



**SPECIAL EDITION**  
SEPTEMBER 2017

1<sup>th</sup>  
annual  
**competition law  
economics & policy**  
conference 2017

THE FUTURE OF COMPETITION POLICY



## The Competition Commission and Competition Tribunal proudly present the 11th Annual Conference on Competition Law, Economics and Policy

### THEME: THE FUTURE OF COMPETITION POLICY

This year marks the 18<sup>th</sup> year of the existence of competition authorities in South Africa. Significant gains have been achieved in the enforcement of competition law. Alongside this, there have also been global economic developments, which have had an impact on the domestic economy. Globalisation and technological developments have affected the world economy and in particular competition policy.

This gives rise to critical questions as to how best

competition enforcement can be optimised in response to these global developments as well as what changes could be usefully effected.

South Africa is confronted with enormous economic challenges. Most markets in the economy have persistently remained highly concentrated and the challenges of poverty, unemployment and inequality continue unabated. The economy is not growing, in such times, default

instruments such as macroeconomic tools are insufficient and restricted by the need for fiscal consolidation. It is in this context that the role of microeconomic tools such as competition policy and its enforcement can play a critical part in turning the current economic situation around. The Annual Competition Conference - targeted at academics, policymakers and practitioners - brings together renowned specialists in competition law and economics to discuss this and other relevant competition law and policy issues.

**DATE:** 30 August - 1 September 2017 • **TIME:** From 08:00 • **VENUE:** GIBS, 26 Melville Rd, Jhb

**KEY NOTE SPEAKER: Deputy President Cyril Ramaphosa**

**Other confirmed speakers:**

**Ebrahim Patel** (Minister: Economic Development)

**David Makhura** (Premier: Gauteng)

**Norman Manoim** (Chairman: Competition Tribunal)

**Enoch Godongwana** (Chairperson: Economic Transformation Committee, ANC)

**Dennis Davis** (Judge President: Competition Appeal Court)

**Tembinkosi Bonakele** (Commissioner: Competition Commission)

**Floyd Shivambu** (Deputy President: EFF)

To register, please visit the Competition Commission website: [WWW.COMPCOM.CO.ZA](http://WWW.COMPCOM.CO.ZA)  
For enquiries: 11ACC2017@compcom.co.za

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Competitive Strategy, Competition Policy and Law and the Regulation of Markets



# Hon. Cyril Ramaphosa

Deputy President  
Republic of South Africa

## KEY NOTE ADDRESS



Thank you master of ceremonies, Norman, Judge Dennis Davis, Commissioner of the Competition Commission, International guests who are here, we welcome you to sunny South Africa on spring day. Government official's business leaders. And ladies and gentlemen.

You mentioned and the Anglo American story with Mr Oppenheimer and the issue of absence affects. I recall listening to an Anglo American employee who one day woke up in his home which had been built by an Anglo American company, which he worked for and he went into the bathroom dressed up and even as he dressed up he found that some of the clothes that he was wearing had been manufactured and produced by and by an Anglo American linked company.

And got into the car and the car was also a motor vehicle that had been made and produced by and an Anglo American linked company and he drove on the tar mark, and the tar mark had been built by the LTA which was an Anglo American company and got to the building obviously owned by Anglo, looked at all his colleagues and all of them worked for Anglo and at the end of the day and they were hard workers, these Anglo people. At the end of the day he goes back home, has dinner gets into bed and he looks at his wife and he wondered to himself whether she too was owned by and Anglo American.

So that is fact and Anglo American was that dominant.

More than owning a great portion of the Stock Exchange. They were dominant in more ways than one. I'm a fly fisherman. I love fishing trout and the other day when I was trying to get a fishing sport just to go and throw a line on the waters, I found that many waters and Mpumalanga area are also owned by Anglo American. So they have been very dominant. Thank you very much for your kind invitation, Commissioner to come and share a few thoughts here at this conference.

As you sat down, I actually said that you have actually made my speech. Much of what you said, it's what I wanted to articulate so I could just easily sit down because you have said all that I needed to say. But I guess for the past few days gathered here are some of the best minds that come from all over the world, the continent and the globe, you've been deliberating here about the future of our competition policy and it is correct that we should do so because our country is going through a process of self-evaluation, where we want to look at everything that moves and drives our economy, so that we can begin and continue with the process of creating an economy that responds to the needs of our people and that addresses the challenges that we face.

Now the discussions that you've been having at this conference are of great significance to this economic trajectory that we want to craft for ourselves. An economic trajectory that is transformational and that will ensure that the people of our country do have an economy that will give them a better life. And even though the issues with which you have been grappling are often unfamiliar to many

people who are outside this room, who are out there in the open area. Because they sound very complicated once you talk about competition policy many people's eyes start rolling because they don't quite fully understand what it is about. But the issues you are dealing with are nevertheless profound because they do have an impact on the lives of those very ordinary people.

And in a country like ours the attitude and conducts as well as actions of corporate citizens as one would call them, can be decisive as they have been in the past, in lifting the majority of our people out of poverty or sinking them into poverty. They can reduce inequality but they can also deepen inequality. And they can allow new enterprises to flourish. And expand employment or they can also be a barrier to the development and the entry of new enterprises but also to the development of innovation. And they can also strengthen this social fabric of our country.

But if they don't strengthen that social fabric they can actually erode it. So enterprises or corporate enterprises therefore have an important role to play in the life of a country and in South Africa we would say in the life of our country because that is precisely what they have played on or not to played in the past. When organize cabals steal from public resources and unsuspecting consumers, they break trust. They also undermine social cohesion but in the end they lead to what I would call destroying the lives of ordinary people. When corporate greed and there is quite a lot of it that goes around, gives rise to price fixing, markets division and collusive tendering, governments and citizens alike, in the end do become poorer.

This is not only unfair, it is also on a sustainable. But more than that it is also immoral. It results in a disproportionate share of economic product that accrues to a narrow group of companies as well as individuals. It reduces the economic contribution of many people whose talents, energies but resources would otherwise have been gainfully employed for the greater social goods. Now, anti-competitive behaviour prevents economies from ever realizing their potential. One does not even need to write a thesis about this. It is something that is fairly simple and straightforward which all of us would be aware of. And competition policy in South Africa cannot be limited to merely the promotion of market efficiency or having an introspective look at events such as mergers and acquisitions.

And looking at that from a parochial point of view where all it looks at is, whether there is a transformational aspect which is economic empowerment. And that's all, it must be an instrument. This Competition Commission Policy that must effect fundamental economic and social change. From the advent of our democracy we have argued that competition policy has what I would call a pivotal role to play in redressing the injustices of the past. This is what we stated right at the beginning and me as part of the governing party felt that, that is what we need to do. It was to underline this imperative that in the Competition Act as it is was crafted a preamble that said apartheid system that we had in the past and iniquitous system.

And other discrimination laws and practices of the past, resulted in excessive concentration of ownership and control within the national economy. It also led to inadequate restraints against and anti-competitive trade practices and unjust restrictions on full and free participation in the economy by all South Africans. And we also added that the economy must be open to greater ownership by a greater number of South Africans. Now this we crafted because we realized that we could utilize competition policy as an instrument to effect the change that is necessary to whittle down the concentration that was seen in the economy, in the governing party realize this as early as the 60s at its various conferences whilst it was in exile and that is when it spoke about monopolies dominating the economy of our country.

And in seeking to do this, it was to say the wealth of our country must be shared amongst all South Africans. And one way of doing so would be to open up spaces, participation and areas so that South Africans in their totality can participate freely in their economy through owning the economy, controlling the economy and also being key managers of economic activity in our country.

This was therefore set out as a major objective. Now I took the trouble to look at our Competition Act, Commissioner, and found that there is a disjuncture between what is set out in the preamble and what is embodied in the actual Act. And it was interesting to read and OECD report which was commenting on our competition environment. And the OECD said we've set up lofty ideals in terms of having a competition policy that would be transformational, that would change the structure of our economy and this the OECD observed was the product of the past. Product of the past in that, the past system that we had, apartheid, so structured our economy that it only favoured a particular racial group to be the owners, the controllers of the economy. And it did so by law, by convention, by practices and by everything else.

That is actually an anomalous type of situation which I guess many people would say they have never seen in many parts of the world. Where you make laws and say only one racial groups shall have the right to participate in this area and you shall not trade in a particular part of the country, you will only be restricted to either the township or rural area and so forth. So it was this that the OECD also commented on and looked at the body of the Act and said the two don't talk to each other. And it is also what I observed.

