CELEBRATING 20 YEARS OF REGULATING FOR INCLUSIVE GROWTH

04 SPECIAL REMARKS BY THE CHIEF JUSTICE

08 JUSTICE MINISTER - CONFERENCE ADDRESS
019 was a significant year for the competition authorities of South Africa. It marked 20 years of competition enforcement in the country. To mark this, the Competition Commission, alongside the Competition Tribunal, hosted what was the 13th annual competition law and economics conference dedicated to celebrating 20 years of regulating for inclusive growth.

The conference was hosted at the vibrant and innovative economic hub of 012 Central in the capital city, Pretoria. There the discussions centred not only on reflecting on past successes and failures but also the ideas and ideals of what competition regulation ought to look in South Africa over the next 20 more years. This edition of newsletter is a rendition of those discussions including the highlight of the keynote address given by the Chief Justice of the Constitutional Court of South Africa, Justice Mogoeng Mogoeng. Moreover, the Minister and Justice and Constitutional Development, Minister Ronald Lamola, also gave an address espousing the work of the competition authorities whilst highlighting the challenges which lie ahead. The Commissioner of the Commission, Mr Tembinkosi Bonakele, officially opened the conference with reflective and prospective opening remarks, laying out the future of competition enforcement and regulation in South Africa.

The conference was preceded by other events as a build-up including the annual CRESSE economics workshop taught by Prof Amelia Fletcher, Prof Tom Ross, Prof Marc Ivaldi, Prof Simon Loertscher and the former chief economist of the Commission Dr Liberty Mncube. The Commission also hosted a business and labour dialogue focusing on economic transformation and employment in South Africa. Prof Ioannis Lianos, now head of the Hellenic Competition Commission, held a workshop where he presented work being undertaken by the BRICS Competition Innovation Law and Policy Joint Research Platform on the digital economy.

As per norm this conference attracted not just new and old faces of competition law and economics both locally and internationally.
2019 was a significant year for the competition authorities of South Africa. It marked 20 years of competition enforcement in the country. To mark this the Competition Commission, alongside the Competition Tribunal, hosted what was the 13th annual competition law and economics conference dedicated to celebrating 20 years of regulating for inclusive growth.

One of innovations of this year’s conference was the law students’ competition law moot court with young and inspiring participants from across the universities of Fort Hare, Stellenbosch, Venda, Johannesburg, Western Cape and Zululand. These young and brilliant minds showed off their legal prowess and eagerness to add to the competition law fraternity in the future.

The conference was also an important opportunity to mark the end of the tenure of the former Chairperson of the Tribunal Mr Norman Manoim. However, with his departure, it ushered in new leadership in the form of the current Chairperson of the Tribunal Ms Mondo Mazwai who is the first black female to hold this position.

We thank all those who continue to support the work of the Commission as noted the continued well wishes from our colleagues and partners from across the globe including Dr Sacko Seydou of the Economic Community of Western African States, Mr Igor Artemiev, Head of the Federal Antimonopoly Service of the Russian Federation, Mr Deshmuk Kowlessur, Vice-Chair of the Competition Commission of Mauritius, Mr Amadou Ceesay, Executive Secretary of the Gambia Competition and Consumer Protection Commission, Mr Andreas Mundt who is the Chair of the International Competition Network and President of the Bunderskartellamt of Germany and Ms Moreira from the Competition Branch of the United Nations Conference on Trade and Development.

A special thanks goes to all those who have worked hard to make this 20th anniversary a special occasion especially service providers and our dedicated staff at the Commission. The competition authorities of South Africa will continue to deliver on their mandate and contribute to an inclusive economy, strengthened by the amendments to the Competition Act.

along with other significant delegates including former constitutional judge Justice Albie Sachs, Judge President of the Competition Appeal Court of South Africa, Judge Dennis Davis, Advocate Tembeka Ngcukaitobi SC, Prof Tshilidzi Marwala who is the Vice-Chancellor of the University of Johannesburg and Prof Alexey Ivanov of Skolkovo Institute for Law and Development at the National Research University-Higher School of Economics in the Russian Federation.

Colleagues and delegates from competition authorities around the world including those from Botswana, Mauritius, Madagascar, Malaysia, Russia and Kenya were also present at our conference and we continue to value their collegial support and cooperation. Other colleagues from various international institutions were also present including from Berkeley Research Group, PFI Partnerships, Compass Lexecon, World Bank, Fideres, University of Melbourne, University College London and the University of British Columbia.

The conference also presented an opportunity to further cement collaboration with local and international stakeholders. To this end, the Commission signed memoranda of understanding with the Independent Communications Authority of South Africa and the Competition and Tariff Commission of Zimbabwe. The Commission also hosted a working visit from Malaysia where the Chief Executive Officer of Malaysia Competition Commission also participated in a plenary at the conference. Further, representatives from the World Bank held a discussion with representatives of the African Competition Forum who were working on a joint institutional benchmarking report. The Commission also held a bilateral meeting with Mr Andrey Tsarikovsky, the Stats-Secretary of the Federal Antimonopoly Service of the Russian Federation, an important global and BRICS partner.
Chief Justice Mogoeng Mogoeng gave the following remarks.

He began by noting the successes and challenges of competition enforcement in South Africa and its contribution to a more competitive and fairer economy. However, he restated the question of why we have the Competition Act, what it sought to achieve and what progress has been made. He further stated that if progress has been unsatisfactory in 20 years we need to ask why that is the case. The Chief Justice’s genesis of his reflection of 20 years of competition enforcement was the long title of the Competition Act, its preamble and purpose. He read the long title as, “To provide for the establishment of a Competition Commission responsible for the investigation, control and evaluation of restrictive practices, abuse of dominant position and mergers. For the establishment of a Competition Tribunal responsible to adjudicate such matters and for the establishment of a Competition Appeal Court and related matters.” He further noted that the preamble reads, “The people of South Africa recognise that apartheid and other discriminatory laws and practices of the past resulted in excessive concentrations of ownership and control within the national economy, inadequate restraints against anticompetitive trade practices, and unjust restrictions on full and free participation in the economy by all South Africans.”

The Chief Justice noted that the economy must be open to greater ownership to a greater number of South Africans. Credible competition law and effective structures to administer that law are necessary for an efficient functioning economy. That is an efficient, competitive economic environment, balancing the interests of workers, owners and consumers, focused on development to benefit all South Africans. He continued reading from the preamble which continues to state, “In order to provide all South Africans equal opportunity to participate fairly in the national economy; achieve a more effective and efficient economy in South Africa; provide for markets in which consumers have access to, and can freely select, the
The people of South Africa recognise that apartheid and other discriminatory laws and practices of the past resulted in excessive concentrations of ownership and control within the national economy, inadequate restraints against anticompetitive trade practices, and unjust restrictions on full and free participation in the economy by all South Africans.

The Chief Justice acknowledged the work of the Competition Commission including its investigations against big companies. This notwithstanding that there are impediments which restrain the Commission from going all out, which the South African economy demands in achieving objectives of the Competition Act.

The Chief Justice noted that there are many challenges to effective competition law enforcement. He first referred to lawyers and the court system. He noted that access to justice is one of the challenges. He further noted that when he was in practice, it was relatively cheaper to afford a lawyer. Then, clients knew how much, in terms of the guidelines, that counsel would charge for things such as settling summons, for particulars for divorce and a number of other matters depending on the level of seniority of counsel. However, since the Competition Commission came into being or the Act was passed, fees have increased. This is due to the fact, as some practitioners have reported, that the Competition Commission would not allow practitioners to operate in terms of a regime that regulates the level beyond which practitioners ought not to go in charging fees. The result is that even the Constitutional Court have had to reduce some of the fees charged by counsel because the fees were shocking. He noted that those practitioners in practice before Competition Act came into being would never have dreamed in a lifetime to charge fees charged today. This in a country were equality is at its highest and maybe something needs to be done to enhance access to justice.

The Chief Justice read the purpose of the Act, which is to promote and maintain competition in the Republic in order to:

- Promote the efficiency, adaptability and development of the economy
- Provide consumers with competitive prices and product choices
- Promote employment and advance the social and economic welfare of South Africans
- Expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic
- Ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy
- Promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons

The Chief Justice acknowledged the importance of the Competition Commission and its role in maintaining competition in the Republic.
The Chief Justice further noted that there is a complaint by the public that quality justice is accessible to those whose pockets are deep and the quality of legal representation almost predicts the outcome of litigation. If you are an average South African, then the struggling lawyer to which you are likely to be confined would in no likelihood be a match to the practitioner that those with deep pockets would be relying on for assistance. Given this, he advocated for intervention given that our country is challenged at an economic and social level, for practitioners to very deliberately and intentionally ditch or throw away technicalities that we have been playing around with in pursuit of self-interest or sectional interest. This extends to access to medical facilities where it is fast becoming something out of which to make a lot of money. It needs to be very truthfully, soberly reflected on particularly because we are a troubled nation.

The Chief Justice further noted that both the Commission and the Constitutional Court are struggling in the application of the Competition Act. This was evidenced in the Media24 judgement delivered in July, which was split four-four. He urged that something revolutionary needs to be done to simplify the law and judgements. In referring to Stephen Hawking, the Chief Justice noted that anything, any concept that another human being is capable of understanding is capable of simplification for the benefit of those who are not experts in that area. However, it appears that in South Africa, the legal and other fields including competition law is excelling by mystifying concepts in order to allow those who want to milk the system to do so by hiding behind this notion. When we look at economic activity one can see the disparity in that few key players participate in the mainstream economy of our country. The question therefore is how this could have happened over 20 years and with the kind of Constitution we have? He further noted that with the kind of Competition Act we have one needs only to look back in villages and in townships where small business enterprises are virtually non-existent. They used to thrive there before the Competition Act came into being. The Chief Justice noted that he is not blaming anyone however he noted that some are taking advantage of some of our laws to the exclusion or the perpetual exclusion of those that have been excluded all along. He urged that the competition conference was not an opportunity to demonstrate high intellectual capacities. But rather that the conference is a place to find practical solutions in order to be able to hold everyone to account. The Chief Justice noted that in the Media24 case, he learned that it permissible to squeeze out of existence a small player. It is permissible for a diversified big player to employ whatever technicalities in order to squeeze out of existence those that have just entered to retain a monopoly position. This, he stated is a problem noting that even though we can reference from other jurisdictions, we must do so from the premise that not every jurisdiction is similarly situated to South Africa. He noted that we have a history that must inform the nature and character of the laws that we pass. South Africans must ensure that we do not pay lip service to the aspirations of the unemployed and the poor and rather that we take steps to give practical expression to these.

The Chief Justice concluded by noting that one can employ a strategy that works in order to ensure that some continue benefiting at the expense of others by simply saying what others expect without ever implementing it. He noted that it is time for action and anything in and about the Competition Act that does not help us to realise its objectives must be changed so that we can get to where we are supposed to.
Ladies and Gentlemen:

Attendance of conferences of the competition commission used to excite me as a practitioner as I felt I am sharpening my skills and knowledge to fight monopolies, so I used to joke with the commissioner and said here it is not about rhetoric but about the fight against monopolies and you need to do it in action.

When I received the invite from the Commissioner, my programme made it impossible for me to come here as I was supposed to be in parliament, mysteriously, the programme I was supposed to attend
Competition Law is an essential tool for economic emancipation. When successfully applied, Competition Law becomes a critical component of Constitutional Development.

in parliament was cancelled, hence I am here this morning. This would have been the first competition law conference I miss since BRICS Durban, 2015; Brasilia, Brazil 2017; ICN Porto 2017; and all the annual conferences, I attended all these conferences at my own costs.

I have seen young lawyers and economists, and various young professionals being turned into experienced competition practitioners. I always say it in government that if you want prove that young people can successfully run a government institution, they must come to the competition commission.

Former Chairperson Norman Manoim, thank you for your services to this institution, you have seen this institution grow from embryo to a full grown adult.

I would also like to take this opportunity especially because it is women’s month, to single out Ms. Mondo Mazwai, I wish you well on your appointment as the Chairperson of the Competition Tribunal. I have no doubt that you are where you are because of your commitment and sustained hard work.

I am singling you out in women’s month because young girls in Nkowankwa, Makhado or Mthatha must know that it is possible for women not to only sit at the table when crucial decisions are made, but it is actually possible for them to be the final arbiter, the one overseeing the process to its just conclusion. From my personal experience with the institution and interactions with yourself, I can say with no shame that this Tribunal is in very safe hands. Malibongwe!

Ladies and Gentlemen; I received the invite to address the 13th Annual Competition Law, Economics and Policy Conference with deep sense of humility. This conference takes place in the year where the Competition Commission, Competition Tribunal and Competition Appeal Court mark their 20th year of existence. September 1999 represented a new era for economic regulation in South Africa. This year signified that South Africa was determined to ensure that an open, efficient and competitive economy found full expression in the lives of our people. So maybe I should concede that the idea of Economic Freedom in Our Lifetime preceded some of us.

