016 and took the 18th place of the Top 20 of South Africa’s trends.

The communication and media strategy implemented by the team was consistent with the plan approved by EXCO. Targeted stakeholders were reached and there was no negative publicity relating to the Conference. The communications and media strategy, implemented by the team, succeeded in yielding widespread visibility of the Commission and its annual Conference – ultimately reaching several million television viewers, radio listeners, newspaper readers and social media followers.
CONFERENCE IN PICTURES
10th Annual Conference
Honourable Ebrahim Patel is the Minister of Economic Development of the Republic of South Africa; a position he has held since 11 May 2009, and to which he was re-appointed on 26 May 2014. The Ministry helps to coordinate and integrate economic policies across government.

His responsibilities in government include the Industrial Development Corporation (IDC), the International Trade Administration Commission (ITAC) and the competition authorities. He heads the Secretariat of the Presidential Infrastructure Coordination Commission (PICC).

Mr Patel was active for many years in the anti-apartheid and labour movements and in social dialogue institutions. He headed the Southern African Clothing and Textile Workers Union (SACTWU), which provided a range of services and social benefits to workers and their families and built a significant stake in the economy through its investment strategy.

He served on the governing body of the International Labour Organisation (ILO) for a decade, in which capacity he was spokesperson on employment and social policy for many years. He was one of the drafters of the ILO’s Declaration on Social Justice for a Fair Globalisation in 2008 and a number of ILO policy documents and instruments.

Locally, he led the labour team in the finalisation of a number of the country’s labour laws, including the Labour Relations Act in 1995, as well as key economic documents such as the Framework for South Africa’s response to the International Economic Crisis, adopted by Nedlac in February 2009.

His past board and council memberships include the National Economic Development and Labour Council (NEDLAC), the Congress of South African Trade Unions (COSATU), the SA Labour Research Institute, the Commission for Conciliation, Mediation and Arbitration (CCMA), the Council of the University of Cape Town (UCT), the Financial and Fiscal Commission (FFC) and Proudly South African. He served on the Judicial Services Commission joint interview panel for appointments to the Labour Court and the Labour Appeal Court.

He has edited three books, on social dialogue, worker rights and African industrialisation. He studied at the Universities of the Western Cape (UWC) and Cape Town (UCT). He worked in SALDRU, at the time the Research Division of the UCT School of Economics.

Justice Dennis Davis was educated at Herzlia School, Universities of Cape Town (UCT) and Cambridge. He began teaching at UCT in 1977 and was appointed to a personal chair of Commercial Law, in 1989. Between 1991 and 1997 he was Director of the Centre for Applied Legal Studies of the University of the Witwatersrand.

Justice Davis held joint appointment at Wits and UCT 1995 - 1997. He was appointed a Judge of the High Court in 1998 and President of the Competition Appeal Court in 2000.

Since his appointment to the Bench, he has continued to teach constitutional law and tax law at UCT where he is a honorary Professor of law. He is a member of the Commission of Enquiry into Tax Structure of South Africa and was a Technical Advisor to the Constitutional Assembly where the negotiations for South Africa’s interim and final constitutions were formulated and concluded.

He hosted a TV programme, Future Imperfect which was an award winning current affairs programme between 1993 and 1998. He has been a visiting lecturer/professor at the Universities of Cambridge, Florida, Toronto and Harvard.

Mr Norman Manoim is the Chairperson of the South African Competition Tribunal. Mr Manoim is serving his second term as the chairman of the South African Competition Tribunal. He is a lawyer by qualification and has served as a full-time member of the Tribunal since its establishment in 1999.

He was subsequently appointed as Chairperson in August 2009 and he was re-appointed to this position in 2014.

He was a member of the team that drafted the present South African Competition Act. He lectures part-time in Competition Law at the University of Witwatersrand and University of Pretoria.

He has addressed numerous conferences, both locally and internationally on the subject of Competition Law.

Prior to being appointed to the Competition Tribunal, Mr Manoim was in private practice as an attorney for fifteen years with the firm Cheadle, Thompson and Haysom.

He obtained a BA LLB from the University of Witwatersrand, graduating in 1983 and was admitted as an attorney in 1984.
Mr Tembinkosi Bonakele has been with the Competition Commission for the past ten years. He briefly left the Commission in March 2013 and came back in October 2013 as Acting Commissioner. He has been in this position until his appointment as the Commissioner. Mr Bonakele has occupied various positions in the Commission’s core divisions. He was appointed Deputy Commissioner in 2008, and prior to that worked as head of mergers, head of compliance and senior legal counsel respectively.

He established the Commission’s cartels division and has worked on all of the Commission’s major cases over the past ten years, including the bread & flour and construction bid-rigging cartel cases, Telkom and SAB abuse of dominance cases and a number of high-profile mergers. He has been involved in negotiating most of the Commission’s ground-breaking settlements and helped develop the Commission’s Corporate Leniency Policy as well as the Construction Fast Track Settlement Policy.

Mr Bonakele is an admitted attorney and previously practised with Cheadle Thompson and Haysom in Johannesburg largely in the areas of labour law, regulation and health and safety.

He has also spent a year working in corporate finance & antitrust groups at Clifford Chance, New York office. He occasionally teaches competition law at the University of Fort Hare, Wits University and is a fellow of the University of Johannesburg’s Centre for Competition, Regulation and Economic Development. He publishes academic journals and writes for newspapers and business magazines on competition matters.

He holds a BJuris and an LLB from the University of Fort Hare and an MBA from Gordon Institute of Business Science (GIBS), University of Pretoria. Mr Bonakele currently serve as the Chairperson of the African Competition Forum and is a member of the International Competition Network Steering Group.

Prof Frédéric Jenny is a professor of economics and director of International Relations at ESSEC Business School in Paris, co-director of the European Centre for Law and Economics, former judge at the Supreme Court of France (Cour de Cassation, 2004-2012), and former non-executive director of the Office of Fair Trading in the United Kingdom. He is the chairman of the OECD Competition Law and Policy Committee (since 1994).