And having observed this, I then looked at precedents around the world, Commissioner. Precedents around the world that I looked at, it was to go to the citadel of capitalism and I went to the United States and I looked at what the United States did many years ago at the turn of the century, when one of their Presidents Franklin Delano Roosevelt broke up a number of monopolies. And he did that because he concluded that, the dominance of certain monopolies in sectors of the economy were not good for the American economy. And the one example that comes to mind maybe there are two was in the oil industry. America had discovered oil.

They were pumping oil from their ground and many oil fields were littered across the country. And a few companies had emerged as the dominant players. And Roosevelt realized that oil was to key, could was and indeed it was the key driver of economic growth. And it was propelling the American economy forward but he also concluded that it was not moving as quickly as it should because there was dominance of this oil industry.

He then concluded that what needed to be done and these oil activities were owned by trust companies. They had organized themselves as trusts. And this trust held this piece of land and so forth and there were a few and that is when he came up with the anti-trust laws. And anti-trust laws were aimed at breaking up these trust companies and Standard Oil was one of those that was very

dominant. Broke them up. They were about 4 or 8 or so, they were broken up and 40 companies then emerged as key players in the oil industry and America took off. The growth was breath taking. And that in itself defined America as if you like as a blue blood capitalist country where competition was the rule of the day.

But it was competition that enabled other players to come in, compete. And in the end, it was to the benefit of even those few companies who operated because it sharpened their wits and it made them more competitive. And that break up was not to rule them out of playing in the market. It was to open up space and they continued operating. As it did when they broke up their telecoms company which. AT And T. They broke it up into Southwest Bell and so forth and the telecoms company industry rather before then was concentrated and it was broken up and many telcos then came up and existed. And then their telephonic industry took off.

Having looked at the American experience, I concluded that it is something that we should learn from, because market concentration is not good for an economy. An economy that seeks to grow and to thrive and to embrace new technologies efficiencies and in the end also, consumer satisfaction in the form of prices coming down, it's an economy that can work much better and efficiently. And having looked at the OECD report and looked at the American experience and indeed Europe also caught up on to that. Now this is something that competition policy in South Africa needs to look at, to embrace what we have set out in the preamble of our Competition Act and to mesh that into the body of the Act and make the Act alive, and make the act transformational, and to respond to the needs of South Africa because our needs, our needs possibly are much greater than Franklin Delano Roosevelt looked at.

He was looking at economic growth and so are we. We are looking at economic growth but we are also looking at the inclusion of all our people in economic participation. And the purpose of the Act should therefore be:

- To provide all South Africans equal opportunity to participate fairly in the national economy of our country; and
- To also promote employment and advance the social and economic welfare of all South Africans.

A question would then be asked, once as it was asked in the US, once the oil industry or sector was broken up. Will those that emerge be able to thrive? They did thrive and succeed, because when you do, de-concentrate the economy if your country, there is already a market. Where there was one player, you then create a number of players. There is already economic activity and the banks should not have any difficulty in underwriting or funding the new players that can emerge because a market exists and in fact funding institutions should find this most exciting because that is when they will see competition at its best. Where the best succeeds and where they can put their money behind the very best. Because concentration often leads to sluggishness.

It also often leads to complacency. And concentration, breaking up concentration is not nationalization even without compensation. It is actually giving value for money for what a concentrated business will have had and it can then use that firepower to further invest in their own business once they have been given a slice of the business and they can then break out into a number of areas.

In short, the purpose of the act should really be to facilitate economic transformation. and economic transformation, yes you can guess that is that is radical, that is transformational but that is also inclusive but more than anything else, it would be sustainable, because the new entrants will be able to go to the banks and the banks would be able to understand the business, because they would have been funding the concentrator and they would say

we know this business and we can therefore fund it and in this area this sector that you have chosen, we can fund it effectively because we understand it, so it is sustainable.

Now as we work together to fundamentally change our economy. And let me say, economic policy, is the one instrument and there are others, that we can utilize to fundamentally change the structure of our economy. We've often complained that the structure of the South African economy is the root of the problem and indeed it is because the way our economy was structured, we came from the minerals sort of extraction complex and manufacturing rather agriculture and all we have been doing is to export raw minerals without even benefiting them and that defined the structure of our economy and that led to the concentration of the economy in the hands of white men largely.

And the case of the American which you quoted, Judge Manion is a case in point. And we are therefore bound to ask whether in substance and practice, our policies and laws and institutions including the Competition Commission, the Tribunal and what a view and what you also had Judge Dennis Davis are institutions that will meet the objectives that we have in mind.

We inherited as we all must accept a racially skewed economy that had all these players. It is this that we need to correct. 23 years after our democracy, the moment has arrived, for us to introspectively look at transforming this and we do this on the back of what is happening throughout the world. The world is now calling for Inclusivity of effort, of initiative, of anything that we do at an economic level and not only economically but socially as well.

I attended the World Economic Forum in Davos this year, the President couldn't go so I went there. And the theme of the conference was: Inclusive growth. And so the world right across the globe is talking about inclusion and people around the world are saying include us. I read was it in the Financial Times, just yesterday, the New York Times it was troubles that unfolding in the Democratic Republic of the Congo in a particular area where a Canadian company has been mining for some years. And the local community is rising up and they say you have been mining gold in this area, far flung area in the DRC, and they say as they are protesting we want to be included.

We want you as a Canadian company to make us a part of what you are doing here, as you seek out our rock, and transport it to various parts of the world. We want to be part of this economic drama that is unfolding and they are up in arms and they've actually stopped the extraction of gold in that area. The poor Canadian company is dizzy, they are all sixes and nines but in the end, what they have to do is to sit down with the community and talk about inclusion.

So, 23 years later, in our own country it is inclusion of those who were deliberately prevented from participating in the economy of their country that is now at the top of people's minds. And it is this that the Competition Policy in our country needs to address. And it needs to address it, not only when it encounters mergers and acquisitions. When a company buys company X and comes. It needs to be proactive. It needs to look at market dominance. It needs to ask itself, is this market dominance the correct one. I was telling colleagues before coming into this meeting that I used to be a chairperson of a major company in our country and one of the things that you do as a chairperson, you go around the various subsidiaries and I went to work and this one was a company that processes pig intestines.

And I learned then that every pig has up to 14 kilometers of intestines in its belly. And this pig intestines is used as casing for sausages. And they import billions and billions of kilometers of pigs intestines from China because, they eat a lot of pigs there. So they bring that in and it is the only company in the whole country, let alone maybe

even sub-Saharan Africa that does this. No other company does this. Do they have market dominance? Are they a monopoly and I would say yes they are. And what it also does is that it will prevent many other companies from coming in through hogging the space, through the distribution outlets and everything else. And it is this that the Competition Commission or Competition Policy that must it must look at.

Market dominance in the South African context, therefore, refers not only to specific sectors in which segment share has been unfairly captured and retained by a few companies. Now a phenomenon unfolded in our country after 1994 when black people suddenly were allowed to become key players in the economy. And as they came in they became black entrepreneurs. Something that they were prevented from doing in the past. And because the market had been carved up by a minority they found that there was very little space to play. And therefore, they bought shares into existing companies because as they looked at property they were dominant players in property.

As they looked at whatever, there were dominant, in mining they were dominant players. So they became appendages because there wasn't very little left. So in the end they found the space closed up and what the Competition Policy should do, is to open up the space. So that new companies can be created. Black people who are prevented from becoming economic players can become players in the economy of their country.

This refers to concentration of ownership and control and this has largely been in the hands of a few. So black South Africans are for the most part excluded from exercising control even as they have bought into these companies. They became what I call appendages, they became silent players or minority players. So, the system that they found as a given did not allow them to play that role that others have been playing, of being controllers and of being owners. We must therefore measure the effectiveness of our Competition Policy by the extent to which it contributes to the undoing of the racial and gender dimensions of economic concentration. Now Minister Patel said yesterday, our competition policies should concern themselves not only with the conduct of companies, but also, yes, the structure of the market but also the structure of our economy.

Where the structure of markets are found to inhibit competition, inhibit also innovation because by definition when you are a dominant player, in the end you are also inhibiting innovation. Because there are many clever people around and they will find it difficult to all be employed by your company. They are all over. So for as long as you are the only dominant player other people who would have been innovators, clever, creative will not find space and the economy therefore suffers.