Justice Sachs, in Oliver Tambo’s Dream (and I am not quoting him because he is here, I genuinely think he makes an important point) which is his latest installment of great writings, argues that the generation of Mandela and Tambo, the Constitution represented the culmination of one stage of our freedom and the beginning of another…The Constitution was not seen as the end of the journey. It is only the beginning of creating a society which is truly liberated. And I think no one can argue with us when we say one of the sure signs of liberation is economic freedom.

In fact, in 1981, Oliver Tambo our revered liberation stalwart, on the anniversary of the South African Communist Party said three things which underscore this,

The first thing he said was:

“The objectives of our struggle in South Africa, as set out in the Freedom Charter, encompasses economic emancipation.

It is inconceivable for liberation to have meaning without a return of the wealth of the country to the people as a whole.”

He then amplified this by saying:

“To allow the existing economic forces to retain their interests intact is to feed the roots of racial supremacy and exploitation, and does not represent even the shadow of liberation.”

And finally he concluded:

“It is therefore a fundamental feature of our strategy that victory must embrace more than formal political democracy; and our drive towards national emancipation must include economic emancipation.”

It can therefore be argued that Competition Law is an essential tool for economic emancipation. When successfully applied, Competition Law becomes a critical component of Constitutional Development. Wherein our constitution provides for the right to trade, it is competition law that ensures that the right to trade is given a lived reality. It is common cause that the architecture of economy to this day still resembles the era of colonization and apartheid. In other words, the monopolies, and cartels in the South African economy cannot be said to be created because of market conditions. The market concentration which become a central feature of our economy is a result of many years of political and economic exclusion.

It is within in this context that we gather here today. We are gathering here not to lament how concentrated our markets are but to ask and analyze how much have we done to reduce barriers of entry in our markets. What effect has interventions such as the Competition Act made and what more needs to be done? Some of things that remain abundantly clear is that despite our interventions, unemployment remains extremely high and is on the increase, the gap between the rich and the poor is widening at an alarming rate and we have little to show where transformation of the economy is concerned.

Perhaps let me pause here to say, by economic transformation, I am not referring to seeing more companies with
black CEOs and black chairpersons of boards. I am talking about seeing women owned financial institutions, a black owned automobile manufacturer, a youth owned co-operative leading in the export market for livestock and an African owned tech hub providing us the latest innovations in the digital economy.

In recent years, we have seen how Competition Laws have opened up critical sectors of our economy, particularly in construction, steel, automotive components and food sectors. Economic transformation and inclusive growth can only be accomplished on the strength of a competitive economy. Put differently, Competition is an essential tool for us for inclusive and economic growth. Equally, inclusive growth must be two sides of the same coin. One cannot exist without the other.

More importantly these interventions which tackle anti-competitive behaviour have had a direct impact on the poorest of the poor. The Commissions' intervention in the bread case put money back in the pockets of the poor who were subjected to unscrupulous monopoly prices. According to a World Bank report, the Competition Commission’s investigations into cartels in wheat, poultry, pharmaceuticals, and maize reduced South Africa’s poverty rate by 0.4 percentage points.

I have observed that the enforcement of abuse dominance contraventions remains somewhat contentious. For instance, if memory serves me well there have been 27 cases before the tribunal and out of those, 20 were said to have had contraventions. 3 of the 20 were subsequently overturned by the Competition Appeal Court, two against cases SASOL one against Media 24. The question which comes to mind is what it takes to successfully address dominance by large firms in our concentrated markets. Whilst noting that the successful appeals have been against State Owned Enterprises, approximately 745-million-rand worth of administrative penalties to date have been levied on Telkom (twice), SAA (Twice).

It is within this context that government has considered and welcomed the amendment of the Competition Act. If certain interventions have shown that the effective application of Competition law can have a direct impact on growth, transformation and poverty, then surely these tools need to be sharpened even further. Especially since the structure of the South African economy remains insufficiently diversified;

For instance, it is common cause that:

• Our public monopolies are highly inefficient and they impose high cost structures for our infrastructure such as electricity and transport;
• Exports are concentrated on minerals and metals products and this is not sustainable because these are finite resources;
• We have Highly concentrated industrial structures, limited competition and high barriers to entry;
• Our unemployment rate is a strong indicator of a weak and volatile growth in labour-intensive sectors such as construction, manufacturing and agriculture; and
• Skills development not sufficiently linked to the economy’s needs and developing capabilities.

With the continued economic challenges, government has renewed focus on those markets with the greatest growth potential, with a reimagined industrial strategy focusing on the seven prioritised sectors:

• Industrial Sector focusing on Automotive, Clothing Textile, Leather and Footwear, Gas Chemicals and Plastics, Renewables/Green Economy, Steel and Metal Fabrication;
• Agriculture and Agro-Processing;
• Mining focusing on Minerals and Beneficiation;
• Tourism;
• High Tech Sectors/Knowledge based focusing on the Digital Economy, ICT and Software Production, Health Economy and Defense Economy;
• Creative Sector; and
• Oceans Economy.

To transform these sectors and make them more competitive, it will require more than just competition regulation. Other policy instruments should also be employed to open markets for new entrepreneurs, particularly the historically disadvantaged. In other words, Competition law alone is not a silver bullet. A concerted effort is required across government and by the private sector to eradicate barriers to entry, reducing uncompetitive behavior and market concentration.

For instance, it is government that creates regulations around licensing processes and we need to assess whether our licensing conditions and requirements assist us in transforming the economy or do they entrench the status quo and stifle small to medium enterprises.

The years ahead demand that we renew and refocus our efforts to transform the economy and eradicate anti-competitive practices, particularly cartels.

Opening up the economic will also help grow the economic; as pointed out by the world bank report that economic exclusion of the majority of the population stifles economic growth in SA, economic inclusivity is in the interest of everyone.

For competition authorities, as you will be discussing today, there are new challenges emerging in digital markets within the context of the fourth industrial revolution. It has become evident that developed countries are taking the lead in the discourse on digital markets and the appropriate response for competition authorities is required. Digital markets should be a priority for all countries, and I am encouraged by the initiatives within the BRICS competition community and discussions that have started at United Nations Conference on Trade and Development to ensure that the response to challenges in these markets should be the one that addresses challenges of developing countries.

With the high levels of concertation in South Africa, it should remain a priority to break down barriers to enter markets and promote new entry and competition. Although competition authorities are at the center of market regulation, other complementary policy instruments need to be used for maximum impact.
The years ahead demand that we renew and refocus our efforts to transform the economy and eradicate anti-competitive practices, particularly cartels.

My remarks will be incomplete if I do not say anything about the criminalization provisions of cartel conduct in the Competition Act, yet to be operationalized since enacted in 2016. This is a complex area of enforcement whose complexity is not unique to South Africa. There have been experiences in other jurisdictions such as the USA, UK, Australia and Canada. Models adopted in these jurisdictions are not the same, but what is common is the need for collaboration between the competition authorities and the prosecuting authorities.

Although there are challenges in these jurisdictions on enforcement of the criminal offences, a jurisdiction such as the USA has had relative successes.

Considerations to give effect to the criminalization of cartel conduct within the schema of the Competition Act and the NPA Act can either be the centralization and integration of the enforcement of both the administrative and the criminal provisions, requiring further legislative changes, or finding a workable understanding between the Competition Commission and the National Prosecution Authority within the prescripts of the existing legislation.

My duty is to ensure that the National Prosecution Authority and the Competition Commission find an immediate solution to give effect to criminalization of cartel conduct in South Africa. It is what the legislature has prescribed, and it is my priority. Regardless of the model we opt for, I expect the operationalization of the provision from the beginning of the next financial year.

Let me congratulate the competition authorities on this special milestone, particularly staff and leadership (past and present) as well all stakeholders and wish you strength and wisdom as you dismantle anti-competitive market structures and cartels for a more inclusive South Africa.

I thank you!

Minister Ronalda Lamola
Ministry of Justice and Correctional Services: Republic Of South Africa
29 August 2019
South Africa was recognised by the Global Competition Review as “Agency of the Year” in the Asia, Pacific, Middle East & Africa category. The years ahead demand that we renew and refocus our efforts to transform the economy and eradicate anti-competitive practices, particularly cartels.

It is my pleasure to welcome you to our 13th annual competition conference which, this year, also marks the 20th anniversary of the competition authorities’ existence. These celebrations take place in a particularly difficult economic climate. The challenges we face today are still stubbornly like those that preceded the enactment of the Competition Act in 1998. They include sluggish growth, high unemployment, high levels of inequality, low levels of transformation and inclusion, and insufficient export competitiveness in many sectors of the South African economy.

There is increasing recognition, including by institutions such as the World Bank, that low levels of competition in the South African economy have a disproportionate impact on the poor by keeping prices high. Twenty-five years after the advent of democracy, the benefits of economic activity are still unevenly spread. This path is simply not sustainable.

The economy is not inclusive or dynamic enough to meet the aspirations of all South Africans. Institutions like the Competition Commission are increasingly under pressure to effect change in markets that open up spaces for firms to enter and challenge incumbents.

To contextualise the scale of the challenge we face, it is useful to take stock of some key economic indicators:

- The South African Reserve Bank in its July Monetary Policy Committee meeting decreased its growth forecast for 2019 from 1% to only 0.6%. Their forecast rate of 2% GDP growth in 2021 now seems optimistic.
Over the past 20 years the Commission has grown from just 70 employees to 229 in the last financial year. We are pleased to say that some of those 70 employees are still with us.

- Unemployment remains high at 29%, translating into 6.7 million working age South Africans being unemployed. Using the expanded definition of unemployment which includes discouraged work-seekers, 10.2 million South Africans are unemployed.
- South Africa’s inequality remains the highest in the world. A 2018 World Bank study estimates that South Africa’s Gini coefficient (based on wealth) was 0.81. To put this in context, 10% of South Africans own 70.9% of the country’s wealth while the poorest 10% own 0.1 percent of the country’s wealth. Richer households have, on average, 10 times more wealth than poorer households.
- The economy is characterised by high levels of concentration and market power, and very high mark-ups. The World Bank estimates that mark-ups above normal profits amount to nearly 10% of GDP. A recent Competition Commission study based on merger reports found that there are dominant firms in more than 70% of the sectors in the South African economy.

A worrying insight emerges from these facts. The parallels between the economic challenges we face today and the economic challenges that framed the introduction of the Competition Act two decades ago are stark. Twenty years ago, we said the economy remains closed to many South Africans, there is excessive concentration of ownership and control in the South African economy, there are unjust restrictions on full and free participation in the economy and there are inadequate restraints against anticompetitive conduct. Today, we often repeat many of these challenges. The real question, to which an honest and constructive answer is long overdue, is what can be done to change this?

One of the strongest responses lie in the recent amendments to the Competition Act. These amendments place renewed focus on how the competition authorities can be re-tooled and refocused to reduce economic concentration, to address abuses by dominant firms more effectively and to promote entry and participation in the South African economy. These new powers are not only a reflection of the work that still needs to be done, but they also a testament to the effectiveness of the authorities thus far. South Africa’s competition authorities have been recognised as being “amongst the most active and effective in the world” by the World Bank. In 2018, South Africa was recognised by the Global Competition Review as “Agency of the Year” in the Asia, Pacific, Middle East & Africa category.

Although we know that more is to be done, we also have much to celebrate. It is to these successes that I would now like to turn by providing a brief overview of the phases of our growth over the past 20 years and some of our key interventions during this time.

Over the past 20 years the Commission has grown from just 70 employees to 229 in the last financial year. We are pleased to say that some of those 70 employees are still with us. Over the same time our case load has grown from 527 in 2000 to 775 in 2018 an increase of 47% though this does not reveal the increase in complexity in cases over time. Our budget has increased from about R52mn in 2000 to R352mn in 2018 along with an increase in resource intensive market inquiries and abuse investigations.

In the first few years after the establishment of the competition authorities our work focused mainly on institution building and merger regulation. Our efforts were focused on staffing the organisation, establishing systems and processes and on developing our investigative, research and prosecutorial skills. We were greatly assisted in this task by the compulsory merger notification regime which meant that all mergers beyond certain thresholds had to be notified to the authorities. In the first five years from 1999 to 2003, the Commission received a total of 1355 merger notifications. This allowed us to understand the inner workings of markets, which led us to identifying competition failures and thus turned our attention to anti-competitive conduct taking place in the market.