His main research areas include the relationship between structure and performance in European countries, particularly France, and antitrust legislation in Europe in general.

Professor Jenny studied in France and the United States and holds a Doctorat en Sciences Economiques (University of Paris) and a Ph.D in Economics from Harvard University. He has written extensively on Industrial Organization, Competition Law, Trade and Economic Development.

Mr Hardin Ratshisusu is currently the acting Deputy Commissioner. He has worked in the regulatory field with over 10 years’ experience in the competition regulatory environment in the public and private sector, and has had exposure in a number of industries, including communications, broadcasting, mining, chemicals, retailing, property, healthcare and food.

Mr Ratshisusu holds a BCom (Hons-Economics) from the University of Venda, MCom (Economics) from the University of the Witwatersrand and MBL from the University of South Africa. His areas of specialty are competition and regulatory economics, strategy, governance and research.

In his role as acting Deputy Commissioner, Mr Ratshisusu is responsible for the Commission’s investigative and enforcement activities. He has oversight over the Cartels, Mergers and Acquisitions, Enforcement and Acquisitions, Policy and Research and Legal Services divisions.
Ms Yasmin Carrim joined the Tribunal in February 2005 having come from a background of diverse experiences and skills. She has a science degree, a legal degree and a commerce qualification. She has worked as an activist, a lawyer, a teacher and in business. Over the past eight years, Ms Carrim has been a panel member on the Tribunal’s most complex and ground-breaking matters including the Telkom case on abuse of dominance, the Sasol excessive pricing case and the Wal-Mart / Massmart merger. Ms Carrim also serves as a part-time member on the National Consumer Tribunal. She has previously served as Group Executive of Regulatory Affairs at MTN SA, and as a councillor on the Independent Communications Authority of South Africa.

Ms Carrim is an attorney by profession. She was a director at the law firm Cheadle Thompson and Haysom and a founding trustee of the Women’s Legal Centre. She has maintained her involvement in human rights and development issues through her involvement in non-governmental organisations. Ms Carrim co-edited a handbook on telecommunications regulation in South Africa and serves on the board of the Soul City Institute for Health & Development Communication and the Open Society Foundation.

Mr David Lewis is the executive director of Corruption Watch, a not-for-profit NGO dedicated to combating corruption. Mr Lewis received his training in Economics from the Universities of the Witwatersrand (Wits) and Cape Town (UCT). Between 1975 and 1990 he worked in the trade union movement, in what is now the South African Transport and Allied Workers Union.

From 1990, Mr Lewis directed the Development Policy Research Unit, a UCT based economic policy research group. Between 1994 and 1996, he was Special Advisor to the Minister of Labour and co-chaired the Presidential Commission on Labour Market Policy. In 1999, Mr Lewis was appointed Chairperson of the Competition Tribunal, a position which he held until 2009. He was chairman of the Steering Group of the International Competition Network.

Mr Lewis has served on the boards of the National Research Foundation, the Industrial Development Corporation, the Johannesburg Development Agency and South African Airways. He is currently a member of the Advisory Board of the Wits University Business School. He has authored and edited several books including ‘Thieves at the Dinner Table’, an account of the first 10 years of competition law enforcement in South Africa. In 2010, UCT awarded Lewis an honorary doctorate in economic sciences.

Advocate Menzi Simelane is a former Commissioner of the Competition Commission (SA). He is currently a special/legal advisor to the Minister of Human Settlement. He held a similar position in the Ministry of Public Service and Administration. Adv Simelane was admitted as an advocate of the High Court of South Africa in 1996 and started practicing at the Johannesburg Bar in 1997.

Before becoming a Commissioner, he was the Chief Legal Counsel and established the Legal Division of the Commission. He subsequently become the Director General of the Department of Justice and Constitutional Development, and was later appointed the National Director of Public Prosecutions, the National Prosecuting Authority (SA).

Adv Simelane holds an LLB degree from the University of KwaZulu Natal, has Management Advanced Programme (University of Witwatersrand), 1st International Course on Competition Policy (World Bank) and did his pupillage at the Durban Bar Council.

Dr Márcio de Oliveira Júnior is the Commissioner and Acting President of Administrative Council for Economic Defense (Cade) in Brazil. He holds a doctorate in Economics from the Economics Institute of the University of Rio de Janeiro, Brazil. He has a postgraduate degree in Capital Markets from the Postgraduate School of Economics of the Getulio Vargas Foundation - FGV. Dr De Oliveira Júnior graduated in Law and in Economics.

He worked as a Legislative Consultant at the Brazilian Senate between 2004 and 2014 and from 1998 to 2004, he worked as a Planning and Research Technician at the Institute of Applied Economic Research – IPEA in its acronym in Portuguese. He also works as a Professor at the Brasilia University Center - UNICEUB. He was a professor of economics at the University of Minas Gerais.
Mr Andrey Tzarikovskiy was appointed Stats secretary and Deputy Head of the Federal Antimonopoly Service of Russia in July 2006, following his tenure as Deputy Head of the FAS Russia since 2004. He graduated with honors from Saint-Petersburg Engineer-Economy Academy, specializing in economics and engineering.

His professional career has seen him serve in various roles in the Russian government. In 1995 he was appointed assistant to the Member of the Legislative Assembly of St. Petersburg and a year later, Chief of Staff of the First Vice-Governor - Chairman of the Finance Committee of St. Petersburg City Administration. From 1999 till 2004, Mr Tzarikovskiy was the Director of scientific-research programs and Executive Director of “EPICENTER – Saint-Petersburg Foundation”. Mr Tzarikovskiy is a draftsman of several legislative initiatives at the State Duma of the Russian Federation in the sphere of economy, finance, taxes and antimonopoly policy.

