

**Opening Remarks by the Commissioner on the Occasion
of the 8th Annual Competition, Law, Economics and Policy
Conference**

Gordon Institute of Business Science

04 – 05 September 2014

Honourable Minister of Economic Development, Minister

Ebrahim Patel

Judge President of the Competition Appeal Court, Justice

Dennis Davies

Chairperson of the Competition Tribunal, Norman Manoim

Heads of Competition agencies and heads of delegates from

our sister countries in the continent,

Member of the Competition Tribunal of India,

Vice Dean of the GIBS,

Distinguished Guests

Ladies and Gentlemen

On behalf of the Competition Authorities of South Africa, I am delighted to join the Vice Dean of Gibs, Nicola Kleyn, in welcoming you here at my alma mater, to this the 8th Competition Law Annual Conference and the celebration of the 15th anniversary of the Competition Authorities. It is the first in our annual conferences that we do in partnership with Gibs, and we look forward to a long standing relationship with Gibs aimed at advancing education and exposure to competition policy and economics. Competition policy is becoming an important part of the curriculum of business schools in many countries, and I hope this conference will inspire Gibs to reintroduce this subject in its core programs and short courses. It can only add to the quality of business education through better understanding economics and incentives that drive firms, regulation and ethics in leadership. Let me also; in absentia take this opportunity to wish the founding Dean of the School, Professor Nick Binedell well as he steps down as the Dean of the School.

I am also grateful that at this conference no less than 15 African countries are represented, and we have representation from our one of our BRICS allies, India. Yesterday we held a very successful conference of the African Competition Forum. Amongst other things, the Forum agreed to foster cooperation among African countries in the area of competition policy in support of the regional integration agenda.

Minister the Competition Commission of South Africa reluctantly agreed to serve as the chairperson of this informal network of the African Competition authorities for the next two years. We were reluctant because while we sincerely support this initiative, we are mindful of our own domestic challenges that place a huge demand on our time, and acknowledge that many other countries within the continent can play this role, but our colleagues prevailed on us to accept this responsibility. In doing so we were mindful of what President Julius Nyerere said to President Mandela at the University of Fort Hare in 1998, that while South Africa should naturally be sensitive of playing a

dominant role within the continent, it should not shy away in taking leadership in addressing Africa's challenges. "Don't be too shy", he said.

We deliberately want to develop this conference into the one where competition policy issues facing developing countries can be interrogated from all perspectives, and models developed suitable to our own economies, our real economies, and not economies we imagine having. The panel discussions, focusing on, among other things, competition policy and inclusive growth, Innovation and regional cooperation is an expression of our desire to steer the conference to address competition issues facing countries of the South in general, and African countries in particular. In this vein, I would also like to announce that we will be hosting a BRICS competition conference in November 2016, and we will use the opportunity to deepen and advance knowledge on the link between competition policy and the struggle to defeat inequality, unemployment and poverty, while also strengthening

cooperation amongst BRICS countries in competition policy. One must recognise that competition policies have always been about addressing the immediate economic challenges; dealing with monopolies/trusts in the US, and regional integration in Europe.

I will have a privilege to participate in *Judge For Yourself* before Justice Davies during the first panel that will be reviewing the work of the Competition Authorities in the past 15 Years, and making proposals on the next 15 years, so let me confine my opening remarks to a few observations before I call upon the Minister to give a key note address.

Ladies and Gentlemen

We are meeting at a critical time in the history of our country, our democracy is 20 years old, and this presents an opportunity to review what has been the track record in the past 15 years. There is no doubt about the remarkable progress made in

various spheres. The government's 20 Year Review is a vivid account of the achievements and remaining challenges, but let focus in the competition policy area, in the interest of time.