In the first five years from 1999 to 2003, the Commission received a total of 1355 merger notifications. This allowed us to understand the inner workings of markets, which led us to identifying competition failures and thus turned our attention to anti-competitive conduct taking place in the market.
During this early period, we also investigated one of our most impactful cases, the excessive pricing case brought by Hazel Tau and others against GlaxoSmithKline and Boehringer Ingelheim in 2002. This case dramatically reduced the prices of lifesaving ARVs and changed the structure of pharmaceutical market by encouraging effective entry and promoting sustainable competition.

In 2001, there were approximately 4.7 million people living with HIV/AIDS in South Africa. AIDS was the leading cause of mortality in South Africa at the time. Most of the people who died were those who did not have access to the drugs that could have prolonged and improved their quality of life. In this dire context, the CCSA received a complaint about the exorbitant prices of ARV treatment in South Africa. The Commission found that GlaxoSmithKline and Boehringer Ingelheim had indeed abused their dominant positions in the market for their respective ARVs by charging excessive prices for ARV drugs under patent and excluding generic manufacturers from the market by refusing to issue them with licences. The case was settled before referral to the Tribunal.

In 2016, the CCSA completed a study on the impact of the Hazel Tau settlement. The study was based on pricing data from 2000 to 2015. It found that the prices of ARVs had decreased by more than 11% per annum, on average, and that an estimated cost saving of R12bn had been realised over the period, much of which accrued directly to the State.

The Commission’s intervention also contributed to making access to ARVs easier for South African citizens. In 2004, the year in which the South African government introduced its ARV treatment program, only 47,500 people received treatment. By 2016, this number had increased to 3,407,336 people, the largest number in the world.

This case was also a prime example of how ordinary South Africans would come to use competition law and look to competition authorities to address exclusion and exploitative practices and promote fair and equitable access to goods and services in South Africa.

In 2004, the year in which the South African government introduced its ARV treatment program, only 47,500 people received treatment. By 2016, this number had increased to 3,407,336 people, the largest number in the world.

The impact of these changes was evident in the following five years when we uncovered and successfully prosecuted several cartels, including the bread price fixing case, the maize meal and flour milling cartels, as well as the construction cartel that affected almost all public sector projects in the build-up towards the hosting of the World Cup. We also successfully investigated the long-running cement cartel. It was also around this time that the public at large became more aware of the Commission and began to participate meaningfully in its work.

The prosecution of these cartels has resulted in direct benefits to consumers in the form of reduced prices and increased product choice. An impact assessment of cement cartel found that the Commission’s intervention resulted in consumer savings between R4.5 and R5.8 billion to consumers. In both the wheat and the concrete products cartels, the Commission found that cartel overcharges were more than 40% which would have persisted but for the efforts of the Commission. Yet, much more work needs to be done.

From 2009 onwards, there was a noticeable change in approach. We focused on quantifying our impact on markets through impact assessments, changing the rules of the game through innovative settlements like the Telkom vertical separation and the establishment of supplier development funds in mergers and on growing an inclusive economy through market inquiries and advocacy initiatives. This positioning reflects a greater focus on changing market conditions to lower barriers to entry, increase participation and promote a greater spread of ownership in the economy. This phase was also characterised by a rapid increase in cases successfully handled and fines levied.
Some of the key cases in that ‘middle decade’ of strategic prioritisation and coming of age were the 2013 Telkom case, the Pioneer bread price fixing case and the WalMart/Massmart merger. In the Telkom case, the Commission found that Telkom, the fixed line incumbent, had contravened the Competition Act by squeezing the margins of its competitors in the ISP space and, in that way, put them at a disadvantage when competing against it. The Commission negotiated a settlement with Telkom in which they agreed to pay a penalty of R200 million and to change their pricing behaviour to promote fair competition. Telkom undertook not to discriminate in pricing between its competitors (who relied on its infrastructure) and its own retail operations. To give effect to this Telkom agreed to implement functional separation between its retail and wholesale operations, including a transfer pricing programme to regulate transactions in the provision of network services between its wholesale and retail divisions. In addition, it would implement a code of conduct for its wholesale division that would ensure non-discriminatory treatment of ISPs and protection of their confidential service information from the competing retail division. In early 2019, the Commission conducted a preliminary assessment of the cost savings resulting from the Telkom settlement and found that they ranged between R331 and R544 million.

The Pioneer settlement in the bread price-fixing case was arguably pivotal in laying the foundation for the principle of establishing supplier development funds to facilitate entry by small and black owned firms into retail markets. This became a key condition in the Walmart case and has subsequently been recognised as an important tool to facilitate entry and participation in markets. Minister Patel has recently announced that an expected R6bn in supplier development funds will be raised in commitments from merging parties in the next 5 years. The Pioneer settlement was also the first to include a direct price reduction remedy. The firm was forced to reduce its gross profit margin on certain bread products by R160mn over a defined period. The intention of this was to provide direct reprieve to the consumers who were most affected by the anticompetitive cartelised prices of bread. The Pioneer fund supported the entry of 10 start-ups and the expansion of 24 enterprises. It attracted co-finding from the IDC that was nearly equivalent to the initial value of the fund and has created and estimated 2 752 jobs.

Over the last ten years, the Commission also started seeing increased participation of stakeholders in merger proceedings, with interventions from government and unions seeking to protect the public interest. The effect of this was a much greater focus on public interest issues, leading to imposition of a record number of employment and other public interest conditions in mergers. Even in enforcement cases, the focus shifted towards the establishment of challenger funds and partnerships with new and black-owned firms to change the structure of markets.

The Commission has now entered yet another phase, which reflects the maturity of the system and is outward looking and focuses on real and tangible economic outcomes. This follows the amendments of the Competition Act to empower authorities to deal with concentration in the economy and promote participation of SMMEs and HDIs. This phase holds much promise for the contribution of the competition authorities to expand participation and unleash the potential of the economy.

I am grateful for the opportunity to contribute to the Commission’s history. I have been immensely privileged to partner with the hard-working men and women staffing the Commission in our efforts to deliver on the uniquely South African goals of competition regulation. Now at the start our third decade on this journey, I am confident that the Commission will work even harder to fulfil the important mandate the South African public has placed on us.
FACES AT THE CONFERENCE
The Commission hosted stakeholders representing business and labour to a dialogue on 26 August 2019. The dialogue was conducted by way of a round table discussion with panellists from the Black Business Council (BBC), Black Management Forum (BMF), Johannesburg Chamber of Commerce and Industry (JCCI), Solidarity, Federation of Unions of South Africa (FEDUSA), National Council of Trade Unions (NACTU) facilitated by the Deputy Commissioner, Hardin Ratshisusu.

The purpose of the dialogue was to discuss the state of the South African economy after twenty (20) years of competition regulation. The discussion also explored how competition law and policy can be better used to promote inclusive entry in the economy for historically disadvantaged individuals (HDIs) and small and medium enterprises (SMEs). In essence, the dialogue sought to engage stakeholders on how to unlock the country’s potential and promote a greater spread of ownership, provide consumers with competitive prices, promote employment and advance the social and economic welfare of South Africans.

In his opening remarks, the Commissioner, Tembinkosi Bonakele noted that amid the fourth industrial revolution and the amendments to the Competition Act there is a more significant role to be played by the competition authorities in responding to changing market structures and fast-tracking the necessary changes to achieve the objectives of the Competition Act and the country.

The roundtable discussion highlighted the need for more coherent and directed policies to promote the participation of SMEs and HDIs as well as labour interests in the South African economy. Some of the participants pointed out the need for better coordination between the relevant government agencies in the economic cluster. The discussion also emphasised the importance of government’s intervention in the economy, for instance, in ensuring greater local participation by investing in and supporting local businesses through its procurement practices.

From the roundtable discussion and the participation of attendees at this dialogue, it was clear that there need to be continuous engagements between civil society, government and business to find solutions to challenges that face the country. The Commission as a critical economic regulator has a vital role to play to ensure that there is a conducive economic environment but also to continue to engage with other departments and agencies to strengthen their regulatory position to reach inclusive economic growth.
The Commission hosted a workshop with Professor Ioannis Lianos, Professor in Competition Law and Public Policy, Faculty of Laws, University College London and head of the Greek competition authority on 28 August 2019. Professor Lianos presented to the group attending the workshop the work he has been doing with the BRICS Competition Innovation Law & Policy Joint Research Platform in the digital economy.

The workshop discussed the issues raised by the development of the digital economy, the rise of digital platforms, and what the appropriate competition law and policy responses would be in this context. Professor Lianos shared the findings of his research based on the experiences of the BRICS countries. The research centre has subsequently published a draft report titled *Digital Era Competition Law: A BRICS Perspective* which is accessible at http://bricscompetition.org/materials/news/digital-era-competition-brics-report/
The aim of the meeting was to have a dialogue and exchange of information in and ideas from both parties in competition law and policy.

The workshop included an overview, strategy, and preview of key findings. Those included; Focus on institutional independence: Key findings and benchmarking rules that can promote independence and Focus on institutional efficiency: Key findings and benchmarking rules that can promote efficiency.

The workshop was then concluded with a discussion on potential recommendations and next steps. Participants were from Kenya, South Africa, Botswana, Zimbabwe and Mauritius. Workshop was coordinated by Precious Mathibe and Yongama Njisane from CCSA and Sara Nyman and Guilherme Falco from the World Bank.
The Commission and FAS Russia held a Bilateral meeting on the side lines of the Commission Annual Conference on 28 August 2019 in Pretoria. The aim of further develop our bilateral relations in the area of our ongoing international cooperation in the field of competition law. A Pfizer merger case and the automotive update were discussed as part of our cooperation agreement. FAS Russia gave an update on the upcoming IV BRICS Competition Conference which was held on 16 – 20 September in Moscow, Russia.

The meeting was attended led by Commissioner Tembinkosi Bonakele and Mr Andrey Tsarikovsky, the Stats-Secretary of the Federal Antimonopoly Service of the Russian Federation.

COMMISSION WELCOMES FEDERAL ANTIMONOPOLY SERVICE

By Precious Mathibe
FACES AT THE CONFERENCE
For the first time at an annual competition conference we had law students competing in a moot. I see this as something more significant than just spreading interest in competition law to a new generation.

It also meant that competition law has evolved and become so complex that it has become ready material for moots, where law students engage in a debate over some arcane point of law that can be argued either way.

Does this mean that if competition law has become good for moots it will be bad for everyone else? Most consumers and businesses want certainty, not more complexity.

After all competition law exists to provide outcomes. To the extent that outcomes are uncertain it means that business-people don’t have bright lines about what they can or cannot do, and those who are potential beneficiaries of the system of enforcement, are left uncertain of what their rights are. But no competition law regime is devoid of uncertainty; not only is it necessarily a complex field of regulation, requiring an interaction between law and economics, it also has to be dynamic enough to meet changing conditions in markets.

I think we have found the right balance, between legal certainty and flexibility, but it is important to convey that message all the time and to be self-critical if the system is to keep its legitimacy. Good enforcement cannot exist without good advocacy.

The last 20 years in South Africa have seen a wide range of decisions, ranging from merger control, to what constitutes cartel conduct and abuse of dominance. In a small period of time we have had a lot to decide - a testimony to the fact that enforcement has been far reaching.

Some cases acquired an extremely high profile, the Walmart merger, the cartel cases in the bread and construction industry, to name a few, fostered awareness about what competition law was trying to regulate. In that sense we can say they were successful. But these weren’t always the cases that created the most significant jurisprudence. Those typically were cases with low name recognition but probably much higher precedent value. A good enforcement system has to have both.

But it is not only the law reports that have swelled over this period. Over time the institutions have grown to meet the demand. Once we were all housed in small space and everyone, be they in the Commission or the Tribunal, knew everyone else. That no longer is the case; but we have to accept the institutions had to grow to meet increasing demand.

But overall, despite failures from time to time, we can be proud of the project. South Africa is looked at as a success story by colleagues from other jurisdictions and our endeavours to find our own approach on issues such as the public interest consideration in mergers, have been followed by some, even if met by scepticism by others, more hesitant to tread out of the bounds of antitrust orthodoxy.

The new amendments to the Competition Act, will necessitate a new approach to issues such as inclusion, racial redress and no-fault remediation. The solutions will be complex and there are no other templates from other jurisdictions to follow.

The decisions taken will need to be wise ones. Hopefully they will be. But we can be sure they will keep law students with no shortage of moot topics over the next 20 years.
The conference has been an historic moment for the competition community. It is remarkable to see how far we have come; and telling just how far we still have to go on our “long walk” to competitive markets. 20 years ago, South Africa emerged from a closed economy into the international world of competition regulation with a bold and progressive competition regime.

It has been reassuring to hear some of the international speakers applaud the milestones achieved here in 20 years in areas which constitute ‘the road less travelled’ of competition law internationally, such as excessive pricing, predatory pricing and public interest issues.