Mr Tzarikovskiy is a member of the Governmental Commissions on legislative activity, economic development and integration, and the Military-Industrial Commission under the Government of the Russian Federation. Mr Tzarikovskiy is the recipient of the Order of Friendship 2008, Honor Certificate of the Government of the Russian Federation 2012, and the Order “For Merit to the Motherland” of the 4th degree. Mr Tzarikovskiy is also the Head of the Supervisory Council of the Kazan Study Centre, professor of the department for control over state and municipal procurement faculty of the National Research University “Higher School of Economics”. He has authored more than 30 scientific publications, including monographs, 12 of which are in the field of economics and budget policy.

Mr Uttam Chand Nahta who is Chartered Accountant (1976) has more than 32 years of experience as a class one officer in the Ministry of Corporate Affairs, Government of India.

Mr Nahta has held various senior level positions such as Additional Registrar of Companies, Maharashtra, Mumbai, Registrar of Companies, Gujarat, Ahmedabad, Regional Director, Northern Region, Noida, Eastern Region Kolkata, North Western Region, Ahmedabad and Director of Inspection & Investigation at the headquarters of the Ministry of Corporate Affairs, New Delhi. Mr Nahta has joined as Member, Competition Commission of India on 12 August 2014.

Mr Francis Kariuki is the Director-General of the Competition Authority of Kenya, a position he has held since January 2013. His main interests are in competition regulation and also economics of institutions’ development. In addition, he has been focusing on the interface between competition policy and other related government policies, especially on poverty reduction. He is also well known for his advocacy initiatives, nationally and internationally, geared towards entrenching competition in various sectors of the economy and boosting regional trade.

He holds a Master of Science in Economic Regulation and Competition from City University London; BA-Economics & Business Studies from Kenyatta University (Nairobi Kenya) and various certificates in strategic leadership and corporate governance.

Mr Siyabulela Tsengiwe joined the International Trade Administration Commission of South Africa (ITAC), then Board of Tariffs and Trade (BTT) in July 2002 as Director: Tariff Investigations. Before that, he served the South African government in various capacities. In September 2005, he became the General Manager responsible for managing and coordinating ITAC’s core functions: Tariff Investigations; Trade Remedies; and Import and Export Control. Mr Tsengiwe has participated in bilateral, regional and multilateral trade negotiations in support of the Department of Trade and Industry (DTI).

In January 2008, he was appointed the Chief Commissioner for ITAC. He holds various degrees including B Comm, BEd and Masters in Public & Development Management.
Prof Liberty Mncube is the Competition Commission’s (“Commission”) Chief Economist, and the head of the Policy & Research Division. Leading a team of 35 economists, he is intimately involved with case teams, giving economic advice particularly on complex cases and policy issues.

He is an expert in the application of industrial organization or competition economics to competition law, as well as the empirical analysis of markets in the context of competition investigations. Prof Mncube is also an Honorary Professor of Economics with the Department of Economics at the University of Stellenbosch. Before joining the Commission, he was a researcher at the Development Policy Research Unit at the University of Cape Town.

He holds a PhD in Economics from the University of KwaZulu-Natal. While studying for his PhD, he was also a visiting PhD student at the Barcelona Graduate School of Economics (Spain). He holds an MSc in Economics from the University of York (UK).

Prof Mncube has published widely on competition policy and economics in leading local and international journals, including the Journal of Competition Law and Economics and the Journal of Industry, Competition and Trade. He has also been a co-guest editor of a special issue on competition economics for the Journal of Economic & Financial Sciences. He regularly presents expert economic testimony before the Competition Tribunal on behalf of the Commission.

Prof Ioannis Lianos holds the chair of global competition law and public policy at the law school of University College London (UCL) and is also the chief researcher of the HSE/Skolkovo Institute on Law and Development at the National Research University, Higher School of Economics (Moscow).

Prof Lianos was awarded a Gutenberg Research chair at the Ecole Nationale d’Administration (ENA), the elite public administration school of the French republic in November 2011. He was appointed visiting research fellow at the Institute of Law and Society at Humboldt University in Berlin in January 2014 and an Alexander von Humboldt Foundation research fellow at WZB (Social Science Research Centre Berlin) in August 2014.

Prof Lianos was elected a member of the international advisory board of the American Antitrust Institute in 2010, a member of the international advisory board of the Loyola University of Chicago Institute for Antitrust and Consumer studies in 2012, and a member of the international advisory board of the Global Antitrust Institute at George Mason University in 2014.

Prof Lianos is also the co- General Editor of the Global Competition Law and Economics Series. He is the co-editor of the Yearbook of European Law, published by OUP, a Senior Editor of the Antitrust Chronicle, Boston, MA, USA and a member of the advisory board of Global Antitrust Review, London. He has organized and conducted training for judges in competition law and economics in London, Toulouse, Lisbon, Hong Kong and Athens and has organized more than 40 international conferences on various aspects of competition law and policy at UCL and beyond, in the context of the UCL Centre for Law, Economics and Society (CLES), which he founded in 2007.

He has advised a number of governments and private parties in the areas of competition law and good governance. He has published extensively, more than 12 books and 60 articles/book chapters. His most recent publications include Competition Law (forth. Hart, 2016), Brands, Competition and IP Law (CUP, 2015), Damages Actions for Competition Law Infringements (OUP, 2015), Competition and the State (SUP, 2014), the two volumes Handbook in European Competition Law (Edward Elgar, 2013), Competition Law and Development (SUP, 2013), The EU after the Treaty of Lisbon (CUP, 2012), Regulating Trade in Services in the EU and the WTO (CUP, 2012). In 2012 he was awarded the Philip Leverhulme prize for his seminal research on economic evidence.
Prof Nicola Theron is the managing director of Econex and heads the Competition Practice. She is also an Extraordinary Professor at the University of Stellenbosch where she teaches courses in competition economics and industrial organisation. She holds a Masters degree in Economics cum laude from the University of Pretoria, and a PhD (Economics) from the University of Stellenbosch.

Prof. Theron has gained valuable experience in many sectors of the South African economy through extensive consulting for private and public firms. She has been involved right from the start with the new competition dispensation in South Africa.