We need therefore to have appropriate policy instruments that can change the structure. And in recent years, South Africa's Competition Authorities working together with industry and other public entities have produced several innovative measures to promote public interest, considerations in significant mergers and acquisition and let it never be heard me saying that the role of the Competition Authorities has not being effective. In fact, they have been world class. They have been world class, Commissioner, as you have looked at competition processes in our country. Where you have made interventions you often made interventions that advanced the interests of South Africans. So, you've been at the cutting edge and you've been as great as many other keep Competition Authorities have been in the world.

This has been possible because the authorities have seen their role not merely as a regulatory but also as being developmental. To help to develop our country into a better place. It is the same thinking that most inform our approach as we evolve our policies and laws

as well as practices. We must use that levers at our disposal to facilitate the entry of new black companies into established markets. Because there is space and Competition Policy must make that space open just as Franklin Delano Roosevelt did in the United States when he looked at the lethargy, the slow growth that the United States was confronted with.

And when he opened up the sectors, they exploded with growth and similarly the same can happen here. We must create space, yes for black owned companies, for small medium enterprises to flourish. Unless we open up that space, all the resources we invest in our economy will be of no little value. Significantly, our competition policies must expand choice and reduce costs for consumers in the end.

And correctly so, the Competition Commission must focus as the current Act does focus, on the interests of consumers in the economy. And as we implement policies to change the structure of our economy, we must at all times be away of the devastating impact that anti-competitive behavior has on the lives of ordinary people. We must ensure that our competition law and institutions effectively protect the poor. They must safeguard the dignity and the rights of our people.

Now, the latest Poverty Trends Report that was released last week by Stats SA, we now know that more than half of our people live in poverty. We know that children aged 17 and younger are the ones who are disproportionately affected by all of this. These statistics are in the end for any person who is in leadership and a person who is socially aware and politically astute devastating. But they are not nearly as devastating as the lives behind those statistics. Indulge me in telling the story of one such life and that is the life of Sivuyile Sibhozo.

In 2015, the social news website which is called Ground Up carried an article about Sibhozo and his brothers. In part it read: "When you're 14 years old and your parents as we all know, normally take care of you. You're totally dependent on your parents but Sivuyile Sibhozo from Sight City in an informal settlement called Taiwan Khayelitsha has been taking care of his brother and his grandmother and he has been doing that for the past 3 years and he's just 14. But then he grew up. As he was 17 years old, he lost his mother. And he lost his mother in 2004. And he had his 15 year old brother and both of them were taken care off by his grandmother. But last month, Noah Tuse his grandmother died. And that left Sivuyile alone to run the household".

Ground up, this NGO visited the boys in their shack. The shack is very old with holes. Those of you who might have had the occasion to go to the informal settlements and looked at how a good number of our people live, will know how shacks are with holes, wind blowing in, plastic sheets and all that. And this young man said sometimes I only managed to make R10 a day just to put bread on the table. He dropped out of school in 2012 in grade seven and took a job in a construction company in Cape Town. It was not an easy decision he says. But it had to be taken.

"I could not sit and watch my family's hunger sometimes I regret the decision. That I took to leave school but at that time it was the only solution that I had", he says. I could not watch my family suffer like that, all the food my grandmother used to buy would not last a month. She was not working and dependent on my brother's foster grant. The money was not enough we were always in debt and that is why I decided to find a job.

Now Sivuyile's brother who asked not to be named says at times they sit at home and they hope that one of the neighbours will come and knock on the door and give them food. He says sometimes he dodges school because of hunger and there's a neighbour uNoxolo

who sometimes gives the boys food and this uNoxolo's sister told Ground Up, she met the family while Noah Tuse was still alive.

This is a very sad situation she says. I always know that the food I am giving them won't last for long. Tragically the plight of the Sibhozo brothers is not unusual. It is prevalent throughout the country. Their situation like that of millions of South Africans is in the end very desperate but it just made even more desperate by the actions of companies that collude to keep the price of bread artificially high. And you bravely and gallantly dealt with that, Commissioner. When cartels fix the price of necessities like bread, poor families are sometimes forced to choose between paying for school transport or starving. And we live in a country, where the cost of living is just so exponentially high.

The cost of food is much higher in South Africa than it is in many other places and we also know that the cost of things like data is extremely high as well whereas in other countries it is slow and this has to be addressed. And this must be addressed so that South Africans can live a better life. In terms of this cost structure of enabling life to happen. In the private health care system, prices are also fixed and we were very pleased when the courts intervened and in the end we now have ARVs on which 3.5 million of our people rely on to sustain their lives were brought down. As we deliberate at this conference on the critical issue of Competition Policy and Law, we must remain alert to the indignity of poverty that affects many South Africans and particularly young people as well.

We must refuse to be numbed by it. It is inhumane and it is also unnatural. Our Actions can ease or compound the suffering of the people of our country. Competition Policy in the end must contribute to the achievement of sustainable but affordable livelihoods but as social partners it is our responsibility, all of us, to confront to choose and end practices that plays the activities of business at adds those with the interests of society. And this is where inclusivity comes in and this is where prospering your neighbour should be something that we embrace. And in African languages it is what we call Ubuntu. You are because I am as well. And this is what must underpin what we do. Even as corporations, even as we operate, our profit margins, we need to look at that and see, are our profit margins, so excessively high because of dominance.

By resisting competition and charging more for products and services, businesses add to the hardships of ordinary people. And this militates against inclusivity, this militates against sustainability and it also militates against what I would call a smart partnership. We need to be crafting a really wonderful and smart partnership between business and the ordinary people in our country. Business plays such a critical role because they are the economic drivers that enable our economy to grow but at the same time, as they drive this economy they must also take the interests of ordinary people into heart. And in doing so business should make sure that they are not complicit in perpetuating poverty as well as deepening inequality.

As social partners we share a determination and commitment to develop our economy, to eradicate poverty and fundamentally to transform our society. And in the end, Master of Ceremonies, we look to you, the delegates at this conference. To give guidance on this, to address this matter. We have a country that has people, people who want to live sustainable lives. And their livelihoods needs to be underpinned by growth but yes the economy grows it must be inclusive growth and that inclusivity can be enabled by deconcentrating our economy and making sure that there are entrants, new entrants in our economic activity.

The Competition Policy therefore, is a great instrument to undo the wrongs of the past and to make our country a better place, thank you very much.

# Hon. Ebrahim Patel

## Minister of Economic Development Republic of South Africa

### OPENING ADDRESS



Norman Manoin, the Chairperson of the Competition tribunal, Tembinkosi Bonakele the Commissioner of the Competition Commission, the host today Professor Nicola Kleyn, Director General Tom, International guests from elsewhere on the continent from BRICS and from O.E.C.D. countries, members of the tribunal staff of the commission members of the legal and economics fraternity, ladies and gentleman. It's a pleasure to officially open the 11th Competition Conference and to welcome you to two days of panel discussions and speeches working sessions and networking with an excellent team of international and local contributors. We look forward to learning from your exchanges here today from new ideas or the sharing of experiences and feedback on what we're getting right and what we not.

I addressed the Competition Conference in October last year at the V&A Waterfront in Cape Town. Since that conference, two new members have been appointed to the tribunal. Mr. Daniels as Vice Chairperson and Professor Helton Cheadle as a part time member. At the commission I appointed Mr Hardin. Rachisus who also acts today as the MC, as the deputy commissioner. I wish to officially welcome all three to their first Conference in their new position. And I'd like you to join me in a warm welcome to the.

I also wish to extend my condolences to the family and colleagues of the late Xolela Nokele who diligently serve the commission for many years, an example of fine public service and sadly passed away recently. In the FICA legislation, banks are required to know the clients. I would like to know my audience. So can I ask what today you are lawyers if you can just put up your hands? They're not normally a shy bunch. OK, thank you, economists? By the way Nicola before we get to the economists, you gave us a definition of competition I should tell you that competition law has been defined as industrial policy for the legal profession. Or a system to generate billable hours. The economists if they could just indicate? Thank you. Any representative people from corporate, companies? A few, thank you. Staff of the commission tribunal? Thank you. Anyone from government who is not with the commission of the tribunal? OK, there are few of us. Any trade unionists representatives of workers? None. Students, students at GIBBS or anywhere else? A few, thank you. And members of the media. Thank you.