It has also been an opportunity to engage on the recent amendments to the Act which seek to strengthen the competition authorities to tackle monopolies which exist in many sectors of the economy.

The amendments introduce new public interest issues to promote the participation of small businesses in the economy.

We can look forward to exciting new challenges as we navigate new territories occasioned by the amendments. I’m confident that the rigour of our system will yield the right balance.

Our job as the Tribunal is to interpret the new law to find a balance that enables and encourages businesses to invest while at the same time meeting the objectives of the Act to make markets accessible to small businesses.
FACES AT THE CONFERENCE
The plenary was moderated by Justice Albie Sachs, retired Justice of the Constitutional Court of South Africa.

The following representatives constituted the panel for the plenary:

Judge Dennis Davis, Judge President of the Competition Appeal Court of South Africa
Advocate Tembeka Ngcukaitobi, Advocate at the Duma Nokwe Group of Advocates
Professor Jonathan Klaaren, Professor at the University of the Witwatersrand, South Africa
Tembinkosi Bonakele, Commissioner of the Competition Commission of South Africa

Justice Sachs began the plenary by asking the panel’s views on the role and function of Competition Law under the Constitution.

Commissioner Bonakele began by acknowledging that the Constitution commits South Africa to social justice which encompasses socio-economic rights, as set out in the Bill of Rights. Therefore, in all interpretations and judgements, courts should consider their impact on socio-economic rights. Courts should note that for example access to markets or a lack of access to markets has the potential to marginalise or further marginalise people. Commissioner Bonakele also noted that it appears that the Competition Act may have evolved independently from the normative principles set out in the Constitution and this may have created that challenge of finding direct application of a socio-economic right through competition provisions. However, further noted that it would be helpful that in the interpretation of the Competition Act, the judiciary recognises the normative principles set out in the Constitution. The Commissioner also observed that there seems to be an overemphasis on the role of economics in the interpretation of competition law provisions, rather than the values of social justice and how transformative constitutionalism can be utilised by courts in order to change the trajectory of the economy.

Judge Davis noted that the normative framework of the Constitution is infused in the Preamble and Section 2 of the Competition Act. The Judge noted that this would have been exemplified in the Hazel Tau matter which was never litigated but rather settled out of court. The Judge further noted that the point of view of the Competition Appeal Court (CAC), the court still faces the challenge of incorporating normative values in judgements. He noted that this will be the challenge for the CAC in years to come and these principles are infused in the amendments to the Competition Act. On the amendments Judge Davis noted that the abuse of dominance provisions should not be underestimated especially those relating to buyer power. Further that large firms will and do invoke the Constitution as a defence to act against the competition authorities. He noted that the challenge will be balancing the rights of these firms with those who have fallen victim to corporate malfeasance.

Advocate Ngcukaitobi began by noting that the Constitution has always been invoked in competition litigation. He argued that the problem is the defensive use of the Constitution in order to further entrench and protect the status quo by seeking to constrain the powers of the competition authorities in achieving the normative values. He further noted that the Constitution and the provisions of the Competition Act are congruent in seeking to dismantle monopolies, opening
the economy and enabling previously disadvantaged people to participate in the economy. In particular, section 9 of the Constitution deals with equality, section 8 which covers the conduct of private entities and sections 26 and 27 which encompass a class of socio-economic provisions. Further, he noted that section 217 of the Constitution deals with public procurement of goods and services which sets out competitiveness as a criterion to consider when public entities consider their procurement policies.

Advocate Ngcukaitobi further noted that amendments to the Competition Act are still structurally deficient and issues relating to public interest are largely focused in merger regulation provisions and not substantively infused throughout the Competition Act. He stated that public interest provisions such as employment and ownership in competition remain unclear especially in understanding how public interest provisions tie up with economic analysis. He ended by noting that from a procedural perspective, the CAC seems to show more deference to firms who are alleged to have contravened the Competition Act thereby encouraging the skewed and inappropriate use of the Constitution.

Professor Klaaren began by stating that constitutionalism can must be used to support the competition law regime. He reiterated this by further stating that socio-economic rights, which represent a distinct feature of the South African Constitution, should be incorporated into the competition regime. Professor Klaaren considered two approaches to constitutionalism. He noted that top-down constitutionalism, exemplified in the book written by Judge Davis and Advocate Le Roux which looked at the decisions of the South African courts. He then referred to bottom-up constitutionalism, exemplified in the book written by Advocate Ngcukaitobi which looks at the broader application of the law including its historical context. Professor Klaaren submitted that the amendments to the Competition Act lean more towards a bottom-up constitutionalism, particularly in relation to amendments to the market inquiries provisions and the abuse of dominance provisions which largely focus on participation.

Justice Sachs posed a question to the panel on whether the Constitutional Court should be favourably disposed towards intervening in competition cases or should it rather leave it to the experts as it is a specialised area.

Judge Davis emphasised that leaving complex competition cases to those who have no knowledge in the area can threaten business certainty which is important for the economy. He submitted that the Constitutional Court should be more disposed towards intervention but should also appoint the necessary expertise (perhaps those with broad commercial experience) who could assisting the Court. Judge Davis also accepted that maybe the Competition Appeal Court needs to lay down better standards and that in order to improve, it is important to reflect on where mistakes have been made.

Commissioner Bonakele accepted that the Constitutional Court should not be intervening in each and every minor factual dispute but rather should intervene where there are important questions of standards including economic standards. He further stated that the Constitutional Court should not be reticent in dealing with questions of economics and the interpretation of the Competition Act for the furtherance of economic transformation.

Advocate Ngcukaitobi noted that when thinking about the consequences of deference of the Constitutional Court it is important to distinguish between specialisation and expertise. In his view, the Competition Appeal Court is a specialist court whereas the Competition Commission employs expert as part of their regulatory mandate and the composition of members of the Competition Tribunal is reflective of their expertise. Therefore, it may be appropriate to view the Competition Appeal Court as playing a different and more elevated role where it becomes the last voice in competition cases, and that role is set in broad policy for competition law in the country. Advocate Ngcukaitobi ended by stating that Ministerial intervention should also be limited.

Professor Klaaren stated that it is likely that the 17th amendment to the Constitution of South Africa has led to a rise in the number and types of matters being considered by the Constitutional Court.

Justice Sachs then posed the question of whether the enhanced powers of the Minister as a result of the Competition Amendment Act is good or bad.

Commissioner Bonakele stated that the amendments do not undermine the independence of the competition authorities. Therefore, the independence of competition authorities should continue to be promoted by Government. Commissioner Bonakele went on to further note that that the enhanced powers of the Minister under the new amendments could be abused and that politicians should be weary of crafting laws for themselves.

Advocate Ngcukaitobi stated that ministerial interference in competition regulation should be limited.

Judge Davis stated that notwithstanding whether a Minister has the final say in decision-making under competition regulation, it is nonetheless important that any legislation is crafted with the worst possible Minister in mind in order to curb their discretion. Judge Davis further stated that in his view he would prefer less ministerial power than more.

Professor Klaaren stated that in a jurisdiction like South Africa there is the freedom for competition law to be able to develop in ways that otherwise would not have been possible, and it is worthwhile to keep options open.
The plenary was moderated by Ms Yasmin Carrim, a full-time member of the Competition Tribunal of South Africa.

The following representatives constituted the panel for the plenary:

**Mr Norman Manoim**, Former Chairperson, Competition Tribunal of South Africa
**Professor Liberty Ncube**, Managing Director, FTI Consulting
**Professor Simon Roberts**, University of Witwatersrand, Economics and Econometrics Department
**Professor Sutherland**, Co-Director, Centre for Competition Law and Economics, University of Stellenbosch and Professor of Mercantile Law, Stellenbosch University

**Ms Carrim** began the plenary by looking at the track record of the South African competition agencies especially in abuse of dominance and noted that these cases have not provided the silver bullet in addressing broader issues of inclusive growth and reducing inequality. The enforcement statistics of abuse of dominance cases indicates that there have been 28 cases of referred to the Competition Tribunal. 26 cases were referred by the Competition Commission and 5 are yet to be decided. Of the 21 cases decided, 6 was settled by the Commission. Of the remaining 14, 11 were found to have contravened to the Competition Act. Of these 11 cases, 4 have been overturned and 2 are still at the Competition Appeal Court. The new competition amendments will require competition authorities to take different approaches. However, the question is how the performance of the competition authorities of South Africa will be measured into the future.

**Professor Roberts** noted that one of the challenges faced by the Competition Commission was its resounding success in investigating and litigating cartels and mergers. This raised expectations about what the Commission can do in relation the investigation and litigation of abuse of dominance cases. He further noted that abuse of dominance is more important in small economies. Prof Roberts also noted that winning or losing cases should not make competition authorities complacent. He noted that lessons can be learned from cases that have been adjudicated whether successfully or not. In excessive pricing cases the emphasis should be on engendering trust in the economy and fostering people’s ability to participate in the economy. This should be seen within the context of the record of abuse of dominance enforcement in the past 20 years where high level of concentration have not changed. Competition authorities should therefore be looking at exclusionary conduct within abuse of dominance enforcement.

Prof Roberts also stated that South Africa has adopted narrow test for exclusionary behaviour. This is contrasted with the test in other jurisdictions such as the European Union which places a special obligation on dominant firms not to undermine rivalry and competition. This he notes is a values question which is not stated in the competition law. This hinders flexibility in how competition authorities tackle these problems. If one contrasts the outcomes of the South African competition authorities to those in other jurisdictions such as Singapore and Chile, they have been more successful in abuse of dominance enforcement because their competition laws encompass this values-based provision. These competition authorities have entered into settlements which open markets. Prof Roberts concluded by suggesting that the competition amendments are a step in looking at these values.
Prof Mncube noted that in South Africa, it takes about 2 years to investigate an abuse of dominance case. The longest case took about 6 years. In the European Union, it takes about 2 years to investigate a case, with the longest taking about 8 years. Prof Mncube noted that Brazil is different in that it takes a shorter period for investigations to conclude i.e. 17 months. However, he also noted that the longest running investigation in Brazil took about 15 years. This highlights that the investigation of abuse of dominance cases is not easy.

Prof Mncube noted that in South Africa, there is greater weight placed on evidence-based approach and the demonstration that a practice has had anti-competitive effects which is not easy to show. This is because the empirical demonstration of actual effects needs the correct counterfactual to be put in place. Coming up with the right counterfactual can be a cloudy exercise. The interaction of the law and economics is difficult and subject interpretation. In agreeing with the values-based approach to excessive pricing, Prof Mncube stated that he favoured the first excessive pricing case against Mittal. Further, in relation to emphasising the need for access, he referred to the decision of the Competition Tribunal in the Nationwide Poles matter as the correct approach. Prof Mncube concluded by stating that competition authorities must think about outcomes and impact.

Mr Manoim the legislation is well-designed to deal with dominance. He proffered that the reason for the slow pace of success in abuse of dominance litigation is that perhaps during investigations, there is emphasis placed on small facts rather than seeing the big facts. He referred to the matter of Media 24 where he considered the heart of the debate to be inclusion in the market and not fetishising which costs are appropriate to meet the test, where the firm will always win in interpreting its own cost. Mr Manoim noted that if tests in abuse of dominance enforcement are too unassailable then one should conclude that they are anti-inclusion.

Prof Sutherland noted the decision of the Constitutional Court in the Media 24 matter noted the objectives of the Competition Act in section 2 which contain constitutional values. This means that competition law enforcement is a constitutional project.

Prof Roberts noted that the intent of competition amendments is access. He noted that the addition of provisions on buyer power and the amendments of the provisions to price discrimination are both fundamentally about asking dominant firms to behave better and self-regulate. This will not change the structure of the economy.

Mr Manoim noted that the competition amendments are a mixed bag. He noted that the amendments seeking to address issues of predatory and excessive pricing have been worsened by seeking to codify them. In relation to buyer power its introduction also creates problems as there is no definition of terms such as fairness. The interpretation of these new provisions will be determined by the litigation process.
The plenary was moderated by Mr James Hodge, Chief Economist of the Competition Commission of South Africa.

The following representatives constituted the panel for the plenary:

Professor Ioannis Lianos, Professor of Global Competition Law and Public Policy, University College London
Professor Marc Ivaldi, Professor of Economics, Toulouse School of Economics
Professor Tshilidzi Marwala, Vice-chancellor and Principal, University of Johannesburg
Mr Andrey Tsarikovsky, Stats-Secretary of the Federal Antimonopoly Service of the Russian Federation

Mr Hodge began by noting that Digital Market has been one of the most rapidly transforming markets. Given this, there may be a need to relook at the applicability of current policies and regulations in order to address complex challenges that arise in digital markets. The session sought for the panel to provide insights into potentially new approaches to digital markets within competition regulation.

Mr Hodge opened the discussion by asking whether access to big data has an impact on competitiveness.