I should start by paying tribute to the policy makers and social partners for their foresight in prioritising competition regulation as part of a package of economic policy changes of our post-apartheid economic transformation. If our competition laws are an expression of aspirations going beyond the conventional efficiency approach to competition regulation, embracing the notion of an inclusive growth, it is because it was a product of deliberations of various constituencies within NEDLAC. I also need to pay tribute to all those who have made the system to work, the past and present staff and management of the Competition Authorities, business, labour, consumers, lawyers, economists and various industry experts. The past 15 years has seen the building of solid independent and respected institutions. Institutional building is an very difficult but underestimated tasks. In involves building capacity within the

institution to deliver on its mandate – getting the right people in, training people, knowledge management, developing systems, etc. These are less glamorous but essential. Let me give just but one example of what we have done with building capacity:

Our flagship training program is our graduate trainee program, where graduates are brought in the organisation straight from tertiary institutions to learn how competition law and economics applies in practise. A total of one hundred and thirty eight graduates became part of the programme over the years. Many of our trainees who exited the programme are doing well in their careers. Through it, we have produced a counsellor at ICASA, leading lawyers in private practise, at least three divisional managers at the Commission and a member of the Competition Tribunal.

Remarkably, 43.5% (60) were appointed full time in the Commission over the years, and currently, out of about 170 current staff members we have, 48 came through the program and are found at all levels of the Commission. Five staff

members acquired MBAs and 1 PHD qualifications that were financed by the Commission's study loan initiative. Two are currently studying towards their MBA financed by the Commission. Our training budget has increased by 60% over the last two financial years.

To further advance these initiatives, next year we will introduce a scholarship programme to targeting competition law and economics, in addition to the existing our Masters dissertation grant.

I am immensely proud of the cases and issues the Competition Commission tackled in the past fifteen years, which range from prosecuting cartels and addressing anti-competitive behaviour and structures in basic food products (such as bread, maize meal, flour, milk, eggs) to industrial input products that are important for industrialisation, infrastructure and employment (such as steel, cement, concrete pipes, plastic pipes, polymers (plastic derivative), diesel, glass), as well as sectors critical for growth and development (such as HIV/Aids drugs, banking and

telecommunications). We have done all of this while grappling with how to save existing jobs, promoting participation of South African firms to global markets and creating an environment for small and medium enterprises as well as BEE forms to participate in the economy.

To illustrate how far we have come: When a bread distributor got letters from a number of his bread suppliers notifying him of price increases at the same time, by a similar amount, he knew that this must be a competition problem. He also knew what to do with it – he alerted the Commission. The Commission investigated the case within three months, and got one of the bread companies to confess to price-fixing in exchange for immunity. Civil society groups (such as Back Sash) called for the cartels to be severely punished. Record fines were imposed; CEOs resigned; the boards of the companies got involved. The Commission settled with creative remedies that included the lowering of prices for bread and flour, and the creation of an Agro-processing Fund within the IDC. The media

extensively covered the unfolding saga. For the first time, competition enforcement moved beyond the confines of the practitioners, and business sections in newspapers. South Africans weighed-in on the business ethics, executive accountability and effectiveness of the entire competition enforcement regime.

The world has also taken notice: the World Economic Forum Global Competitive Report ranks South Africa in the top ten for the effectiveness of its antimonopoly laws, ahead of its developing country counterparts. The South African competition authorities are well respected by their peers and are an active member of the SADC Competition Committee, the African Competition Forum, the BRICS competition forum, contributing in strengthening cooperation of developing countries. In addition, the Commission participates in the International Competition Network and regularly contribute to the OECD's Competition Committee Round Table dialogues on competition policy.

Let me now come to the highlights of the year under review:

Dismantling the construction cartels

The rooting out of bid rigging cartels has been the key focus of the Commission in the past two years. During the year under review the Commission completed settlements under the Construction Settlement Project (CSP), a special dispensation for uncovering bid-rings and settling them. The process yielded the uncovering of more than 300 private and public sector rigged projects. The projects included major infrastructure development in South Africa, such as the 2010 FIFA Soccer World Cup stadia, dams, business/residential buildings, the Gauteng Freeway Improvement Project and other national roads.