She was the expert economist for the first large merger handled by the competition authorities at the end of 1999 (Santam and Guardian National Insurance). Since then, she has provided expert witness and numerous economic reports for various large clients in proceedings before the Competition Commission and the Competition Tribunal. Some high profile cases in which Prof. Theron provided expert testimony before the Tribunal during the past decade include: SAA/ Nationwide (for SAA), Senwes (for the Commission), BATSA/ JTI (for BATSA), Primedia (Kaya FM) (for Primedia), Protector (for MediClinic), Kansai/ Freeworld (for the Commission), Life Healthcare (for Life).

She has also acted as an expert witness before other regulatory bodies, e.g. before ICASA (on mobile termination rates, and the Vodacom/ Neotel merger) and before Nersa (on pipeline tariffs). She also served as a part-time member of the Competition Tribunal during 2008 and 2009. She is again listed as an expert economist by the GCR Who’s Who of Competition Lawyers and Economists (2015).

Prof. Theron has given lectures and read papers on the economics of competition policy to numerous, students, academics, research institutions and at local and international conferences.

Prof Marc Ivaldi is the professor of Economics at the Toulouse School of Economics (TSE) and at the Ecole des Hautes Etudes en Sciences Sociales (EHESS). Research Fellow at the Institut D’Economie Industrielle (IDEI) and at the Center for Economic Policy Research (CEPR). Furthermore, he is the Scientific Coordinator for the Cooperation on European Research in Economics (COEURE) and Academic Affiliate at NERA Economic Consulting. Prof Ivaldi has served as a member of the Economic Advisory Group on Competition Policy at the Directorate General for Competition (European Commission), Chair of the Standing Committee on Research at the European Economic Association (EEA) and also as Scientific Director of the Division of Social Sciences and Humanities at the French Ministry of Higher Education and Research.

He is one of the European experts on empirical methods for competition and regulation policy. His expertise is focused on applied industrial organization utilizing econometric methods to evaluate firms’ conduct, designing business models, and testing theoretical predictions on market equilibrium, contractual arrangements, and regulatory schemes. Much of his work has been devoted to analysis of network and transport service industries including rail, air, energy, telecommunications, banking, and information technologies. His research on competition policy bears on the delineation of markets, the measurement of unilateral and coordinated effects, and the impact of cartels.

He has published many articles in prominent academic journals. He holds a PhD in Economics from the University of Pennsylvania.

Prof Simon Roberts is Executive Director of the Centre for Competition, Regulation and Economic Development (CCRED) and professor of economics at the University of Johannesburg. He held the position of Chief Economist and Manager of the Policy & Research Division at the Competition Commission (South Africa) from November 2006 to December 2012 where he played a leading role in prioritisation, running complex cases and settlements. In addition, Prof Roberts has consulted extensively on competition matters over the past 15 years, has been an expert witness in a number of major cases, and has advised competition authorities across the African continent. He has published widely in local and international journals including World Competition, Journal of Competition Law and Economics, Industrial and Corporate Change, Journal of African Economies, Review of African Political Economy.
Prof Penelope Andrews is a noted human rights scholar and activist and admitted as an advocate of the High Court of South Africa. Prior to joining UCT, she was president and professor of law at Albany Law School in New York, USA, having formerly served as the first female president and dean for the school which was founded in 1851.

She was previously the associate dean for academic affairs at the City University of New York School of Law (CUNY), where she also sat on the Senate. Prior to joining CUNY, she was a professor of law and director of international studies at Valparaiso Law School in Indiana, USA.

Prof Andrews earned her BA in 1980 (majoring in economic history; comparative African government and administration) and her LLB in 1982 from the then University of Natal in Durban. In 1984 she received an LLM from Columbia University School of Law in New York.

She began her teaching career at La Trobe University in Melbourne, Australia and since then has been tenured at four law schools in Australia and the USA. She has served on significant law school committees and the boards of public interest legal organisations as well as on business councils. A member of the New York State Bar Association and the American Bar Association, she has participated in and has chaired several accreditation site teams for the American Bar Association’s section on Legal Education and Admissions to the Bar. She has also consulted for the Ford Foundation, the United Nations Fund for Women, and the Victorian Commissioner for Equal Opportunity in Australia.

She has received many awards and honours for her work. In 2015, she received the National Bar Association’s International Award for her global human rights advocacy. In 2015, she was included in the USA’s Lawyers of Colour’s fourth annual power list issue, marking her fourth consecutive year on the compendium of “the nation’s most influential minority attorneys”. Prof Andrews has published four books and over 50 articles that focus on international human rights law, comparative constitutional law, gender and racial equality, and the judiciary. Her most recent book, From Cape Town to Kabul: Rethinking Strategies for Pursuing Women’s Human Rights, was published by Ashgate in 2012.

Prof David Unterhalter SC is a professor of law at the Faculty of Law at the University of Cape Town (UCT) where he teaches Competition Law and the Law of International Trade.

He holds degrees from Trinity College, Cambridge, the University of the Witwatersrand, and University College, Oxford. He lectured at University College, Oxford, returned to South Africa, and commenced practice at the Johannesburg Bar in 1990.

He became a Senior Counsel (SC) in 2002. At the Bar, Prof Unterhalter SC has specialised in regulatory law (and in particular competition law and trade law), commercial and constitutional law. He has appeared in many leading cases in these fields.

In 2009, he was called to the Bar in London and is a tenant at Monckton Chambers. He has served as an acting judge on the South African bench. He is a professor of law in the Faculty of Law at UCT. He teaches Competition Law and the Law of International Trade.

He served on a number of World Trade Organisation (WTO) panels, and from 2006 to 2013 served as a member of the WTO Appellate Body, two years as a chairman.

Prof Unterhalter SC has published widely in the fields of public law, evidence and competition law. He is a co-author of Competition Law (Juta, 2002), an account of South African competition law.

Prof Tracy Gutuza is an associate professor specialising in Tax Law, Department of Commercial Law at the University of Cape Town. She lectures Business Law and Company Law to Commerce and Humanities students; Tax Law to both LLB and LLM students, as well as Legal Aspects of Corporate Finance to LLM students.