Prof Marwala stated that access to algorithms that can perform the required output is readily available in this modern technological world. He went on to state that algorithms are no longer an essential input competitiveness. Rather, Prof Marwala argued that the ability to use the algorithms and interpret them to generate the desired results is the desired competitive advantage, hence most firms are investing in these skills. Prof Marwala argued that the ability to use the algorithms and interpret them to generate the desired results is the desired competitive advantage, hence most firms are investing in these skills. Prof Marwala went on to further state that although algorithms in themselves are longer a primary competitive input, they still need to be regulated. This is so because they are a tool for competition and therefore have an impact on those firms who do not have access to algorithms.

Prof Marwala further noted that the ability of large firms to collect vast amounts of data creates an unlevel playing field especially where a single firm can host big data that cuts across your personal information, location, physical activity etc.

Prof Marwala and Prof Ivaldi both noted that firms which can interpret algorithms and have access to or own big data, naturally have a better competitive edge. Therefore, the ability to collect and store big data remains the primary competitive factor in digital markets.

Prof Lianos began by stating that there is no going back to the status quo i.e. the standard way markets are defined. He noted that this is so as network effects in digital markets have the ability to change market structures and the way markets operate generally in a shorter space than in other markets. This, he noted, was the reason why there have been rapid developments in digital markets. Prof Lianos emphasised that digital markets are complex and should be treated as such and called for a more robust approach to regulation and policy as opposed to maintaining the status quo. Prof Lianos further noted that we needed more than competition law to remedy competition
outcomes within digital markets. This is primarily as these markets move and change rapidly.

Prof Ivaldi and Mr Tsarikovsky noted that digital markets raise concerns due to their velocity which competition regulators cannot match.

Mr Hodge put to the panel why they think is the way forward for competition regulation of digital markets.

Prof Marwala noted that competition authorities should have at the forefront the following propositions:

- How can competition authorities regulate big data?
- How can competition authorities regulate public data?
- To what extent can artificial intelligence be used to assist firms that do not have access to big data?
- How do competition authorities ensure that firms with access to big data use it in an efficient, competitive and fair manner?

Mr Tsarikovsky added that unlike positive regulation aimed at setting rules, competition law is a flexible tool which can respond to challenges. He further noted that given the pervasive and borderless nature of digital markets, jurisdictions which cannot have a global impact against technology giants due to their economic stance can contribute to the regulatory dispensation by helping to remove barriers to entry in new markets and provide greater access to key technologies and knowledge. Further to this he pointed to the work undertaken by the Federal Antimonopoly Service of Russia which is developing tools such as, “Developing competition policy in the digital economy”.

Mr Hodge then broached the topic of data operability and data importability and whether it was a practical remedy to competition in digital markets.

Prof Marwala stated although there are many platforms for big data but firms are not forced to use those platforms. However, the intention should be that such data is made available to smaller firms who do not have access to big data. Prof Marwala noted the difficulty that may arise if multiple platforms require the use of big data as porting such data is likely to require time, skill and money, which often works against smaller businesses.

Mr Hodge concluded the panel by noting that jurisdictions are urged to open up to developments occurring in digital markets. This may require jurisdictions looking at new approaches to market definition, mergers and acquisitions and the issue of creeping mergers, network effects and the impact of intellectual property rights as a source of market power.
Evolution of Competition Enforcement in South Africa

By Samantha Kee

The plenary was moderated by Professor Bill Kovacic, Professor of Law, George Washington University

The following representatives constituted the panel for the plenary:

Justice David Unterhalter, Judge of the High Court of South Africa and the Competition Appeal Court
Ms Mondo Mazwai, Chairperson, Competition Tribunal of South Africa
Mr Nkonzo Hlatshwayo, Chairperson of the South African Practice of Hogan Lovells SA
Mr Patrick Smith, Partner, RBB Economics
Mr Tembinkosi Bonakele, Commissioner, Competition Commission of South Africa

Prof Kovacic began by outlining the structure of the plenary discussion which included the development of competition law jurisprudence in South Africa compared with the European Union and the United States of America, the relevance and importance of economic expert analysis in the development and shaping of South African competition jurisprudence and how recent amendments to the Competition Act of South Africa is likely to shape enforcement in the future.

Justice Unterhalter provided an explanatory background of the success of the three competition authorities in South Africa namely the Competition Commission, the Competition Tribunal and the Competition Appeal Court. He lauded the independence of these institutions as a contributor to their successes.

Ms Mazwai noted the influence of the European Union and the United States of America in the development of jurisprudence in abuse of dominance. However, she also distinguished the approach of the competition authorities of South Africa to abuse of dominance jurisprudence where the Competition Act itself sets out clearer standards for the prohibition of abuse of dominance.

Mr Smith outlined that the competition authorities of South Africa have maintained transparency and objectivity over the past 20 years which has contributed to the successes.

Justice Unterhalter noted that competition law is a distinct field of law in which economics and law both play an integral part in decision making. Therefore, it is important for competition law practitioners to have a decent understanding of competition economics. Similarly, competition economists ought to have a decent understanding of competition law.

Ms Mazwai stated that from many abuse cases (which have helped model the current amendments), jurisprudence has shown synergies between the economic impact in these types of investigations and the application of the law.

Mr Smith lauded the impact of “hot-tubbing” in merger control which the Competition Tribunal has recently implemented. There economic expert assessment is delivered simultaneously to easily address all issues without
conflating the economics with points of law. The “hot tub” is not unique to South Africa and is used in other jurisdictions. Mr Smith noted its efficiency and ability to crystallise economic issues where previously, each economic expert would deliver their evidence and be subject to examination by each parties’ legal counsels. The “hot-tub” now allow for economic experts to debate the economics directly.

Mr Hlatshwayo added to the discussion on the “hot-tub” and noted that client feedback on this method of hearing evidence has been positive as it helps the experts to deliver an easy to follow rendition of their inferences of the economic evidence.

Commissioner Bonakele highlighted the potential for the competition amendments to burden litigation due to the qualifications stipulated under the amendments which may also undermine the objectives of the amendments. To this Commissioner Bonakele pointed to the new buyer power provisions. Commissioner Bonakele however suggested that perhaps the Commission should develop and implement a dispute resolution mechanism that may expedite investigations and provide quicker resolutions to complaints under the buyer power provisions.

Justice Unterhalter stated that the ambitious nature of the competition amendments, especially relating to market inquiries may hamper the objectives of the amendments.

Mr Hlatshwayo and Mr Smith both suggested the development of guidance in order to maintain and achieve transparency, clarity and efficiencies with the implementation of the amendments.

Ms Mazwai accepted the likely difficulties that may arise due to the amendments and that a cautious approach to their application should be taken, especially by the Commission to engender clarity and some form of predictability.

In concluding the plenary, it was noted that competition enforcement in South Africa over the past 20 years has been successful. This, notwithstanding the novel nature of some investigations in South Africa, brought about by our unique history, compared to those in the European Union and in the United States of America. Further, expert economic evidence and competition law are symbiotic components of competition enforcement and have equally aided in the establishment of competition jurisprudence in South Africa. There is also new era ahead for the competition authorities and stakeholders given the implementation of the amendments.
The use of industrial policy and competition policy to address market concentration

By Beverley Chomela

Ms Mokoena began by highlighting that this plenary will not only consider industrial and competition policies as tools for addressing concentration in South African economy but will also consider lessons and insights from other jurisdictions such as Russia and Malaysia.

When transformation happens there is an opportunity for someone to make wealth and for others to lose out. When there is a transition from one type of economy to another that is when there are opportunities for people to create wealth. Given the current transformation to the digital economy, this period too should not be neglected as it is based on concentration of data, algorithms and building digital networks and digital platforms. This is the new way of garnering wealth.

Prof Ivanov further emphasised the importance of thinking about the drivers of the new economy especially the race to collect as much data as possible and aggregating as much power from digital tools. He noted that there are calls for changes in the regulatory approach to economic regulation in the rise of digital markets. This will present a challenge to developing countries on whether they have the capacity to participate in the digital global economy and therefore contribute to these new approaches. Developing countries need to consider whether they will err on the side of protecting and promoting national digital champions, which will invariably inhibit domestic competition in order to compete in the global market.

Ms Mondliwa started off by commenting on digital markets and that they pose challenges. Global platforms are very strong and can have market power that they can abuse. Further, these digital platforms can be a route to market which is one of the biggest challenges for small businesses in South Africa. She believes that industrial policy will be required...
to integrate and allow for platforms to exist and for the opportunities they come with to be open to smaller players. Ms Mondliwa agreed with Prof Ivanov by stating that the new mechanism for creating value is big data and that important questions will flow about who collects data and who can turn big data into value. Ms Mondliwa noted that given that South Africa does not have big platforms, policymakers need to think about how to create opportunities for smaller players to participate within the global economy and create value. Therefore, the question to consider is the type of rules needed to create and allow success for the South African firms.

Mr. Ismail began by echoing Chief Justice Mogoeng Mogoeng by stating that competition law should be easy and understandable. Mr. Ismail noted that as recent as 2010, Malaysia did not have competition law. Industrial policy was the primary driver of economic growth. Government then realised that competition policy was necessary in order to deal with market concentration in the economy. Mr. Ismail went on to further state that industrial policy and competition policy are complementary. He provided the example of how Malaysia created a steel company called Mega Steel, which was a national champion against competition from China. Over time, Government realized that Mega Steel was acting anti-competitively which led to an investigation by the competition authority.

However, given that the creation of Mega Steel was part of industrial policy, he concluded that the competition authority was unable to take the matter further. Mr. Ismail noted that Malaysia has been in a process of reviewing monopolies in the country and has been doing so through competition policy. He noted that the position is to not abruptly dismantle the monopolies as it may lead to distortions in the markets. In concluding Mr. Iskandar stated that Malaysia wanted to grow local companies in order to not be overly reliant on foreign companies. The challenge is to ensure that local firms act competitively.

Ms Mondliwa commented Mr. Ismail’s submission by noting that there is a concept which speaks to the balance between cooperation and competition evidenced in the different phases of the development of industries. She noted that at infancy some industries may need less competition policy intervention. However, as the industry grows, more competition regulation may be needed. What is important is that performance targets and conditionalities are created for these firms. Ms Mondliwa used the example of how this has gone wrong in South Africa, stating that the two excessive pricing cases litigated by the Competition Commission were against previously state-owned companies, namely Sasol and Arcelor Mittal. These firms benefitted from support through industrial policy during apartheid with their capacities built by the state prior to privatization. These companies were accused of abusing their market power in the upstream which undermined the development of firms downstream.

The way in which this specific problem was addressed has been to shift it to competition law to address, diverting the use of industrial policy as a tool to deal with this type of abuse of market power. Ms Mondliwa concluded by reemphasizing that conditionalities need to be placed on firms for industrial policy to be effective. These conditions need to be strong, measurable, achievable and are compatible to the political economy of the country. Further, she noted that there is room for better coordination between industrial policy, general government policy and competition enforcement.

Prof Malekane, in focusing on concentration noted that there is a concern about increased concentration in sectors and markets globally, which reduces competition to the detriment of consumers. He noted that this could be an indication that competition regulation or policy may be a weak tool for addressing concentration compared to industrial policy. He stated that he believes that the type of concentration taking place is accompanied by high profits margins which are not borne out by high prices to the detriment of consumers, but rather from technological advancements that are lowering the variable costs. This can be implemented as a strategy to driving out competitors who cannot afford the same technologies. This presents a challenge to industrial and competition policy. Prof. Malekane further stated that concentration in South Africa is a legacy issue, driven by state subsidies and state procurement in the form of the long-term contracts with government that are both exclusionary and can offer opportunities for economies of scale. In order to cure this and open up access to new entrants, Government may need to intervene to support new entrants in obtaining required capital.

However, he also noted that in the private sector incumbents can sustain dominance by obtaining long-term contracts based on cultural and institutional networks, making it difficult for new firms to enter such markets. He concluded by stating that competition authorities may not be able to address these issues and that competition authorities need to increase their capacities to consistently monitor the various priority sectors.
The plenary discussed issues relating to inclusive growth, the equitable spread of firm-ownership in South Africa, market concentration, poverty, the role of competition law and policy and what the next 20 years of competition enforcement ought to be in South Africa.

All representatives on the plenary emphasised the need for Government to play a bigger role in economic development, the development of small and medium enterprises (SMEs) and job creation primarily through its investment decisions and procurement policies.