In July 2013, the Commission settled with 15 out of 18 construction firms that participated in the CSP. These included the top six largest construction firms in South Africa. The total combined administrative penalty imposed by the Tribunal for

the 15 firms amounted to R1, 4 billion. The Commission has commenced with phase two of the investigations, which entail prosecuting firms that did not settle as part of the CSP. Penalties for firms that did not take advantage of the CSP to disclose and settle all the cases will be higher than those of the firms that settled. This is important in achieving the Commission's objectives for CSP, of fully uncovering the extent of the collusion and ensuring that it does not happen again. Failure to disclose or settle rigged projects gives rise to a concern that the firms involved are not remorseful and committed to cleaning up the industry.

The stamping out of this behaviour is in part also dependent on the other role players getting involved, including the state as a regulator, the state and the private sector as victims, and the construction industry itself. The Commission is deeply concerned about the impact of cartels in infrastructure development, and will be working with government and other

stakeholders to ensure that the planned infrastructure rollout does not fall victim to collusion.

Tackling abuse of dominance in the telecommunications sector

Telecommunications is very important for both business and end users, and is vital for the country's growth and development. Over the past ten years the Commission has been at loggerheads with Telkom SA SOC Limited over its abuse of a dominant position in some key telecommunication services and infrastructure. Following a successful prosecution of Telkom and an imposition of a R 449 million penalty during the 2012/2013 financial year, Telkom settled its outstanding case with the Commission during the year under review. The settlement entailed the payment of a R 200 million administrative penalty, functional separation between Telkom's retail and wholesale divisions along with a transparent transfer

pricing programme to ensure non-discriminatory service provision by Telkom to its retail division and other Internet Service Providers (ISPs), effective monitoring arrangements of its future conduct, and wholesale and retail pricing commitments for the next five years estimated to yield R875 million savings to customers. Telkom will also provide points of presence at strategic locations in the public sector. The settlement will have a lasting impact in South Africa's telecommunications sector, and lead to a more competitive market.

Untangling the cost and pricing issues in private healthcare sector

Following concerns from various quarters about the costs and pricing in the private healthcare services in South Africa, the Commission initiated a market inquiry (Inquiry) into private healthcare sector. The Inquiry will be undertaken under the Commission's new powers to conduct market Inquiries in terms of the Competition Amendment Act 2009 (Act No 1 of 2009).

The Commission is committed to an objective process of probing the issues, with the aim of contributing to improving access to healthcare to a wider number of people. Given the importance of this matter, we have appointed five experts under the chairmanship of the former Chief Justice of South Africa, Justice Sandile Ngcobo, to conduct the Inquiry.

Cement Cartel Impact Assessment shows savings for consumers

In 2008 the Commission started investigation of SA's cement producers with a dawn raid in their premises, after conducting a scoping study into the costs of construction inputs. The Commission uncovered a long running cartel that included price fixing and market allocation, through market share allocation. The Commission has undertaken a study of the impact of uncovering the cartel. Using estimates of overcharges as a result of the cartel the study found that consumer saving as a result of the cartel being uncovered range approximately

between R 4.5 billion to R 5.8 billion for the period 2010 to 2013. In addition, there has been noticeable change and dynamism in the market, with firms entering territories they previously did not trade in.

Moving forward

My management team and I will be finalising the Commission's Vision 2030 in the next financial year, that will inform our Five Year Strategic Plan and subsequent annual performance plans. Vision 2030 will place the Commission in a position of an important partner that contributes to inclusive growth in South Africa.

I am happy that this year we were able to fill all the vacancies in key management positions in the operational divisions of the Commission, mostly with internal appointments.

In the panel discussion, I hope to discuss the evolution of our jurisprudence, but I would like to acknowledge also, that through various decisions in the recent past, we have reached some congruence on some major procedural issues that were threatening the efficacy of the system, such as the scope of the powers of the authorities in investigations and adjudication.

I would also like to thank the Minister for his presence this morning, as well as all our speakers and panellist, I hope you enjoy the conference.

Thank You

Commissioner

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