She holds a PhD from UCT (obtained June 2013), which focussed on the analysis of the methods used in the South African domestic legislation and in double taxation treaties entered into by South Africa for the elimination of international double taxation.

She obtained her LLB at UCT in 1995 and was admitted as an attorney in 1997 and thereafter worked as a legal advisor, and re-joined UCT Law Faculty in 2003 as a lecturer. She briefly left the law faculty to join the South African Revenue Service, but returned to the faculty in March 2015.
Prof Yannis Katsoulacos is Professor of Economics and the Chairman of the Department of Economic Science at the Athens University of Economics and Business. He has been University Vice Rector for Academic Affairs (2007-2011) and Director of the Department’s Program of Post-graduate Studies (2000-2004). In 2003, he organized and since then he directs the Executive MSc in Applied Economics and Finance. Professor Katsoulacos was appointed Associate Professor at AUEB in 1989. He obtained his PhD in Economics from the London School of Economics. His main research interests are in areas of Competition Policy and Regulation and the Economics of Technical Change and Innovation.

He has been Research Fellow of CEPR (1992 - 2001), Director of the Institute of Economic Policy Studies (Athens, 1993-1995), and Director of the Joint Doctorate Program in Economics of AUEB and the University of Athens (2001 –2003). Further, he has authored or co-authored over 90 academic articles, written and edited a large number of books and his work has been cited in over 1500 journal articles. He is the Coordinator and a member of the Scientific Committee of CRESSE (www.cresse.info) since 2006.

Professor Katsoulacos has previously served as a Commissioner of the Hellenic Competition Policy Commission (1995 - 2005), and advised the government in amending Competition Policy and Law in 1995, 2000 and 2011. He has acted as advisor or consultant to the European Commission, the OECD, the World Bank, and major corporations at various times in the last 25 years. He is also Senior Academic Consultant for Charles River Associates.

Prof Heski Bar-Isaac is a professor of Integrative Thinking and Business Economics at the Rotman School of Management at the University of Toronto (Canada), and is currently on sabbatical leave as a visiting Professor of Economics at London Business School.

Prof Bar-Isaac earned a B.A. in Mathematics from Oxford University and a Masters in Economics from the London School of Economics. Before returning to the London School of Economics for his PhD, he spent a couple of years as a consultant, working on a range of antitrust and regulatory issues. He taught PSE; MIT Sloan; Kellogg School of Management; University Bocconi; and London School of Economics; as well as at New York University where he served on the faculty for several years.

Prof Bar-Isaac's research broadly focuses on applied microeconomic theory. His expertise spans the economics of reputation, rating agencies, vertical restraints, search and industrial organization. His work is widely published in journals including the American Economic Review, Review of Economic Studies, and the RAND Journal of Economics. He currently serves as an editor of the Journal of Industrial Economics, on the editorial board of the American Economic Review, and as an associate editor for the Economic Journal.

Ms Thandi Orleyn holds a B-Juris degree from Fort Hare. She also holds B-Proc and LLB degrees from UNISA as well as a Certificate in Energy Law from Witwatersrand University. She also did the Executive Management Programme at the Kellogg Business School in Chicago.

Ms Orleyn’s legal and business career of over 30 years spans the Legal Resources Centre, National Director of both the Independent Mediation Service of SA (IMSSA) and the Commission for Conciliation, Mediation and Arbitration (CCMA) and senior partner at the commercial law firm, Routledge Modise (presently known as Hogan Lovells (SA) Inc.). In the period 2002 – 2006, Ms Orleyn was appointed to serve as a part time member of the Competition Tribunal and as Adjunct Professor of Law at the University of Cape Town.

She is presently an Executive Director and Shareholder at Peotona Group Holdings. She is involved in various community initiatives including chairing the Legal Resources Trust, Zenex Foundation, Ceramic Foundation, De Beers Fund and the Fort Hare University Council. She also sits on South African National AIDS Council Trust.

She chairs the Board of BP Southern Africa and Tokiso Dispute Settlement. She is a non-Executive Director on the Boards of Toyota SA, Toyota Financial Services (South Africa) Ltd, Reunert Ltd, Ceramic Industries Ltd and the IDC. She was previously a non- Executive Director of the South African Reserve Bank and other listed companies.
**Prof Michael Katz**

Prof Michael Mervyn Katz is the chairman of ENSafrica, a firm of corporate law advisors. He is a course director of Advanced Company Law - Wits University, visiting Professor in Company Law at Wits University and is a member of the board of governors of Hebrew University of Jerusalem.

Prof Katz holds a B.Com and LLB (Witwatersrand University, respectively), LL.M (Harvard Law School) and LL.D (h.c) (Witwatersrand University). In his luminous career, he has co-authored 4 volumes of the Butterworths Company Law Precedents and has been a member of a number regulatory bodies including the following: Chair of the Commission of Enquiry into The Tax System; former chairman of the Tax Advisory Committee to The Minister of Finance (SA); and former member of the Securities Regulation Panel.

In addition, Prof Katz is a member of a number of subcommittees of the Law Society of South Africa, member of King Committee on Corporate Governance, chaired the Committee For the Restructuring of the Johannesburg Securities Exchange, was recently appointed as Chairman of the Specialist Committee on Company Law (established in terms of section 191 of the Companies Act, 2008), and is a member of the FSB Legislative Committee.

He is also a director of numerous companies and chairs the board of the National Housing Finance Corporation Limited – which was established by South African Government to enable affordable finance for low cost housing.

**Ms Tania Begazo**

Ms Tania Begazo is Senior Economist and Competition Specialist at the World Bank Group’s Trade and Competitiveness Global Practice. She is advisory lead on competition policy in Sub-Saharan Africa, and has contributed to the design and delivery of technical assistance on competition policy in more than fifteen emerging and developing economies.

The technical assistance covers implementation of competition law frameworks including anti-cartel policy, merger control and concurrency frameworks with sector regulators, reform of anticompetitive regulations in sectors such as agriculture, energy and telecommunications, and knowledge and analytical products for competition advocacy.