**Ms Randall** stated that given that SMEs are instrumental in generating employment it is important that preferential procurement regulations form part and parcel of policy frameworks aimed at promoting local industries and economic transformation as well as the empowerment of SMMEs, rural businesses and township entrepreneurs. Ms Randall noted that preferential procurement regulations introduced compulsory subcontracting in procurement with the expectation that subcontracts will go to small and medium-sized enterprises. This also links with another objective proposed by the Gauteng legislature, of breaking up large tenders in order to promote SMME-participation in the economy. She further noted that municipalities do not have powers to force main contractors to pay subcontractors on time nor to force them to undertake skills transfer. Therefore, Ms Randall proposed that there ought to be reporting obligations placed on main contractors, setting out to an accounting committee how they have contributed to the development and participation of SMMEs. Ms Randall concluded by noting the value of Public Private Partnerships as a tool to maintain and develop infrastructure which has the multiplier effect of creating jobs.

**Ms Mancotywa** shared views on public interest objectives considered under the Competition Act as part of merger regulation. In particular, she highlighted the public interest factor seeking to increase ownership stakes of historically disadvantaged persons. Ms Mancotywa submitted that the Black Management Forum perceives competition law working together with employment equity. Ms Mancotywa further submitted that the latest employment equity figures indicate that black employees make up 60% of senior management, however this number shrinks to 15% for top executive level. Ms Mancotywa attributed this drop to, amongst other things, the oligopolistic nature of the South African economy. Therefore, she believes that the Competition Act has a role to play in breaking up monopolies and changing employment equity outcomes. Further, Ms Mancotywa emphasised that decisions of competition authorities need to filter down and have a positive impact on marginalised citizens particularly in rural areas by creating market access. Ms Mancotywa further stated that development institutions such as the Industrial Development Corporation, the Land Bank and others need to revise their funding models in order to promote entry. This is
so, as currently these institutions would ordinarily require some form of equity contribution and/or collateral from individuals/firms who are likely small and without the necessary capital for such contributions.

**Mr Tshimomola** began by reflecting on the role of competition policy in addressing inequality, poverty and unemployment. He was of the view that there is an imminent and impending shift because in the last 20 years, the country’s legislation has been focused on transformation. Now the language has changed to ownership and this is largely the premise of the amended Competition Act. Mr Tshimomola stated that the discussion of ownership needs to be focal and not at the periphery. Mr Tshimomola stated that the necessary levers to alleviate inequality, unemployment and poverty encompass the procurement budget as a strategic area. He suggested that it should be that 80% of goods and services procured by the state must be produced locally. Further, Government should be at the center of setting up local industries and assisting firms to produce goods for international and export markets. Mr Tshimomola suggested that competition regulation should be more democratic and used more in dealing with all social problems as opposed to maintaining the status quo. Citizens must be able to engage with the Competition Act.

**Ms Rugege** began by reminding us of the Hazel Tau case. Hazel Tau is a woman who disclosed her HIV status at a time where a lot of people were succumbing to HIV and HIV-related illness. Moreover, there was a lot of discrimination and violence associated with the stigma of HIV and HIV-related at the time. Ms Rugege also highlighted that at that time antiretroviral (ARV) medication was also unaffordable for most South Africans. This led Section 27 to bring a complaint of excessive pricing of ARV medication to the Competition Commission. The case was decided against the pharmaceutical companies and they settled with the Commission. Ms Rugege noted that the value of the Hazel Tau case was present competition law, a relatively new piece of legislation as another legal tool to advance human rights. She noted that the case led to the reduction in the prices of ARV medication which granted many South Africans who had contracted HIV access to lifesaving medication. Ms Rugege further lauded the Commission’s initiative to investigate pharmaceuticals related to the treatment of cancer and wished for positive outcomes.

On the question of NHI, Ms Rugege noted that the NHI promises universal healthcare which is good for the country. She cautioned that to the extent that the implementation of the NHI necessitates coordination in price-setting, that this is done so in order to prioritise affordability whilst preserving competition. She also noted the recommendations of the Health Market Inquiry in relation to the NHI. Ms Rugege concluded that South Africa has benefitted from the Competition Act in seeking to address inequality and socio-economic issues and should continue to be one of the tools used by South Africans and the rest of the world.

**The Deputy Commissioner** wrapped up the plenary session by acknowledging the contributions made by the representatives from different political parties and civil organisations. He further noted that it is everyone’s responsibility to engage together and ensure that all the challenges faced as a country and we all need to take bold steps today to ensure that the future generation will have something meaningful to inherit for the future.
The Zimbabwe Competition and Tariff Commission signed a Memorandum of Understanding (MOU) with the Competition Commission South Africa on 30 August 2019. The agreement facilitates cooperation between the two authorities in the competition field in areas such as sharing experiences in competition law enforcement and cooperation in investigations.

The MOU formalizes the relationship that has existed between the two authorities over the last decade. In time past, the Competition and Tariff Commission (CTC) has benefited from expert advice from the South African Competition Commission on undertaking investigations in a number of sectors. For instance, in 2010 CTC consulted the South African Competition Commission to share its experiences and lessons from its investigation of the bread sector in South Africa.

This renders the formalization of the cooperation agreement very pivotal in the future work of the two Competition Authorities in promoting and maintaining competition as there will be more information exchanges, sharing of experiences in investigations and staff exchanges. Last, CTC regards the implementation of the MOU as a positive way forward in fulfilling regional cooperation in Competition law enforcement.
The Commission and the Independent Communications Authority of South Africa (ICASA) signed a new Memorandum of Agreement (MOA) on 29 August 2019 to strengthen competition regulation in the sector. The MOA aims to boost bilateral relations on competition law and policy matters between the two regulators and continue an already-existing relationship of cooperation and support.

The Commission and ICASA initially entered into an MOA in 2002. The MOA was entered into to establish how the parties will interact with each other in respect of the investigation, evaluation and analysis of mergers and acquisitions, and complaints involving telecommunication and broadcasting matters. The new MOA will act as a strengthening mechanism to ensure that there is continued cooperation and collaboration between the Commission and ICASA.

According to the new MOA, which will remain in force until it is amended, cooperation may include:

a. Effectively coordinating the exercise of concurrent jurisdiction powers when making decisions;

b. Applying a consistent interpretation and application of the principles of competition when exercising their powers and their respective functions in terms of their enabling legislation;

c. Consulting each other regarding the definition of markets for electronic communications, broadcasting and postal services and determining whether there is effective competition in these markets; and

d. Timeously provide each other with the necessary information in respect of the investigation of anti-competitive practices, regulation of mergers and acquisitions, as well as research developments or studies within the electronic communications markets.

The MOA will contribute towards improving the effectiveness of competition law enforcement in this sector which is vital for promoting economic growth and consumer welfare.
The Commission celebrated 20 years since its inception in September 1999, under the theme: “20 years of regulating for inclusive growth”. The Commission held a series of events in commemoration of this milestone.

Part of the celebrations was the 13th annual Competition Law, Economics & Policy Conference, hosted in partnership with the Competition Tribunal, under the theme: Competitive Markets for an Inclusive Society: Challenges, Opportunities and Prospects.

The Conference was attended by international policy experts, economic consultants, scholars, lawyers, academics, policymakers and government representatives, the judiciary, law firms, African and international competition authorities also participated.

Commissioner Tembinkosi Bonakele invited members of the press to a media breakfast to reflect on the last two decades of the Commission and the future that lies ahead. The meeting gave more details on the conference. The media breakfast was on Wednesday, 28 August 2019 at 012central.
The recent 20th anniversary celebrations of the Competition Commission and the 13th Annual Conference afforded me the singular honour of being its Programme Director for the two days. It was a privilege like no other.

It has always been a passion of mine to participate in meaningful dialogue, and to “own the stage”, as it were. My recent exploits at the Conference were an opportunity for the latter. I thoroughly enjoy the stage in formal proceedings either in the capacity of directing or moderating conversation, or being a discussant or presenter. Thus, the chance to direct the programme on so august an occasion fills me with much gratitude. That I would go on to receive the appreciation from the Commissioner and Professor Bill Kovacic, as I did, about the good work that I put on display is the kind of affirmation and positivity that I shall, forthwith, rely on to continue pursuing passion.

In sharing the stage with Chief Justice Mogoeng, the many internationally acclaimed scholars of law and economics, practitioners in these spaces and the emerging experts in these fields from six of our top universities, I felt a tremendous amount of pride doing so in the colours of the great University of Fort Hare.

I would hope that my experience will be that of many of my Colleagues: We are a talented organisation with many people gifted beyond what they are employed to do. How it is my wish that these hidden talents be given room and space for expression, and indeed be explored and exposed to the world.

Finally, it is appropriate to express gratitude to the Commission’s leadership for allowing to me flourish, as I did.

Maz’ enethole!
DELEGATES AND THE
COMPETITION FAMILY
ENJOYED THE OCCASION
Below are abstracts of papers presented at the conference. The full papers are available on the Commission’s website.

“Implementation of amendments to Competition Act: Buyer Power and Price Discrimination”, Arnold A. Okanga

The paper considered the concept of superior bargaining Position, which if abused is inherently anti-competitive since it affects allocative efficiency and as there is resultant welfare loss that arises when a dominant buyer or collusive buyers set a non-optimal price or conditions for inputs. Prohibition against Abuse of Buyer Power (ABP), specifically relating to buyers and upstream suppliers, generally try to address conduct of unfair dealings within competition law, with focus on selected jurisdictions: United States, United Kingdom, European Union, Kenya, Korea and Japan. The paper finally attempts to highlight salient features of the most effective regime in the enforcement against ABP, which brings about fair play and protects Small and Medium Enterprises (SME) against unfair dealings in their distribution of products and services.

“Is the introduction of competition between stock exchanges a good idea?”, Paul Anderson and Andre Frauenknecht

This paper explored stock exchanges and how they are sophisticated data platforms which facilitate the listing and trading of company stocks. The nature of these platforms mean they exhibit elements of natural monopoly with features of strong scale economies and network externalities. There is also a widely held view that capital market soundness and the efficient pricing of stocks is best achieved through a single exchange platform. These characteristics have traditionally been seen as insurmountable barriers to entry for would-be competitors and a justification for regulators to only allowing a single exchange to operate in a given market. However, in the past few decades these barriers have reduced significantly with the rapid rate of technology diffusion and growing sophistication of trading platforms (and its users). This has made the notion of competition in the trading of stocks more feasible. Nonetheless, the introduction of competition in capital markets remains a complex issue and involves the consideration of a number of atypical competition impacts. On the one hand the introduction of competition has the potential to improve welfare by...
This paper considers price discrimination within the context of the modern era of big data and sophistication within the market system and its management of risk. The paper explores the dynamics of competition between exchanges and provides a framework for considering the various impacts (positive and negative) that such competition may bring. The analysis is applied to the South African context and assists in answering the question whether allowing competition between multiple exchanges would be net positive for the country.

“Trading-off Efficiency against Fairness: The Case of Price Discrimination”,
Kalyan Dasgupta

This paper explores technological advances and innovation as they have changed the way in which economies operate around the world. In retail markets this has translated into an increased reliance on digital platforms and the data that they provide. These platforms and data are used in a range of applications including advertising, demand management and as a new mechanism for reaching consumers and new markets. These innovations have had an extensive effect on how businesses operate and as a result on various industries and value chains within the South African market.

“The growth of e-commerce in South Africa and its impact on competition.”
Sha’ista Goga

This paper explores technological advances and innovation as they have changed the way in which economies operate around the world. In retail markets this has translated into an increased reliance on digital platforms and the data that they provide. These platforms and data are used in a range of applications including advertising, demand management and as a new mechanism for reaching consumers and new markets. These innovations have had an extensive effect on how businesses operate and as a result on various industries and value chains within the South African market.

Online retail is one component of wider digital transformation (or digitalization) of the economy. While it presently still represents a small proportion of all retail sales, internationally these sales are increasingly significant in some product categories (such as books, electronic goods and clothing) and online sales are growing rapidly overall. E-commerce can be efficiency-enhancing and has the potential for consumer benefits in the form of lower prices and greater choice. It can be a route to market for smaller firms, lowering their transactions costs and increasing their exposure to many more customers. In some countries e-commerce is also being used to extend retail services to the rural population. In addition, e-commerce can have beneficial disruptive benefits on existing industries spurring greater innovation and efficiency in the general retail sector.

However, the growth in e-commerce also raises a number of challenges. Where trade is cross-border there are implications for the collection of tax, and international trade. Features of digital markets that reward scale can lead to the emergence of dominant platforms that may be prone to abuse and require competition and regulatory intervention to prevent the exertion of market power and control over routes to markets and consumers. In addition, the introduction of digital technology and trade can have a disruptive impact on existing industries. Access to international online retailers provides direct access to imports for consumers (which from international trends may increasingly originate in countries with lower costs of production such as China). This could have repercussions on the manufacturers and wholesalers. The e-commerce business model could potentially displace bricks and mortar retail with employment in sales teams and stores reduced, though this could potentially be compensated for by increases in employment in delivery and logistics. It could also have disruptive impacts on adjacent industries from shopfitting to payments. It is thus necessary to consider the rise of e-commerce and to understand the potential threats and opportunities that are likely to arise as a result.