The Competition Authorities had one of the busiest and most successful years. And I want to build on what Commissioner Bonakele said earlier and illustrate the breadth of their work with a few additional metrics. And I'm going to focus on the financial year that ended March. Commissioner took us right up today looking at the case

role of the Commission. And I think you'll see here extraordinary activity by the Commission and the tribunal. The Commission that we see for the twelve months up to the end of March four hundred and eighteen notifications of mergers and they finalize the bulk of it some 385. All of those. Of those 349 mergers were approved. So, the bulk of them were approved. 31 with conditions, 5 were prohibited but there were three that were withdrawn during the proceedings.

On cartels, the Commission handled 86 cases for the year and completed 33 of the investigations and all of those 33, 27 were referred to the tribunal. So, that's really where the matter will go for adjudication. The tribunal itself has had a busy year. It's had 196 cases, issued 179 orders and issued the reasons in 153 cases and when I looked at the mergers that the tribunal considered because that's such a big part in the public arena of its work of the 105 mergers considered, the tribunal approved 85 without conditions, nineteen conditions and one was prohibited.

Just ending back on the issue of approval with conditions, you'll see from these numbers that roughly ten percent of the cases that go through the commission end with conditions and roughly twenty percent of matters that go through the tribunal end with conditions. The past financial year saw the largest penalty yet imposed by the competition authorities on a firm in the steel industry Arcelor Metal which was fined 1.5 billion rand for contravening the act. In the beverage sector, arguably the most far reaching public interest conditions attached to mergers to date were put in place in two mergers involving a AB Bev, SAB Miller and Coca-Cola. So three global companies.

In a matter that had been before the competition authorities in 2013, government and seven construction companies implicated in collusion over the 2010 Soccer World Cup projects agreed to a settlement in this past year. A settlement in addition to the penalty of 1.4 billion rand imposed by the competition authorities required a further 1.5 billion rand to be put into a fund through the national revenue fund for financing the training of black artisans and engineers working capital for small black owned construction companies, social infrastructure such as rural bridges where young girls who at school walking from the village to the school have to often strip and cross a river and put on the clothes of the other end because this no infrastructure, teaching of math and science at township schools to lay the foundation of the learning society that we seek to build and project managers and engineers to help smaller municipalities to achieve better infrastructure delivery. In each of these cases

that I've alluded to the public sixty institutions which include the Government departments each played this specific roles to fix these outcomes and when one stand back from the detail of what each of the deed and we look at some exit gets it is it makes for very interesting reading.

Over the past twelve months some 57 200 workers have been covered by job protection commitments that emanate from a Competition process. Some six thousand five hundred new jobs are expected to be created as a result of commitments made during merger proceedings. 4.8 billion rand has been raised to support small business development and job creation through competition linked measures and thousands of spaza shops, taverns and small retail outlets will have the freedom to open a part of the sponsored fridge space to products that compete with a near monopoly large suppliers.

Appletiser by the way has significant black shareholding for the first time as a result of the competition process and has already been buying more local grapes for their grapetiser product. So, each time you have a bit of grapetiser it does you are creating a job somewhere. And we developing new models of empowerment, the construction industry through the seven largest companies and embarked on a major transformation program and 3 of these companies have already agreed to sell a large block of their shares to black South Africans. One of them, Mariane Roberts's essentially selling its entire construction business to a black on consortium. In all the deal will place construction turnover of many billions of ends in the hands of black South African entrepreneurs, construction companies and shareholders over the next seven years.

So, in some ways one could say that competition policy is going through a golden age with enormous public interest in the work of the authorities, great successes that is beginning to make in areas that it's dealing with and widespread public debate and engagement on what is being done and what should be done. In my remaining remarks this morning I'd like to cover five areas. Some comments on the state of public interest issues, the challenge and complexity of economic concentration and transformation, the case for policy coordination and integration, the need to reflect on competition in the fourth industrial revolution. And finally the urgency which need to be brought to issues of integrity corruption and collusion. I want to raise these issues some of them tentatively to stimulate discussion to receive advice and to use the collective good will of South Africans to take the enormous challenges that we face and make them a success.

So let me start with public interest considerations in competition. The past 7 or so years has seen a focus by government on the public interest consequences of mergers and acquisitions specifically on employment Small Business Development ownership by black South Africans and local industrial capability. It is not surprising in a society with so many people who are employed where poverty levels a deep many citizens feel excluded from the economy and wider inequalities threaten the social stability of our youth still young democracy. This is a fertile field for demagogues who offer simple solutions to the many who are desperate. Some commentators, lawyers and economists while acknowledging the extent of the problems of joblessness have asked whether it is the proper agreement of competition policy to deal directly with unemployment and with a strong focus on public interest issues. Of course we could cite the Constitution, we could cite the Competition Act itself. But when we started on this journey seven years ago we were regarded as somewhat out of step with conventional wisdom. But as American economists the late John Kenneth Galbraith said, the conventional view serves to protect us from the painful job of thinking. There is today a growing constituency of policymakers across the world to see value in

well thought out and transparent public interest conditions being attached to mergers and acquisitions.

Two decades ago economic goals were framed in the language of rates of economic growth with the widespread presumption that growth always automatically results in wider benefits in society. The debate was framed between those who saw growth as the solution and on the other hand those who saw development as the solution and it was a conversation of the deaf. Today we are wiser, we are in a wiser world that have to confront together with significant economic growth, deepening inequalities and social exclusion. I mean just look at the results of elections in many places in the world. So today there's a consensus, a growing consensus on the need for inclusive growth that's no longer a controversial concept, it's now economic mainstream.

The OEC convene a roundtable in June last year on public interest considerations in merger control. The discussion showed the diversity of approaches and the number of jurisdictions which do in fact have legislative or other provisions to enable public interest considerations to be taken into account during merger proceedings bringing the inclusiveness to growth. So we found in the tool box there were tools that were rusting that were decommissioned but they were available.

In the past year, that conversation about public interest is no longer about whether it's really just trying to find a sensible balance between all the interests and make sure that public interests play its appropriate role in the consideration and in the in the work of the competition authorities. Some of the more noteworthy public interest conditions relate to firms in the beverage and retail sectors. In two large beverage mergers that I referred to involving soft drink, that's Coca-Cola and beer that's SAB Miller. Significant public interest were at stake ranging from access for smaller players to that retail infrastructure of the dominant firms all the spaza shops basically the lock to the spaza shop with a tavern is the fridge. It dealt with issues of employment, challenges of employment, industrial development, empowerment and small business promotion. It required extensive engagement between government and the merger parties as well as a presentation on these issues to the regulators for the regulators to consider the appropriate balances. The mergers were approved both of these mergers and they were approved with conditions that provided inter-alia for significant and extensive employment undertakings provisions, to support small businesses particularly black emerging farmers, access to compete at the products and fridges to display cooling units owned by the large firms, SAB Miller and Coca-Cola in certain kinds of spaza shops and taverns and commitments to maintain the African headquarters of these companies in South Africa.

In the soft drink transaction, black ownership would be increased both in Coca-Cola and in a locally inspired brand appletizer, which should continue to be produced in South Africa. In the retail sector the EDCON was a subject of a deal that converted debt into equity to save a very large and important company which had struggled to retain market share under a mountain of debt. When the creditors took over as owners they agreed to measures to save jobs, expand employment as part of the commercial recovery plan and to increase local procurement of goods in their stores.

So, our act imbeds public interest issues, international consensus is growing on the value of well thought, well reasoned and transparent public interest and in our own conduct as government, as regular companies, as unions, increasingly appropriate public interest conditions are being crafted.

Secondly, a few remarks about economic concentration and the challenges of transformation in 1994 at the start of the democratic era the new incoming government identified a high levels of economic

concentration as a critical challenge. Today some twenty three years later the public discussion has returned to this issue. Many markets in the South African economy are faced with persistently high levels of economic concentration. In a number of sectors there is a mere handful of firms which account for the majority share of the market and utilize the resulting market power to heighten barriers to entry. The market inquiry into the L.P.G. sector released its report in April this year which showed levels of economic concentration in key parts of this important supply chain that produces energy for households and for industry. At the top end five refineries provided the bulk of the gas to four wholesale distributors who in turn account for more than ninety percent of the market.

In the research currently being done and concentration of ratios in the manufacturing sector as a whole, preliminary results suggest that the top five firms in the sector as a whole accounted for thirteen point seven percent of total manufacturing sales in 2011. There's not in a subsector, this is manufacturing as a whole. By had risen to 16,2%. In a three year period the data seems to show a growth of some two point five percentage points in market share or based on estimated rand value, it may be equivalent to as much as fifty four billion rand of additional sales that had market shares market ratios remained the same, would have gone to smaller firms. Think about it, that's a significant sum of money. Some of this may be due to efficiency gains or other reasons that could be enhancing overall welfare. But clearly if increase concentration has the effect of displacing smaller companies, issues of social equity must loom large to policy makers. These levels of concentration may be economically unjustified and if so should be addressed.