Previously, Ms. Begazo worked for the International Telecommunications Union, APOYO Consultoria, and the Peruvian telecommunications regulator (OSIPTEL). She advised on the design and implementation of economic regulation, economic analysis of antitrust cases, and regulatory aspects for public-private partnerships.

Tania holds a Master Degree in Public Administration in International Development from Harvard University.

**Prof Hassan Qaqaya**

Prof Hassan Qaqaya is a senior fellow of Melbourne Law School, University of Melbourne, Australia. Until recently, he was the Head of the United Nations Conference on Trade and Development (UNCTAD) Competition and Consumer Policies, United Nations (UN), Geneva, Switzerland. He specialises in competition and consumer policy, financial regulation, international trade, and anti-dumping. He has advised governments, public and private entities, and young competition and consumer agencies in over sixty developing countries and economies in transition on various competition, consumer protection, privatization, de-regulation, and international trade issues.

For more than three decades, Prof Qaqaya was involved in teaching for the United Nations as well as in various universities and institutes across wide spectrums of countries and regions, while holding important positions at UNCTAD. In addition to courses on competition and consumer policies, he taught international trade and WTO issues, Development Economics, Industrial Organization, and Micro and Macroeconomics.

Prof Qaqaya has written and co-written over forty UN reports and studies. In addition to his teaching, he established the UNCTAD Research Partnership Platform (RPP), which brings together research institutions, universities, competition authorities, business and civil society. It provides a platform where academics and practitioners can undertake joint research and other activities with UNCTAD: disseminate the results of their own work; and exchange ideas on the issues and challenges in the area of competition and consumer protection, particularly those faced by developing countries and economies in transition.

He holds a BA Degree in Economics from Polytechnic of Central London, a Master’s Degree in Economics from the London School of Economics, a Master’s Degree in International Law from Lausanne University and a PhD in Economics from the London School of Economics. Since 2015, he has been a member of faculty at Perdana University in Malaysia and he also lectures on international economics at Webster University in Geneva. He has been travelling the world for the last 20 years, assisting numerous countries in drafting competition laws and application guidelines, and organising capacity building workshops.
Prof Joseph Harrington is the Patrick T. Harker Professor of Business Economics and Public Policy at The Wharton School of the University of Pennsylvania.

Prof Harrington has published more than 80 articles and his research has appeared in many leading journals including the American Economic Review, Journal of Political Economy, Econometrica, Management Science, and American Journal of Sociology. His current research focuses on collusion and cartels, with the objectives of understanding observed collusive practices, developing observable markers of collusion, and designing competition policy to detect and deter collusion. His research is on the interface of theory and practice and has been presented before competition authorities throughout the world including those of Chile, European Union, Japan, South Africa, and the United States of America.


Prof Harrington has given many keynote addresses on the topic of collusion and cartels including the Bayard Wickliffe Heath Memorial Lecture at the University of Florida Levin College of Law, the Conference Policy Lecture at the European Conference in Competition & Regulation and plenary talks at the annual meetings of the European Association for Industrial Economists (EARIE), Chile Economics Association, and the German Economics Association.

He has performed extensive service on editorial boards in the field of industrial organization including co-editor at the RAND Journal of Economics and the International Journal of Industrial Organization and is currently associate editor at Economics Letters, the Journal of Industrial Economics, and the Review of Industrial Organization.

Previously president of the Industrial Organization Society (IOS) and now a member of its board of directors, he is currently a member of the Scientific Committee of the Competition and Regulation European Summer School and Conference.

Prior to joining the Wharton faculty, Prof Harrington was Professor of Economics at Johns Hopkins University where he was Department Chair from 2007 to 2012 and Program Chair of the M.A. Program in Applied Economics from 1997 to 2012. In the Fall of 2012, he visited Universidad Carlos III de Madrid where he held a Cátedras de Excelencia (Chair of Excellence) funded by Banco Santander.

Prof Chiara Fumagalli is associate professor of Economics at Bocconi University since 2006. In 2013 she was appointed as the Avv. Giovanni Agnelli endowed Associate Professor in Economics, and since 2014 she is Director of the Bachelor in International Economics and Finance at Bocconi University. Professor Fumagalli is an applied micro-economist, whose research covers the fields of industrial organization, corporate finance and international trade. Her research in these areas has been published in leading academic journals, such as the American Economic Review, the Journal of Financial Economics and the Rand Journal of Economics. Much of her recent work has been concerned with competition policy and the activity of diversified business groups. The work of Prof Fumagalli in competition policy is mainly focused on the economics of exclusionary practices. More particularly, she has studied the potential anti- and pro-competitive effects of exclusive dealing contracts and the scope for predatory pricing, while she is currently working on bundled rebates and vertical integration.

She is currently working on a book ‘Monopolization: A Theory of Exclusionary Practices’ (with M. Motta and C. Calcagno) to be published by Cambridge University Press. Since January 2014, Prof Chiara Fumagalli was nominated by the European Commissioner as a member of the Economic Advisory Group on Competition Policy (EAGCP). Prof Fumagalli is a Research Fellow of CEPR, Baffi Center, IGIER and CSEF (Università di Napoli). She is member of ACE (Association of Competition Economics) and associate of CRESSE, and in 2016 she was appointed as a member of the Economic Advisors of the Italian Government. She earned her Laurea degree in Economics at Bocconi University in 1994 and her PhD in Economics at Universitat Pompeu Fabra (Barcelona) in 2000.
### PROGRAMME OVERVIEW
5 - 7 October 2016
Venue: The Lookout V&A Waterfront