Internationally there have been differences in how regulation of digital platforms and related sectors such as e-commerce are being approached by regulators. In the EC, regulation of digital platforms has thus far predominantly been undertaken through competition law. This includes various cases against Google for abuse of dominance, notably using its dominance in search to promote its shopping services and using restrictions on Android devices to cement its dominance in search on mobile devices. They have also
considered questions over the impact of vertical restraints in online sales which has led to various investigations of online booking platforms. Other countries have taken different approaches. For example, India has developed e-commerce regulations that ban e-commerce companies form selling products from companies in which they have an equity interest and from entering into exclusive agreements with sellers.

While e-commerce in South Africa has grown rapidly as internet speeds, mobile penetration and the ability to shop over mobile devices has risen, it is still in its infancy. E-commerce accounts for a small proportion of total retail spend with estimates of the proportion of e-commerce at 1-2% of retail in South Africa. This lags substantially behind other countries in which the role of e-commerce has risen extensively accounting for up to 20% in the most sophisticated markets.

The growth of e-commerce in South Africa is reported to have been hindered historically by the high prices and poor quality of internet services, and the reliability and cost of delivery mechanisms (particularly the Post Office). However, e-commerce is growing rapidly from a small base and, as data costs come down, logistics improve and trial increases it can be expected to grow even faster. It is therefore important that South Africa considers the implications on competition of the rise in e-commerce. This paper attempts to outline some of the key features of e-commerce in South Africa, challenges faced and opportunities that arise from it.

The paper explores changes in the world economy which is undergoing a period of structural and technological trans-formation, some-times described as the ‘Fourth Industrial Revolution’. At the centre of this trans-formation is the digitalisation of eco-nomic activity, which is being experienced differently across the globe. In relation to competition policy, the regulation of competition within the digital economy has dominated competition law and policy debates for the past few years. These debates have typically focused on the threat of global or national monopolies due to ‘winner takes all’ tippy digital markets, how best to deal with the economic power of the FAAGs (Facebook, Amazon, Apple and Google) and the inadequacy of national competition law and regulation to deal with these threats. South Africa, as with other developing countries, shares these concerns as we are subject to the same economic forces and many of our digital markets are similarly dominated by the same companies. Our regulations and competition law are also substantially based on best practice emanating from Europe and the US, resulting in the same competition law gaps identified elsewhere. However, there are some distinguishing features of developing market economies which means that our competition policy agenda around digital markets needs to be broader. The first is that our economies are smaller, enforcement resources more constrained and jurisdictional reach more limited relative to the major jurisdictions. This hinders our ability to act decisively against such economically powerful companies which may have limited physical presence in our economies. The second feature is that many of our markets are highly concentrated, in part a product of our history but also a feature of many developing countries. The disruptive nature of digital markets is also an opportunity to reduce concentration in the economy. Finally, we face vast inequality and poverty where the majority are economically excluded. As such, whilst the digital economy may be thought to be a force which could contribute to the further entrenchment of global companies at the centre of developing markets economies, it is also the same disruptive force which could provide an opportunity to enhance inclusion in markets which has lacked to date.

This paper considers these three aspects of a competition policy agenda in digital markets. The focus is deliberately on competition policy rather than simply competition law, as many potential interventions to enhance competition lie outside purely enforcement of the South African Competition Act. The focus on inclusion is also deliberate, because South Africa’s competition regime has the express objective of increasing participation in the economy by SMEs and historically disadvantaged persons. Many other jurisdictions on the African continent have laws which include the promotion of economic development alongside competition.

The paper discusses that institutional investors are displacing households as the major shareholders of publicly listed companies, while these same firms are increasingly guided by the principle of shareholder value maximisation. Further-more, the asset management industry has become dominated by a handful of large firms. As a result of these related trends, many rivalrous companies are now commonly owned by just a handful of large asset managers, notably BlackRock, Vanguard and State Street. ‘Common ownership’ poses a fundamental challenge to traditional competition law and economic analysis, which assumes that independently owned firms compete fiercely with one another, to the benefit of consumers and society. However, commonly-owned firms may instead act as different arms of the same monopolist, keeping prices high and reducing output. Due to the emergence of econometric evidence demonstrating such effects across several industries, a vigorous debate has emerged over recent years focused on common ownership’s negative implications for consumer welfare, narrowly understood in terms of price and output. The present paper analyses the extant common ownership literature and offers a future research agenda which recognises the potential for common ownership, and institutional investor ownership more broadly, to provide countervailing benefits through the promotion of innovation. Although the study of common ownership is arguably insufficiently developed so as to merit intervention at present, an improved
understanding of such innovation efficiencies would enrich the competition law debate going forward.

“*We Need to Talk About Conditions: The challenge of conditions for merger control in South Africa*”,
James Hodge and Sthabiso Mkwanazi

The paper considers merger conditions which have become a significant feature of merger control in South Africa. In the last two years, 12.7% of all mergers are approved subject to conditions or roughly one conditional approval every week. The Competition Commission now monitors around 200 merger conditions on an ongoing basis. The voluminous nature of conditional approvals is in part due to the inclusion of public interest in merger control, which are typically remedied through conditions rather than prohibitions and which constitute over half of all merger conditions. However, competition related conditions are also numerous due to cross-shareholdings and often novel in design. These features of South African merger control pose unique challenges to both the design and enforcement of conditions. The purpose of this paper is to highlight some of these challenges and present some preliminary views on how to take the subject of merger conditions forward in terms of application and research. This has twin objectives, to initiate the debate about merger conditions in South Africa and to provide insights which might feed into a research agenda on the design and appropriate imposition of conditions.

“The Buyer Power and Price Discrimination Amendments: An economic perspective”,
Jacob Muller and Simon Lee

This paper seeks to stimulate debate and discussion ideas stemming from the Competition Amendment Bill which introduced several amendments to the Competition Act. These amendments are specifically designed to address issues of “concentration and the racially-skewed spread of ownership for firms in the [South African] economy”, both to enhance competition, broad-based growth and economic welfare, and to achieve meaningful transformation. In this regard, two notable amendments have been introduced that are aimed at promoting the effective participation, and growth, of small and medium sized enterprises, and firms controlled or owned by historically disadvantaged persons (“HDPs”). Specifically: Buyer power and Price Discrimination. The Bill introduced a new section – Section 8(4) (a) – to the Act which broadly prohibits a dominant firm active in a sector designated by the Minister of Economic Development to impose unfair prices or other trading conditions on suppliers that are small or medium enterprises, or firms controlled or owned by HDPs. On Price discrimination, the Bill introduces several changes to Section 9 of the Act. In short, these updates seek to prohibit price discrimination practices that impede the ability of small and medium businesses, or firms controlled or owned by HDPs, to participate effectively. Guidance on how these specific Amendments will be applied in practice by competition authorities has been provided in the form of the first draft set of buyer power regulations, as well as the first draft set of price discrimination regulations, released on 21 December 2018 by the Minister of Economic Development. In this regard, the Amendments, read alongside the draft regulations, are broadly aligned with well-established economic frameworks for the assessment of the competitive effects of buyer power and price discrimination, respectively. However, it is nonetheless important to appreciate that the specific forms of competitive conduct addressed by both the Buyer Power and Price
Discrimination Amendments tend to be pro-competitive and welfare enhancing in most market contexts. Therefore, in the implementation of the Amendments, it will be important for competition authorities to set out well defined tests, which are based on sound economic principles, that will be applied in identifying those specific forms of conduct that are likely to impede effective participation by the designated class of firms. The implementation of the Amendments should, amongst other things, explicitly aim to protect the participation of the designated class of firms, rather than to protect the participants that fall within the designated class of firms. This is analogous to the broader objective of competition policy to protect competition rather than to protect competitors. In contrast, should the Amendments be implemented in such a way that protects (potentially inefficient) participants in the designated class, this will likely result in a reduction in incentives for improved efficiency and innovation on the part of firms in the designated class. This would ultimately mean that the Amendments would be less likely to achieve their overall objective of promoting the growth and sustainability of firms in the designated class. The paper provides an overview of the economic principles that ought to be applied in the implementation of the Amendments in order to ensure that they achieve the overarching goal of enhancing competition, broad-based growth and economic welfare, and achieving meaningful transformation in the South African economy.

This paper looks at the rise of digital markets, spearheaded by Big Tech firms such as Amazon, Apple, Facebook and Google which have tested existing approaches to enforcement traditionally used in competition law. Consequently, these firms control key platforms through which an enormous amount and variety of personal data (“Big Data”) flow. This has seen these firms obtain the ability to control the markets that they participate in through the acquisition and use of this personal data, bringing into question whether competition law has the appropriate tools for merger assessment, assessing abuse of dominance and coordinated conduct in these digital markets. This has been the subject of a growing number of cases in the European Union (the “EU”) and the United States of America (the “US”) recently, multiple commentaries and the subject of competition law conferences around the world. What has been observed is that the approaches of the European Union and the United States seem to differ in this area as a result of their differing understanding of the goals of competition law – this has been further emphasised by the recent decision of the German competition regulator, the Bundeskartellamt, in the 2019 Facebook case. This paper looks at whether the tools used by South African competition authorities for the enforcement of abuse of dominance provisions are adequate for the digital market and the relevance of data accumulation and data protection in the exclusionary abuse assessment. The paper analyses two distinct but interrelated questions. The first being whether the accumulation and exploitation of Big Data can cause abusive conduct in digital markets in the South African competition framework – related to this is also the tendency of Big Data to cement market dominance and create barriers to entry. The second question, assuming that the use of Big Data can give rise to abusive conduct, asks whether data protection laws can be utilised to confront such conduct and to assist in the enforcement of competition laws.

This paper considers the recent Media 24 decision and how it exposed the Constitutional Court’s disparate views on the right of appeal to the Constitutional Court on competition issues, and the constitutional (as opposed to legislative) imperatives of the Competition Act (Act). Despite the increasing number of Constitutional Court judgments on competition issues, there are clearly divided opinions on when such appeals may be heard by the Constitutional Court, and what the exact relationship between the Act and the Constitution is. This paper assesses the Constitutional Court’s legal authority and disposition to consider competition matters, with reference to the Constitution, the Act, and Media24. It concludes that the Constitutional Court is likely to exercise its jurisdiction only when a particular constitutional or jurisdictional issue or point of law of general public importance, warranting its consideration, is raised. In such instances it may allow direct access.
WILLIAM KOVACIC HOSTED AN INSIGHTFUL WORKSHOP
South African law students were recently called upon to consider the competition law implications of the flying car market in the Republic of Wakanda. This hypothetical scenario, drafted by the Commission’s Manager of Litigation, Advocate Candice Slump, was provided to university students for debate at the Competition Commission’s inaugural moot court competition held at its 13th Annual Conference, from 28 August 2019 to 30 August 2019.

Participants in the moot court competition included Fort Hare University, Stellenbosch University, the University of Venda, the University of Johannesburg, the University of the Western Cape and the University of Zululand.

The Commission’s 13th Annual Conference celebrated 20 years of competition regulation by the Commission and the Competition Tribunal. The participating students were full delegates to the conference and were afforded an opportunity to meet various delegates and guests to the conference, including Justice Mogoeng Mogoeng, Chief Justice of the Constitutional Court of South Africa, Justice Dennis Davis, Judge President of the Competition Appeal Court, Justice David Unterhalter, Judge of the Competition Appeal Court, and Mr Ronald Lamola, Minister of Justice and Correctional Services. The conference was also attended by South African and international practitioners and academics, with whom the students could interact and engage.

Participating students were required to prepare and submit heads of argument to the Commission prior to the conference. This exercise tested their drafting abilities, as well as their ability to work under pressure. The heads of argument...
were assessed by senior members of the Legal Services Division of the Commission, including the Legal Services Divisional Manager, Mr Bukhosibakhe Majenge (currently an Acting Deputy Commissioner).

On the first day of the Commission’s Annual Conference senior members of the Commission provided the students with an overview of the Commission and the work it conducts. They were provided with training on legal drafting and litigation skills by the Commission’s Legal Services Division. They were then immersed in a gruelling competitive process, comprised of two preliminary elimination rounds, two semi-final rounds and a final moot court argument. The competing teams were required to present argument for both the appellant and the respondent. The scores awarded to the teams for their heads of argument were taken into consideration during the preliminary elimination rounds. The semi-final and final rounds were judged solely on the students’ oral presentations.

The two preliminary elimination rounds were presided over by legally qualified staff from various divisions within the Commission and from the Tribunal. The two semi-final rounds were presided over by senior members of the Commission’s Legal Services Division.