In addition many parts of the economy still are faced with stubbornly, racially skewed ownership profiles. The exclusion of mostly historically disadvantaged South Africans from the ability and opportunity to own productive assets must be remedied to unlock the competitive and develop and benefits of full participation by all in the economy. The effect of these two structural features of these markets is to stunt economic growth, prevent entry of new players, reduce consumer choice, limit the levels of innovation and dynamism in the economy and feed a growing resentment among black South Africans of the failure to realize the promises made by the Competition Act and the vision of the Constitution.

In some of these structural features diminish the promotion of effective competition in a number of markets and limits the inclusiveness of growth. Despite its clear objectives, the current Competition Act is primarily concerned anti-competitive effects arising from the conduct of market participants as opposed to optimizing the structure of the relevant contestable markets to achieve its purposes. In this of course, our law follows the global mainstream. Yet the debate whether competition laws should focus only on conduct or whether indeed it can and should focus on structure as policy relevance for us and is the policy choice of the ruling party. It also has an international pedigree.

Let me take a short detour to the regulatory history of the United States. In a recent conversation with Eleanor Fox, Professor Fox of NYU, she recalled efforts in the United States from at least the 1950s and 1960s to address the challenges of structure or what some have called no fault monopoly. From the mid-1970s, two U.S. Senators Hart and Kennedy each introduced bills to deconcentrate ownership in the American economy. In 1978, President Carter appointed the National Commission for the review of anti-trust laws and procedures which began to look at structure as the challenge.

I am advised that a combination of increasing foreign competition in the US domestic market, the triumph of the Chicago school and the policies of the Reagan administration abruptly entered those initiatives. Given South Africa's challenges with economic concentration and social exclusion, that potent mix, it's time for

us again to stretch the envelope of thinking as we have done with public interest criteria in our law and jurisprudence and come up with practical and workable approaches to address high levels of concentration in the economy. It will be done, clearly there's a political constituency for it. And from where I stand, it seems to me to be better that it be done through the trusted and predictable processes of competition regulation and its sound institutions than that it be left to laws that simply mandate the breakup of companies irrespective of the economic logic thereof.

In May this year we advised the parliament of our intention to propose amendments to the Competition Act to enable more effective measures to be taken against these features of market structure. These amendments will seek to amplify and complement the measures already available to address all forms of anti-competitive conduct. The key set of amendments that we're looking at will require the consideration of the concentration ownership profile and structural impediments to entry or expansion in the market when that market is defined and assessed by the competition authorities in mergers or anti-competitive conduct in that market is scrutinized in complains referred to the competition tribunal for determination.

In addition the competition authorities must be empowered to consider these questions proactively or at the request of key stakeholders including parties who are demonstrably unable to overcome these barriers entrenched in their relevant markets. Markets plagued by over concentration in untransformed ownership will need to be identified, investigated and appropriate measures applied to remedy these market features. Such inquiries and in any agreement is that the result will target the primary structural impediments to market entry and ownership including black South Africans.

We are looking at the proposed amendments to potentially seek to incentivize firms to develop relationships and adopt strategies all to market structure, reduce concentration by encouraging entry to historically disadvantaged South Africans particularly those who are on small and medium sized enterprises, reduced barriers to entry and expand ownership to ensure that more enjoy substantive economics citizenship. So, it is a partnership element. Not all of it is the finger of the regulator only.

The proposed amendments seek to further the objectives of competition policy as reflected particularly in the preamble and section two of the Competition Act and bolsters the remedial tools available to the competition authorities to ensure the fulfilment of these objectives. I've set up an advisory panel to develop draft amendments for consideration by the Ministry, which will inform proposals we will submit for broader consultation with key stakeholders in the public and of course consideration by Cabinet.

The panel members are advocate Michelle Le Roux who is a practicing advocate at the Johannesburg bar, Miss Doris Tsepe who is a partner at a Johannesburg based law firm, Mr Liberty Ncube, Chief economist of the Competition Commission and Professor Imran Velodea, the dean of the faculty of Commerce, Law and Management at Wits University who moonlights as a member of the tribunal.

I acknowledge that competition law on its own cannot address issues of economic concentration clearly. A wider set of industrial policy measures including policy public procurement policies were left to play a key role. But there a role for competition law and I welcome your thoughts and your proposals and your ideas on that role. Next I wish to highlight a case for an integrated approach to economic policy in which competition policy plays an important role as part of a wider toolbox of measures that society can utilize to achieve public objectives.

An integrated approach which enables the public authorities to ensure that national economic goals and the constitutional vision of an inclusive society are achieved through the application of laws, the use of fiscal and industrial measures and the building of broad partnerships in the society. In the matter involving [inaudible], two sets of regulators, trade and competition and to ministries were involved in addressing issues relating to the company.

The complexity of addressing on the one hand, historical breaches of the Competition Act as well as under investment in the steel mills; new pressures on the companies has resulted in the clout of steel in global markets and the rising imports of steel into South Africa particularly from China required innovative approaches. All of these pressures seem to pull us in different directions.

The final settlement with the company included the one point five billion rand penalty, a price cap on flat steel products. So we developed a formula that would bind the company for a five year period and that ensures that what is essentially an upstream monopoly is curtailed in the extent into which it can pass prices down the value chain. The agreement, the settlement included the voidance in retrenchment and a four point R6 billion commitment for new investments in capital spending to improve the dynamic competitiveness of the company. Government liaise with the company and the two sets of regulators, competition and trade each will in turn liaise with the company to enable this comprehensive settlement of issues. Subsequently we used about R90 million just over R90 million of the penalty as seed funding to establish a steel industry competitiveness fund with the Industrial Development Corporation topping this up to create a new R1,5 billion fund aimed at smaller companies in the steel industry.

The DTI in turn designated steel as a product that government entered you should only purchase from local manufacturers and the trade regulator recommended an increase in the duties on foreign steel. Of course while the global glut of steel continues to place enormous measures on the sector, these measures helped for now to prevent a complete collapse of primary steelmaking in South Africa during a period when tens of thousands of workers were laid off and large numbers of steel mills closed in other countries elsewhere in the world. What this example shows is that a range of public instruments embracing competition trade procurement industrial funding each in their own legislative boxes and deriving the legal authority from acts of parliament that can be wielded in which taken together can help to achieve said national goals.

Next I'd like to make a few remarks on the new economy and competition. Last year the competition conference, I spoke in some length about the fourth industrial revolution and how profoundly it will reshape, disrupt, transform economies and societies. One of the pioneer technologists of industry four point zero as it is called are today's big data, the search engines with complex algorithms and social media that are the modern utilities playing the role today akin to what water in energy utilities did a century ago. They characterized unlike the older utilities by the ease, the speed and the low cost of transfer of product across national borders, the high level of market share of some of the technologies and the enormous lobbying power that they can bring to bear on public opinion on the regulators and on policy makers.

When one reviews the practices of some of the companies, it is clear that reports of the death of abuse of dominance with the shift from the old oil and steel economy has been vastly exaggerated. The recent two point seven billion US dollar fine that the European Commission imposed on Google for abusing its dominance of the search engine market in building an online shopping service will be an interesting test of the reach of the regulators in the new economy. The tension between intellectual property and

competition policy will be a significant part of the policy debate in this new economy and it may well be that the weight given to protection of intellectual property in global regulatory systems will need to be rebalanced.

For developing countries like South Africa the challenges of the fourth industrial revolution include some very basic ones like the cost of an access to data that will fuel the new economy. And also the question of the power dynamic between regulators in small jurisdictions; the South African competition authorities when faced with a large multinational enterprises, frankly we don't have the fire power war of the European Commission in dealing with Google.

But coming back to the issue of data costs, in May this year I requested the Competition Commission to initiate a market inquiry into high data costs. The inquiry will benchmark South African data costs against international norms and assess the state of competition in the market by looking at among others, market structure, the current regulatory regime, strategic behaviour by large fixed and mobile incumbents, the costs faced and the profits earned by the telecom operators, current arrangements for sharing of network infrastructure, investment levels, access to an allocation of spectrum and measures to promote entry of black South Africans into the sector. It will make recommendations to government on measures to improve competitiveness in the sector and how data costs can be brought down and it's not just responding to the very strong call and legitimate call of young people for data to fall, data costs to fall. It's also recognizing that data will be a driver of many of the innovations that will see in the twenty first century economies and high costs will limit South Africa's ability to play in this field and to develop advantage here.