#### (Wednesday) 5 October 2016
<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
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<tbody>
<tr>
<td>08h00 – 08h30</td>
<td>Arrival and registration of workshop / conference delegates</td>
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<tr>
<td>08h30 – 18h00</td>
<td>Joint Workshop co-hosted by Competition Commission and CRESSE</td>
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<tr>
<td>18h30 – 19h30</td>
<td>Networking Cocktail Reception – CRESSE conference book launch</td>
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#### (Thursday) 6 October 2016
<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
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<tbody>
<tr>
<td>08h00 – 08h30</td>
<td>Arrival and registration of conference delegates</td>
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<tr>
<td>08h30 – 17h45</td>
<td>10th Annual Competition Law, Economics and Policy Conference of the Competition Commission and Tribunal of South Africa</td>
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<tr>
<td>19h00 – 22h00</td>
<td>Networking Dinner</td>
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#### (Friday) 7 October 2016
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<thead>
<tr>
<th>Time</th>
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<tbody>
<tr>
<td>08h00 – 08h30</td>
<td>Arrival and registration of conference delegates</td>
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<tr>
<td>08h30 – 14:30</td>
<td>10th Annual Competition Law, Economics and Policy Conference of the Competition Commission and Tribunal of South Africa</td>
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<tr>
<td>Time</td>
<td>Topic</td>
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<tr>
<td>08h00 - 08h30</td>
<td>Registration - Deck</td>
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<tr>
<td>08h30 - 09h00</td>
<td>Welcome</td>
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<td>Introduction</td>
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<tr>
<td>09h00 - 10h00</td>
<td>Enforcement issues in rapidly changing / High-tech markets</td>
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<tr>
<td>10h00 - 10h30</td>
<td>TEA BREAK – UCT/Deck</td>
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<tr>
<td>10h30 - 11h30</td>
<td>Market definition and determinants of market power</td>
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<tr>
<td>11h30 - 12h30</td>
<td>Information exchange</td>
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<tr>
<td>12h30 - 13h30</td>
<td>LUNCH – UCT</td>
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<tr>
<td>13h30 - 15h30 (Parallel 1)</td>
<td>Quantitative / empirical analysis for competition policy</td>
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<tr>
<td>13h30 - 15h30 (Parallel 2)</td>
<td>Economic evidence in competition law</td>
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<tr>
<td>15h30 - 16h00</td>
<td>TEA BREAK – UCT/Deck</td>
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<tr>
<td>16h00 - 17h00</td>
<td>Economics of exclusionary conduct</td>
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<td>17h00 - 18h00</td>
<td>Vertical restraints</td>
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<tr>
<td>18h30 – 19h30</td>
<td>COCKTAIL RECEPTION</td>
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**TENTH ANNUAL COMPETITION LAW, ECONOMICS & POLICY CONFERENCE**

**Thursday, 6 October 2016**

**Venue: CompCom**

**Theme: Competition Policy and Economic Growth**

<table>
<thead>
<tr>
<th>DAY 1</th>
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<td><strong>08h00 – 08h30</strong></td>
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<td>Registration - Deck</td>
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<th><strong>08h30 – 10h00</strong></th>
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<tbody>
<tr>
<td>Welcome</td>
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<td>Opening</td>
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<td>Key note speaker</td>
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<tr>
<th><strong>10h00 - 11h20</strong></th>
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<td>(The session will explore the role of competition as a catalyst for stimulating and fostering economic growth)</td>
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<tr>
<th><strong>PANEL DISCUSSION</strong></th>
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<tbody>
<tr>
<td>Competition Policy and Economic Growth</td>
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</table>

**Chair:** Norman Manoim, Chairperson, Competition Tribunal, South Africa

**Speakers:**
- Liberty Mncube, Chief Economist, Competition Commission South Africa
- Francis Kariuki, Director General, Competition Authority of Kenya
- Tania Begazo, Senior Economist: Trade & Competitiveness Global Practice, World Bank Group
- Simon Roberts, Professor of Economics, University of Johannesburg
- Marc Ivaldi, Professor of Economics, Toulouse School of Economics
- Márcio de Oliveira Júnior, Acting President, CADE – Brazilian Competition Authority

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<tr>
<th><strong>11h20 – 11h50</strong></th>
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<td>TEA BREAK – UCT/Deck</td>
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<tr>
<th><strong>11h50 – 13h40</strong></th>
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<td>(The session will explore the challenges of competition enforcement in a globalised world)</td>
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<tr>
<th><strong>POLICY LECTURE</strong></th>
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<tr>
<td>Ioannis Lianos, Professor and Chair of Global Competition Law and Public Policy, University College London</td>
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<th><strong>PANEL DISCUSSION</strong></th>
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<tbody>
<tr>
<td>Competition Policy and Globalisation</td>
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**Chair:** Yasmin Carrim, Member, Competition Tribunal, South Africa

**Speakers:**
- Frédéric Jenny, Chairman, Competition Committee, OECD
- Andrey Tsarikovskiy, Stats-Secretary, Deputy Head of the Federal Antimonopoly Service of Russia
- Nicola Theron, Professor of Economics, University of Stellenbosch
- Siyabulela Tsengiwe, Chief Commissioner, International Trade Administration Commission
- Hardin Ratshisusu, Deputy Commissioner, Competition Commission South Africa
- Hassan Qaqaya, Professor of Law, University of Melbourne

**SESSION III:**

<table>
<thead>
<tr>
<th><strong>13h40 – 15h00</strong></th>
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<tbody>
<tr>
<td>Parallel 1A: Parallel 1B:</td>
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<tr>
<td>The Effectiveness of Merger Control in a Case Study of Cartel Criminalisation</td>
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<tr>
<td>Ensuring the Effectiveness of Competition Policy: Decision in the Media 24 Case</td>
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<th><strong>15h00 – 16h00</strong></th>
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<tr>
<td>Parallel 2A: Parallel 2B:</td>
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<tr>
<td>The Use of Profitability in Competition Analysis: Role and Reasoning</td>
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<td>The Impacts of Minimum Advertised Price Restrictions</td>
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**SESSION IV:**

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<tr>
<td>Parallel 3A: Parallel 3B:</td>
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<tr>
<td>Reflections on the Effectiveness of Competition Enforcement in South Africa</td>
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<tr>
<td>Unbundling the Incumbent and Entry into Fiber: services in South Africa?</td>
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**SESSION V:**