The final moot court was presided over by Competition Appeal Court Judge, Bashier Vally, the Deputy Chairperson of the Competition Tribunal of South Africa, Enver Daniels, and Manager of Litigation at the Commission, Candice Slump. The finalists’ competition law knowledge and advocacy skills were strenuously put to the test by the moot court judges, who challenged them on issues relating to both the law and the facts in the scenario.

Attendees at the Commission’s Annual Conference turned out in force to support the students during the various competition rounds and greatly enjoyed the entertaining and high paced debates presented.

All of the participating teams demonstrated excellent drafting skills and their oral advocacy and ability to debate competition issues was exceptional. This level of performance has set a high bar for participating students in the further moot court competitions to be held by the Commission.

Following a hotly contested final round, Disebo Leokaoke from the University of Johannesburg was awarded the prize for best orator, with Tarryn Sampson from Stellenbosch University winning second place for her oral presentation skills. The team from Stellenbosch University won the drafting award for the best heads of argument. The team from the University of Johannesburg was crowned as the winner of the inaugural moot court competition. Glittering awards and certificates were presented to the winners by the Commissioner of the Competition Commission, Tembinkosi Bonakele, with the assistance of Judge Bashier Vally.

The Commission congratulates all the students that participated in its inaugural moot court competition on their phenomenal performances, and thanks their universities (and particularly their staff coaches) for their participation in this historic event. The Commission anticipates the participation of even more universities in next year’s moot court competition, as it strives to encourage and enhance student lawyers’ knowledge and familiarity with South African competition law.
The Commission, together with the Competition and Regulation European Summer School (CRESSE) and the University of Witwatersrand hosted a joint workshop on 27 August 2019 presenting an in-depth view of some fundamental competition economics topics.

The programme provided attendees with insights from academia featuring globalized course content from faculty of top global universities while also providing the opportunity to engage and contribute to the forefront of the public debate in the area of competition economics, by interacting with other competition and regulatory economists.

The programme drew delegates from a broad spectrum of South Africa’s competition and regulatory economics space, including representatives from the Commission, the Competition Tribunal, private consultancies, law firms and academia.

The workshop featured the following renowned international and local academics: Professor Amelia Fletcher from the University of East Anglia, Professor Marc Ivaldi from the Toulouse School of Economics, Professor Tom Ross from the University of British Columbia, Professor Simon Loertscher from the University of Melbourne, and Professor Liberty Mncube from the University of Witwatersrand.

The workshop, which took place at 012 Central in Pretoria Central. The workshop kicked off with an introductory lecture by Professor Ivaldi on Digital economics and Competition Policy. In this lecture, Professor Ivaldi toughed on the theoretical underpinnings to assess digital economics and the implications this may have for competition policy. Two-sided markets, network effects as well as how to account for big data algorithms in competition policy was discussed.

Professor Fletcher followed with a lecture highlighting the challenges to competition policy enforcement in digital markets. The lecture was primarily based on the findings of the UK Digital Competition Expert panel report of which she was a part of. Key discussion points from the lecture included recommendations on international engagements to encourage a global approach to competition policy enforcement of digital markets as well as re-aligning practitioners thinking on their approach to merger control in digital markets.

Professor Ross then presented a lecture on strategic alliances and competition policy. This lecture focused on the common methods of detecting and screening for cartels and the estimation of damages.

Thereafter, Professor Simon Loertscher presented his lecture on the fundamentals of competition policy and procurement. This lecture touched on the key economic issues associated with procurement design such as the detection and deterrence of bidding cartels as well as how to circumvent the creation of large suppliers through mergers.

The final lecture of the workshop was presented by Professor Liberty Mncube. Professor Mncube presented a selection of recent abuse cases adjudicated by the Competition Tribunal and the economic approach adopted in each. The cases presented included the Computicket and Uniplate exclusive dealing complaints.

The Commission and CRESSE have been organising capacity building workshops for economists since 2015. These efforts reflect on the Commission’s initiatives to build relationships with the international community of competition economists to keep abreast of the latest developments in the global competition economics landscape and to improve the use of economic reasoning and economic tools in case practice.
COCKTAIL CELEBRATIONS
I take this opportunity to congratulate and express my gratitude to the National Com-petition Commission of South Africa, for its leadership in the operationalization of the African Competition Forum (ACF), and its great ability to bring a large number of National Competition Authorities from African countries and Regional Competition Authorities of the continent in the effective management of anticompetitive practices. This leadership, confirmed by South Africa’s Competition Commission, has also resulted in the conduct of cross-cutting studies in different fields. The publication of results of those survey, which currently serve as a good references for all practitioners of competition both continental and international. Once again, please receive my best wishes for the celebration of your 20th Anniversary, while inviting you to persevere in your leadership, in order to bring the benefits of implementing the competition law for the welfare of consumers in the continent.

Dr Sacko Seydou
Programme Officer on Competition
Economic Community West African States
(ECOWAS)
Abuja-Nigeria
To: Mr. Tembinkosi Bonakele  
Commissioner, Competition Commission of South Africa  

August 19, 2019  

Dear Mr. Tembinkosi Bonakele,  

On behalf of the Federal Antimonopoly Service (FAS Russia) and me personally please accept our sincerest congratulations with the 20th anniversary of the Competition Commission of South Africa.  

The joint work of the Competition Commission of South Africa and the FAS Russia is an example of effective cooperation designed to achieve practical results. As part of the implementation of the Memorandum on Understanding between our authorities, we jointly analyze socially significant markets, hold consultations on cases, consider mergers and acquisitions, as well as organize joint investigations.  

I thank you for the constructive cooperation and support in solving our common problems and express the hope that our success will increase in the future.  

The activities of competition authorities play an important role in ensuring the effective development of national economies, and over these 20 years you have reached great heights both at the national and global levels!  

I sincerely wish you success and new achievements, preservation of our antimonopoly traditions aimed at the growth and well-being of the population of our countries!  

With my best wishes,  
Igor Artemiev,  
Head of the FAS Russia
It gives me immense pleasure to be able to contribute to this 20-year review. Whilst the Competition Commission of South Africa is celebrating its 20th anniversary, the Competition Commission of Mauritius is this year, celebrating its 10th year anniversary. When the Mauritian authority started operations and its first cases back in year 2009, the CCSA was already a robust authority, not only in the region but also around the world. It was actively enforcing its competition laws and had already busted the bread cartel and was a pioneer and a leader in competition law enforcement in the region.

Mauritius and South Africa share a lot of similitudes. Colonialism, apartheid in South Africa and slavery in Mauritius have had such profound effects on the historical and political paths of both nations, that our respective economies have been moulded in such a way that led to concentration of economic power in the hands of a few. These have undeniably led to large conglomerates dominating the economic scenes in our respective economies. Madiba’s fight for equality in South Africa to a large extent inspired our leaders in Mauritius to embark on the path to democratise the Mauritian economy, of which the setting up of the Competition Commission of Mauritius was a result. It was only natural then, that the Competition Commission of Mauritius looked up to the Competition Commission of South Africa for inspiration in the early days.

The Competition Commission of South Africa was instrumental in assisting the Competition Commission of Mauritius in building its capacity in its infancy years. In year 2010, we had the then Chairman of the Competition Tribunal, David Lewis, come to Mauritius for training of our staff. The Competition Commission of South Africa also kindly hosted in 2010 and 2011, secondments for our staff whereby 2 investigative staffs were able to be part of the Competition Commission of South Africa for a period of 3 months each. These have been of tremendous assistance to the Competition Commission of Mauritius in the early days to build its investigative capacity.

In 2012, when the Competition Commission of Mauritius was preparing its first ever dawn raid on a cartel case, the Competition Commission of South Africa readily sent two experienced cartel investigators to Mauritius to assist us in the dawn raids and guiding us on how to go about the procedures of obtaining warrants for such raids. Such assistance on dawn raids was also extended in year 2016 when the Competition Commission of Mauritius effected back to back dawn raids on 5 enterprises for cartel activities in 2 separate cartel cases.

To formalise this formidable working relationship between the two institutions, an MoU was signed in October 2016. The MoU provides for strengthening of bilateral ties, capacity building in the field of competition law and a better framework for cooperation between our institutions. I am happy that we are today in a position to take our collaboration to another level, with talks of a tripartite MoU between the Competition Commission of South Africa, the Financial Services Commission of Mauritius and the Competition Commission of Mauritius. This prospective MoU will assist the institutions in better coordinating and cooperating in areas where there are overlaps between financial services and competition matters.

I would also like to commend the Competition Commission of South Africa for its leading role in African Competition Forum (ACF). The ACF, regrouping competition authorities from 41 out of 54 African countries, is tasked with the mission of promoting the adoption of competition laws, building the capacity of both newly established competition authorities and ACF member agencies as well as assisting in advocating for the implementation of competition reforms that benefit African economies. The Competition Commission of South Africa has been instrumental in bringing together countries from across the continent to be part of this initiative. As Co-Chair of the ACF, the Competition Commission of Mauritius is well aware of the dedication and resolve, both financially and resource wise of the Competition Commission of South Africa to spearhead competition in the Continent either through the ACF or otherwise.

I would like to take this opportunity to congratulate the Competition Commission of South Africa for achieving 20 years of excellence in enforcing competition law in South Africa. I have no doubt that under the inspiring leadership of Commissioner Tembinkosi Bonakele, supported by Deputy Commissioner Hardin Ratshiususu and their able team of Executives, the Competition Commission of South Africa will reach new heights and cement its place as one of the leading Competition Authorities in the world, whilst continuing to be the beacon for other competition authorities in the African Continent.
Whilst giving a speech to the National Assembly of Mauritius in year 1998, Nelson Mandela said ‘…in Mauritius we have a friend indeed and a partner for peace, prosperity and equity as we enter the new millennium.’ I am happy to observe that at an institutional level, the Competition Commission of South Africa and the Competition Commission of Mauritius have been able to maintain and further this friendship in assisting one another in enforcing competition law for the betterment and prosperity of our peoples.

ACF Vice chair Deshmukh
INTERNATIONAL LEADERSHIP

South Africa’s Competition Commission and Competition Tribunal are strong and highly respected members of the international competition community. In my capacity as Chairman of the International Competition Network (ICN) Steering Group, I want to express my congratulations and thanks for the engagement, commitment and success particularly in the ICN where South Africa has played an important role from the very start in October 2001, when top antitrust officials from 14 jurisdictions including South Africa launched the ICN.

The ICN is the most important network of competition authorities worldwide. It comprises 139 competition agencies from 126 jurisdictions. But as a virtual organization, the ICN depends on its members’ willingness to take on responsibility and to fill demanding leadership roles. South Africa’s institutions, the Competition Commission and the Competition Tribunal, have successfully taken on this responsibility. Both are not just members of the ICN, but play a vital role in the network. Together the Competition Commission and the Competition Tribunal invited the competition community to Cape Town to celebrate the 5th ICN Annual Conference in May 2006. Competition Tribunal Chairperson David Lewis took over the position as ICN Chair in 2009 and the Competition Commission hosted the ICN Cartel Workshop in Cape Town in October 2013 and the ICN Unilateral Conduct Workshop in Stellenbosch in November 2018. The Competition Commission is active in the ICN as Working Group Co-Chair, currently in the Unilateral Conduct Working Group and before that inter alia in the Cartel Working Group. As a member of the ICN Steering Group, Commissioner Tembinkosi Bonakele is part of the network’s leadership and the Competition Commission was on board as a founding member of the latest ICN Framework, the ICN CAP – Framework for Competition Agency Procedures.

This engagement in the ICN is important and highly appreciated. It moves the ICN forward and ensures its success, particularly today at a time where calls for international cooperation become stronger as the world becomes smaller in the face of globalization and its driver, digitalization. Cooperation between agencies is obviously helpful for us as enforcers, but cooperation in fair and effective competition law enforcement is important for companies and ultimately it is important for consumers.

I am looking forward to continuing this close and successful relationship and wish all the best for the coming 20 years.

Andreas Mundt
ICN Chair and President of the Bundeskartellamt, Germany

GCCCCCCPC CONTRIBUTION

We owe our growth and development to the benevolence of CCSA. As a young institution; the CCSA nurtured us by sharing their experience.

Kind regards
Amadou Ceesay.
Executive Secretary.
The GCCPC - Levelling the Field for Development.
THE COMPETITION COMMISSION CAN BE CONTACTED AT ANY OF THE FOLLOWING:

**Telephone Number:**
+27 (012) 394-3200  
+27 (012) 394-3320

**Fax Number:**
+27 (012) 394 0166

**Email Address:**
ccsa@compcom.co.za

**Physical address:**
The DTI Campus, Mulayo (Block C),  
77 Meintjies Street,  
Sunnyside, Pretoria

**Postal address:**
Private Bag x23,  
Lynwood Ridge,  
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