Finally, I want to turn to the issue of addressing the corruption collusion nexus. Neither corruption in the public sector with its private sectors counter parties nor collusion between large firms are victimless crimes. Corruption takes resources away from housing, jobs, social grants, education and health facilities. Collusion increases the cost of doing business, it stunts the dynamism and competitiveness that is needed and it has a negative impact on growth in jobs. A World Bank study on competition in South Africa noted the following and I quote, 'in the case of four cartels in maize, wheat, poultry and pharmaceuticals; products which make up fifteen point six percent of the consumption basket of the poorest ten percent. Conservative estimates indicate that around two hundred thousand people stood to be lifted above the poverty line by tackling cartel over charges.

We recently began doing work to quantify the cost of corruption in the public sector. And we base the initial work on just a ten percent increase in the price of infrastructure as a result of corruption. So we took one narrow part infrastructure, not all of what the state does and we benchmark at only a ten percent additional cost.

Based on our modelling it leads to at least twenty seven billion rand foregone annually foregone in GDP and the loss of 76 000 jobs that would otherwise have been created. So corruption is not an issue that is only an ethical issue, it's also a profound issue of delivery of growth of services to the poor. There are some troubling matters to address in looking at corruption and the collusion therewith by professional firms from auditors to his two lawyers and others.

The culture of rampant acquisition is spreading so widely that the professional standards of integrity that is a wall mark of functioning institutions is under enormous pressure. Companies suspect that their competitors turn a blind eye and give an easy audit. And in order to lend the job they compete by seeking to lower this standards too. One of the outcomes of this is a fraying of the social compact that all societies need and unless we act with resolution, we will not build a society that achieves the vision of the Constitution. There are things we can do, practical

things while the wide the battle to ensure integrity the public and private sectors is pursued.

One of the provisions in the construction settlement agreement that I referred to earlier is an integrity commitment that we are each of these seven CEO's of the large companies to sign publicly in front of the media and I want to briefly quote what that integrity commitment says. It says, 'I name in my capacity as CEO of company X. Do hereby declare and confirm that one, I will conduct business and will do everything in my power to ensure that my company and all of its associated companies in the group conducts business in South Africa in accordance with sound legal and ethical practice. Two, I will not be involved and will do everything in my power to ensure that no one in my group is involved in any kind of bribery, corruption, collusion or unfair means of furthering our business interests. Three, I will do everything in my power to instil a culture of integrity, honesty and transparency in the group consistent with this declaration.

Four, I will develop and actively promote codes of conduct imposing ethical and legal standards on all personnel in the group that aligned with international best practice for the construction industry and impose appropriate penalties on those who don't comply and five, I will use my best efforts and take firm steps in line with and pursuant to my executive management authority to expose, to confront, to eradicate and to prevent collusion and corruption in the construction industry and in all the construction industries dealings with public entities, private sector institutions and with each other.

Now yes, a declaration is a declaration. But when people make this public commitment as we need to get more businesses to

make as we need to get need to get more civil servants and political representatives to make the oath of office that we take to protect, promote the values of the Constitution are powerful. And then we need to hold people to account for those commitments that they have made.

To strengthen the competition authorities we need to invest in deep knowledge and create the culture in which the brightest young South Africans come to work at the commission and make themselves available for the tribunal. I will be publishing the revised filing fees for mergers and acquisitions to improve the resources available to the competition authorities and we have been increasing the fiscal location. Finally, I want to congratulate the commission for the conclusion of its MOU with the fair trade authorities in Seychelles. Last year the conference was held in Cape Town.

This year it is here at GIBS. I think there will be a wide support for the next annual conference to be held in Seychelles. Thank you and that's cool customer feedback that clapping the commissioner. I wish you well with the conference and regret that I would not be able to join you tomorrow it being the Eid celebration. But I will look forward to hearing what has been some of the great outcomes that we look forward to from the deliberations. Thank you very much.

Thank you Minister for those stimulating and very enriching words. I will not waste any more time. We will now conclude this session. What this means is that you will have ten minutes for tea. Am I right, Norman? Yes, ten minutes for tea. We will come back here for you plenary on big data algorithm collusions. I think we will begin with a lecture from Professor, I hope you brought your book. Thank you very much.



# Tembinkosi Bonakele

## Competition Commission

### WELCOME REMARKS



Deputy Commissioner who is the chair of the session. Honourable Minister of Economic Development, Chairperson of the Tribunal, Dean of the Gordon Institute of Science and our host today. Guest speakers, panellists and Chairpersons of panels, esteemed guests, colleagues, ladies and gentlemen it is my pleasure and privilege to welcome you all to this 11th Competition Law, Economics and Policy Conference.

On the 18th of August 2017, the Competition Commission and the South African Competition Law Fraternity in general learnt with great sadness of the untimely passing off Xolela Nokele after a long and brave battle with cancer. Xolela diligently served the Commission's mergers and acquisition division since 2008 and was well liked and respected by colleagues and Law and Competition Law practitioners who interacted with him. He was one of our best merger analysts and even towards his death, inspired us to start an excessive pricing investigation on cancer drugs case which we dedicate to him. I'd like to extend my deepest sympathies to his family and all of those who were close to him.

On behalf of the Commission and Xolela's family, I would like also to thank that practitioners and colleagues who provided their condolences and support during these trying times. As we officially open today's proceedings, I would ask that we all stand and observe a moment of silence in Xolela's memory. Thank you. As the month of Ramadan ends and in anticipation of Eid celebrations tomorrow we wish all our Muslim brothers an Eid Mubarak. This conference is in collaboration with our partners, the Competition Tribunal and the Gordon Institute of Science of the University of Pretoria and I would like to thank them for this great collaboration. In particular, I would like to commend Professor Nicola Kleyn for her foresight and responsiveness and I am delighted that we have managed turn her it seems.

When we last held a conference at GIBS two years ago, I made a call for business schools such as GIBS competitions regulation as a course or a component of a course to its M.B.A. students. I'm excited that since then we have struck partnership with keeps provides us with a platform to conduct advocacy with business executives and plans are full to introduce a more formal academic course in this area. I have made similar call to other business schools and I hope that they too will join in our endeavours to conscientize future business leaders about competition policy.

We would like to extend our word of welcome to the competition authorities from various parts of the world including BRICS and the continent of Africa as well as international agencies such as

the O.E.C.D. and thank them for gracing our conference. We are delighted that this morning we will be signing a memorandum of understanding with the Fair Trading Commission of Seychelles. Minister, various workshops were held. Leading up to today. On Tuesday the Commission and the National Treasury held a workshop to discuss and debate the intersection between Competition Trade and Industrial Development policies in the role of pro-competitive sector regulation as well as policy formulation in fostering competition in markets.

Various government technocrats and policy experts attended this workshop. The workshop specifically focused on concentration and barriers to entry state owned enterprises and structural transformation. Yesterday the commission and the Competition and Regulation European Summer School better known as CRESSE held a joint workshop bringing leading academics and practitioners to discuss various topics. This year we covered topics such as forensic economics, information exchange and cartels criminalization. I thank CRESSE for this collaboration and all the experts who spoke yesterday.

This has been a very busy year for the Commission in all areas of its mandate. Over the past few years there's been a sharp increase in the number of cartel investigations and prosecutions. As of yesterday the role of cases within the cartels divisions stood at 177 cases, 84 of which are prosecutions before the tribunal and the remaining 93 are under investigations. We initiated 33 investigations and referred 3 abuse of dominance cases to the tribunal for adjudication. The number of notified mergers continue to increase.

Only this year we referred 33 cases to the tribunal, cartel cases to the tribunal for adjudication. Including the case against banks for collusion of the US dollar-rand currency pair. We look forward to receiving answering papers from the bank so that the matter can proceed to trial. Another worthy a mention was the referral of Stuttafords van lines of 649 counts of collusive tendering for office furniture removal tenders issued by various government departments and institutions. This is the highest number of charges of collusion faced by any single firm in the history of our jurisprudence.