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<th><strong>17h00 – 17h30</strong></th>
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<tbody>
<tr>
<td>BOOK LAUNCH - “COMPETITION LAW ENFORCEMENT IN BRICS AND DEVELOPING COUNTRIES”</td>
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**Friday, 7 October 2016**

**Venue: CompCom**
| 13h30 – 15h00 | BOOK LAUNCH: “BREAKING DOWN BARRIERS: UNLOCKING AFRICA’S POTENTIAL THROUGH VIGOROUS COMPETITION POLICY” |
| LUNCH – UCT |
| Parallel 1A: | Parallel 1B: |
| Chair: Willem Boshoff | Chair: Richard Murgatroyd |
| Discussant: Professor Marc Ivaldi | Discussant: Professor Yannis Katsoulacos |
| Mbongiseni Ndlovu, Ronald Rateiwa and Shadrack Rambau | Nompucuko Nontombana and Itumeleng Lesofe |
| *A Review of the Competition Commission’s Decision in the CBE and Other Exemption Applications* | *Review of Abuse of Dominance Provisions of the Competition Act – Is it Necessary?* |
| Phil Alves and Fatima Fiaideiro | Genna Robb |
| *The Role of Ex-post Evaluation in Assessing the Efficacy of Competition Policy Decisions: Lessons Learnt from Recent Case Studies* | *How Effective is the Enforcement of Predatory Conduct Provisions in South Africa? A Review of the Recent Tribunal Decision in the Media 24 Case* |
| Simon Roberts | John Asker and Heski Bar-Isaac |
| *Barriers to Entry and Implicatons for Competition Policy* | *Vertical Information Restraints: The Pro- and Anti-Competitive Impacts of Minimum Advertised Price Restrictions* |

| 16h15 – 16h30 | TEA BREAK – UCT/Deck |
| Parallel 2A: | Parallel 2B: |
| Chair: Uttam Chand Nahta | Chair: Professor James Fairburn |
| Discussant: Professor Chiara Fumagalli | Discussant: Professor Heski Bar-Isaac |
| Neil Mackenzie, Ombline Anceline and Florence de Bakker | Helen Kean |
| *Price Signalling and the South African Competition Act* | *The Use of Profitability in Competition Analysis: Role and Reasoning* |
| Ruth Mosoti and Elizabeth Macharia | Ryan Hawthorne |
| *Competition Policy in Kenya: To What Extent is the Mergers and Acquisition Provisions Effective in Kenya* | *How competitive are markets for telecommunications services in South Africa?* |
| Dr Peter Whelan | Lukasz Grzybowski |
| *Ensuring the Effectiveness of Competition Policy: a Case Study of Cartel Criminalisation* | *Unbundling the Incumbent and Entry into Fiber: Evidence from France* |
| Sunel Grimbeek and Katerina Barzeva | |
| *The Effectiveness of Merger Control in South Africa: Selected Case Studies* | |

| 19h00-22h00 | NETWORKING DINNER |
## DAY 2

<table>
<thead>
<tr>
<th>Parallel 3A:</th>
<th>Parallel 3B:</th>
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<tr>
<td><strong>Chair:</strong> Makgale Mohlala</td>
<td><strong>Chair:</strong> Bukhosibakhe Majenge</td>
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<tr>
<td><strong>Discussant:</strong> Professor Joseph Harrington</td>
<td><strong>Discussant:</strong> Professor Ioannis Lianos</td>
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<tr>
<td>Nicola Theron</td>
<td>Marc Ivaldi and Vicente Lagos</td>
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<tr>
<td><em>Impact of Competition Enforcement in the Cement Industry in South Africa</em></td>
<td><em>Assessment of Post-merger Coordinated Effects: Characterization by Simulations</em></td>
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<tr>
<td>Willem Boshoff</td>
<td>Chris Hart and Richard Murgatroyd</td>
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<tr>
<td><em>An unobserved components model of collusion overcharge: the South African cement cartel</em></td>
<td><em>A Review of Recent Merger Interventions and Judgements in South Africa and Their Implications for Economic Efficiency and Other Regulatory Objectives</em></td>
</tr>
<tr>
<td>Annalies Outhuijse</td>
<td>John Asker and Heski Bar-Isaac</td>
</tr>
<tr>
<td><em>Effective Enforcement of Anti-Competitive Agreements in the Netherlands</em></td>
<td><em>Vertical Information Restraints: The Pro- and Anti-Competitive Impacts of Minimum Advertised Price Restrictions</em></td>
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<tr>
<td>Yannis Katsoulacos, Evgenia Motchenkova, David Ulph</td>
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<tr>
<td><em>Measuring the Effectiveness of Anti-Cartel Interventions: A Conceptual Framework</em></td>
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### 09h45 – 10h00

**TEA BREAK – UCT/Deck**

### 10h00 – 12h00

(10h00 – 12h00)

**POLICY LECTURE**

- Dennis Davis, Judge President: Competition Appeal Court, Republic of South Africa
- Moderator: Tembinkosi Bonakele, Commissioner, Competition Commission South Africa

**PANEL DISCUSSION**

- **Chair:** Penelope Andrews, Professor and Dean of Law, University of Cape Town
- **Speakers:**
  - Dennis Davis, Judge President, Competition Appeal Court, Republic of South Africa
  - Michael Katz, Chairman, ENSafrica
  - David Lewis, Former Chairperson, Competition Tribunal South Africa
  - David Unterhalter, SC, Advocate, Group 621
  - Menzi Simelane, Former Commissioner, Competition Commission South Africa

### 12h00-12h20

**BOOK LAUNCH - “COMPETITION LAW ENFORCEMENT IN BRICS AND DEVELOPING COUNTRIES”**

Edited by Yannis Katsoulacos and Frédéric Jenny

### 12h20 – 12h30

**Closing:** Norman Manoim, Chairperson, Competition Tribunal, South Africa

### 12h30 – 14h00

**LUNCH**
WE WANT TO HEAR FROM YOU

Visit us online at www.compcom.co.za for more information about our work and the Competition Act.

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Fax: (012) 394 0166
www.compcom.co.za

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