The cartels Division also conducted dawn raids against fresh produce agents, red meat supplier and fire control and protection services sectors. Their fire hydrant case the Commission simultaneously raiding 25 premises, breaking yet another record. We referred a case against Afromart for charging excessive pricing for the supply of [inaudible]. An input to manufacture in the manufacturing of clinker pricks. These bricks are used in construction of low cost

houses or as we call them in South Africa RDP houses. There was a referral against Westgro H.Z.P.C. for abusing their dominance in the supply of model seed potatoes by entering into an exclusive agreement whose effect prevented other potato seed growers from competing with the Westgro in the production and sale of more model seed potato variety.

More recently, the Commission initiated an abuse of dominance including excessive pricing for the supply of various cancer drugs. On the matter's front, the highlight were the SAB Miller and [inaudible] South Africa and [inaudible] resources mergers. A.B. raised a number of competition and public interest issues which were dressed by a comprehensive competition and public interest conditions covering potential for closer cross border shareholding employment and development of local supply capabilities and SMME growth in beer production or the beer value chain. The [inaudible] was a straightforward 221 merger of [inaudible] in South Africa and a near monopoly globally. [inaudible] is used locally and internationally in amongst others the production of steel. The Competition Appeal Court confirmed this prohibition.

During yesterday's workshop we discussed some precedents certain cases regarding the initiation of investigations and processes regarding access to the commission's record by litigants and I will not repeat those presentations here. Except perhaps for the two significant cases involving cartels. In Competition Commission versus Deloitte investments and others, the competition court ruled that a [inaudible] firm could be held liable for an administrative penalty levied against its subsidiary under certain circumstances.

In the bicycles cartel case, the court ruled that this silent participation by firms collusive industry meetings attracts liability in the absence of proactive steps to distance oneself from the cartel agreement reached at such meetings. The commission concluded the L.P.G. market inquiry in March 2017 and made recommendations largely about opening up markets and aligning the regulatory framework. The Minister has committed government to implementing these recommendations. The market inquiries into the private health care and retail grocery are expected to be completed this financial year. In addition, we have initiated market inquiries to public transport and data costs. The latter following the request by the Minister.

The annual conference presents an opportunity to reflect on all of these developments as well as contemplate what the future holds. Accordingly, the theme of this year's annual conference; The Future of Competition Policy in South Africa will allow us to reflect on the role Competition policy should play within a developmental context. As we have said before competition policy and execution in developing countries, for its own legitimacy must respond to local challenges of inequality, unemployment and poverty.

The South African economy is one of the most concentrated in the world. According to the commission's concentration study at least seventy percent of our economic sectors are dominated by three to four large firms commanding average market shares of between forty-six and sixty-seven percent. A key strategic role for competition authority operating in this environment is to lower barriers to entry and promote market access.

Barriers to entry in South Africa have manifested themselves in market conducts or firm behaviour which may be abuse of dominance or cartels aimed at amongst other things preventing entry or excluding competitors. The strategic behaviour we have observed by firms to increase barriers to entry include large companies combining abuse of dominance with cartel conduct forming exclusionary export clubs and engaging in various forms of exclusionary conduct. Examples of these include rebates and price discrimination in favour of larger buyers with destructive anti-competitive effects.

We have also seen strategic use of supply contracts that favour particular incumbents and exclude SMMEs and smaller firms. Perhaps the worst of these has been the outright cartels which include market allocation masquerading as genuine market segmentation. Regulatory barriers include the quantitative restrictions on the number of participants through licensing, resulting in insurmountable first mover advantages.

Subsequent licensing of new players are often not accompanied by appropriate regulations to level the playing field. This is particularly rife in the telecommunications and financial services sectors. Procurement rules have also favoured out large incumbents as they promote a winner takes all outcome largely on price which large firms are able to achieve due to economies of scale advantages. Often the so-called lowest price is in any event misleading because of the prevalent cost escalation that the award of tenders.

The infrastructure bill program has also tended to favour large firms over SMMEs. State owned enterprises who often have monopolies over infrastructure prefer to do business with large firms. One of the commissions' abuse of dominance cases against Transnet a port and rail monopoly that has been accused of excessive pricing and discrimination in favour of large firms.

Another aspect of regulation that is a problem is that of standards. And we have observed here that standard authorities have largely surrendered the role of formulation of standards to incumbents. In this regard we have engaged with the South African Bureau of Standards which has acknowledged this. We have entered into a memorandum of understanding with the SABS with the aim of cooperating in tackling these issues.

We are also currently investigating some of the industry associations that have usurped the authority of the standard authorities. Clearly there is a need to look at the effectiveness of the Competition Act and we welcome the review by the Minister focusing on addressing concentration issues. In addition, we think that there should be a clear competition policy on state owned enterprises. The policy must address amongst other things transparency in pricing, cross subsidisation and bailouts.

On market conduct, market competition authorities must continue with rigorous enforcement focusing on sectors most crucial for consumers especially the poor and economic growth. We need smarter regulation aimed at promoting rivalry and sustenance sustainability of entry in markets. The commission will step up its advocacy efforts including assessing the effectiveness of regulation in regulation sectors and make appropriate recommendations. The commission will continue working with our counterparts within SADC and the continent as the Chair of the African Competition Forum to strengthen Competition policy and enforcement in our region. In this regard we are working very hard to operationalize SADC's working groups on cartels and mergers.

In November BRICS will hold its competition Authority by annual conference in Brazil where we will review our progress in deepening cooperation and promoting developmental perspectives on Competition policy. The conference will amongst other things take a resolution to establish a brief Competition Centre that will help coordinate our work. Locally we are working very hard to develop skills and research in the area of Competition Law and Economics true collaboration with various Universities. The commission remains a respected member of the global competition community and was ranked seventh out of 138 countries for the effectiveness of its competition policy. For this I think all of our staff for all their hard work and you Minister for your support and guidance. I also would like to thank the practitioners who try very hard to make our lives difficult because they only make us better.

## YEAR IN REVIEW



Good morning all, I would like to join the Liberty in welcoming all of you, to this workshop which has become one of the defining features of our annual conference, it's quite a big workshop and I know that you have various expectations of it, so let me first manage those expectations.

Really we try to bring, technical people for this session, yesterday, we had a very good session which Liberty and the rest of my colleagues Deputy Commissioner Hardin attended with treasury, where we were dealing with policy issues pertaining to concentration, so Government Departments where here National Treasury was here and b all accounts that was a very nice discussion at Macro issues and the role of competition policies in addressing some of the intriguing questions about concentration and its consequences on the economy.

Today we want to take it a little bit further down, looking at how we are doing as a competition community. In terms of the issues we have handled in the past year and focusing on the cases rarely because that is the guide and the measure of how far we have gone.

So I am sure we will come back to the theme of policy issues tomorrow, because we have a politician tomorrow coming so we have to discuss policy issues in the opening session when Minister Patel will be addressing us. And then we have a Deputy President coming Friday morning and I am sure it is going to be a session filled with a lot of policy issues.

I am saying to you, if you have come for policy issues, you might have to take a lot of coffee in order to be able to sustain yourself for this session because we want to be a little bit technical.

We have economists we have lawyers and just about everyone concerned about the competition regulatory process, it's a very hard area that we spoke about because if I talk about cases there is at least about 30% of our work that is directly not case related a lot of advocacy work and even market enquiries are not part of this.

So there is a lot that we cover. I am hoping that in the course of the two days we will have covered such things, we also have a strange system which makes it hard for anybody to be an expert, here we have economists who are experts in tier field, we have lawyers who are experts in their field and I come from a legal background so we tend to be disciplined and the cost of that we tend to be a little bit narrow minded, so it's nice to work with economists who tend to be very broad minded, but lack discipline, so it's hard to manage the two.

Let me go straight to the presentation because I don't have time and I don't want to eat up on expert's time. But we thought that this time we bring local context to all the presentations, just so that everyone knows where we are, what sort of issues and challenges we are dealing with.

I just think it will help everybody including the experts themselves as they present they will know exactly the kinds of issues; we have to deal with.

So the first thing I wanted to talk about it doesn't really need a slide is we have had a very busy year, it has become clear over the past couple of years that with the increase in the number of cartel cases being investigated and prosecuted. That our tribunal roll is very long and even the Competition Court has been very busy, if I give you an idea I mean, we have a court roll currently of more than 80 Cartel cases, I always have to confirm these numbers with the tribunal, because they sometimes have a higher number than us, which is rarely a function of whether you count, a Respondent facing a case as a case itself or group these, but I think a good figure to keep in mind, so we have about 84 cartels and a couple of other cases we have 5 abuse of dominance cases on the roll and a couple of issues pertain to mergers that are being challenged and higher implementation.

So that takes that roll to more than a 100 cases, I don't know how the tribunal is going to find dates on all of these because, these are

cases that must be heard on substantive issues, this excludes all sorts of legal skirmishes around procedures and Pre-trial litigation that often occurs in these matters.

Fortunately, not all cartels ever get to be heard on the merits a lot of them get settled, but having said that settlements are fewer once the referral to the tribunal has occurred. So settlements are much more helpful in reducing the number of investigations, rather than the number of prosecutions. There are cases that are settled before the tribunal after we have referred but those are far few.

And personally I never understood this actually of settling after the referral, because you do so after you have seen the case against you so everybody has seen the case against you.

Whether its people who want to claim damages or people who want to embarrass you if you are a CEO a board that wants to fire you, but anyway this trend seems to be continuing.

But what I am trying to say today is just, we all coming today, from very different angles and different levels and the cases we have seen this year, kind of take us back to basics on mergers we going to talk a little bit about that, on the complaints how does a case actually start and progress in the competition system and I think there have been very good clarity coming from both the courts and the tribunal on these processes.

So the first thing that eer, we have had to battle with it for some time now. Has been exactly how does a case start at the competition authorities. What are the obligations of the competition authority, when a case starts, you will recall that in the beginning, other people were suggesting that, if you are investigating me you must tell me, of course there were all sorts of problems with that because if we going to raid you, we don't want to tell you?

So that got clarified in a few cases including some supreme court of appeal cases that confirmed that in fact that the commission can start an investigation and doesn't need to announce it, and it doesn't even need a document that suggests that a case has been started.

This doesn't mean that we are out of all the legal problems, when starting investigations because there is issues around prescription, if there is less formality on how you start an investigation.

There are questions of how do you know if the matter has been prescribed, because we must commence the investigations, within three years after the code of conduct has ceased.

So the question that arises on potentially on review is well you must tell me when you started the investigation so that can know if the matter has prescribed or not.

Here I will draw your attention to firstly on these matters is how wide an initiation could be, which again I think provides very good clarity and that's the power construction case that went to the CAC and the CAC had to determine whether an industry wide initiation, which was based on evidence of pervasive collusion in the construction industry was valid in relation into a firm, which has not been expressly mentioned in the initiation statement, by considering principles in woodlands and yaa.

As I have indicated you will recall that in woodlands the SCA helped that initiation statement, be grounded on a reasonable suspicion against the firm, but it also said that, the commission, may tacitly initiate a complaint and that an initiation of a complaint is not required to be in writing as I indicated.

CAC held that there was a valid initiation against Power construction even though it was not expressly sited in the initiation statement, and they held that account must be held on the fact that when the commission initiated it mentioned the firms/ listed the firms that it was going to be investigating but left the list open ended by adding the words that "investigation would include other firms" including joint ventures in the construction industry.

And so there seems to be an acceptance that, even if there are documents, there doesn't need to be documents if there are document listing firms that are being investigated, you don't have to be a part of that list to be considered to be under investigation, the evidence and all the other factors must be taken into account and in this case just to illustrate, this is where in the construction cases we looked at the industry and realised that there was a general problem we listed those, we could list, new where in the industry and therefore could have been part of the cartel and we invited everybody to come and disclose as part of the settlement process what they had done.

So power construction disposed but they said unfortunately everything we have disclosed has prescribed, unfortunately for you but fortunately for us. But we found that in fact that there were certain things that they hadn't disclosed and there were some disputes about it.

Where prescription exactly occurs, I will confirm that prescription must be looked at from the date of the last implementation of the cartel conduct, so not just the date of the agreement but actual execution of the agreement is relevant and so this s one of the cases that sort of widens the scope for initiations.

The second procedural issues which I think, is quite important and I think this case is very important because of in light of all the issues now we have around access to a file, once it has initiated a case so we have a case where group 5 again emanating from the construction cases.

Group 5 brought an application to compel Commission to produce the record of its investigation, this is in terms of the high court rules and in terms of rule 15 of the commission rules, I won't take too much time on this but, I think it's a very important issue for practitioners to follow particularly those involved in enforcement matters we have had a situation where there is potentially contradictions between the Competition Tribunal Rules and sort of a general rule for disclosure of documents that are held by public institutions.

I think emanating from the constitution that general enhancement of transparency of south African institutions, anybody member of the public can ask for documents from the authorities, pertaining to a particular matter. But in terms of the high court rules, the disclosure is limited to documents that are aired in the court papers themselves. In other words, in our papers.

So, the pleadings these are the documents that our litigants are entitled to, so I think the big thing that has been facing both tribunal and CAC has been whether a respondent can be treated as a member an ordinary member of the public and therefore be entitled to, and I am glad to respond to many who represent respondents that, that matter settled that Respondents are entitled to disclosure of the record of the commission, in other words as long as those are not privileged documents or documents that are confidential from a litigation point of view.

However, what the court held which is not different from what the tribunal found is that a litigant cannot be helped by these disclosure requirements or may or may not be helped by the disclosure requirements because the timing of disclosure is very different.

In terms of the litigation rules, the timing for disclosure is regulated and clear but for the rest, disclosure to the rest of the public that disclosure is not strictly regulated from a timing point of view. And it seems that there is always going to be tension about when does the commission apply with the general disclosure requirement with any member of the public and requirements to disclose as part of the litigation process.

Because obviously I think the litigant who gets disclosure, in terms of the general whose applicable to the member of the public, will be in an advantageous position because they can always use those documents, in the litigation process. But, it seems clear from the group 5 decision that one has to treat these two disclosure requirements as being discreet or different processes that should not be conflicted.

So in other words seeking disclosure as a member of the public don't conflate that with the commissions obligations as a litigant and maybe let me not say much on this because I am sure there would be further litigation on this for reasons I don't understand because I believe there is now fairly, fairly clear. So I am going to jump that because we are running out of time.

But it is on my slides and I think I have explained the principle, because I want to spend a bit of time on this.

Aah this is really not working for me guys so if you can see what to do with it. I can't move this backwards and forwards it seems to be stuck.

The case I wanted to spend a little bit of time on was cartels is the bicycles case. For those who are not familiar with the bicycles case in South Africa we had a strange situation where the bicycle supplier, most of all of our bicycles are imported and it seems that 2008 was a perfect storm factor because we had a currency depreciation issues and there was a 15% tariff on bicycle imports and there was a lot of pressure in the margins.

And so somebody exactly at that time had a good idea that the bicycle wholesaler and retailers needed to get together in an association to deal with matters of common interest, because common interests could have included lobbying of the removal of the tariff. But it was very clear that there was a strong contingent of people that wanted to address this issue of margins head on and so there were a couple of meetings.

The meetings seem to have been driven by retailers and he cajoled pressured and encouraged wholesalers to be part of the arrangement, because the wholesalers had an instrument and that was the recommended retail price through which they could coordinate around increasing prices and improving their margins, so the case at hand involved two wholesalers who said we attended the meeting we never said a word at the meeting, we implemented the decision that was made at the meeting coincidentally and it was not the decision of the meeting we were implementing.

It was our own decision because one of them said a representative was sent to the meeting didn't have authority to determine pricing, but anyway our conduct was consistent with what was agreed in the meeting only as a matter of coincidence. There was no dispute about what was discussed in the meeting in fact it was very clear.

Let me just, I just want to refer you because my slides I am just not sure, I just want to refer you very briefly to the agenda of the meeting, because I think it clarifies this point. So, the meeting agenda included a proposed new mark up, bicycles 50% accessories 75% proposed date to start increased margin 1 October 2008.

A) why not now B) everyone needs to start simultaneously 5 benefits to everyone A) wholesalers, stronger retailer's better payments better cash flow, improved shops better presentation of products. Retailers won't need to wholesale to make a profit.

B) retailers more profit means stable business less shops closing down and less stock bumping.

6) issues to address discount mentality in cycling industry B) price fixing concerns c) importance of everyone's by inns.

So it was very clear what the intention of this meeting was. But as I say the wholesalers stayed, so the court affirmed the decision of the tribunal which was also concerned with the commissioner's position that few participate in a cartel. There is a duty to disclose either publicly or to the competition authorities, disclose and distance yourself from the decisions of the cartel.

There were one or two retailers who tried to disclose who tried to get away from it belatedly, but somebody in their wisdom decided to take the minutes of the meeting and post them on a social media site, so I think one of them was horrified and started placing on record that we were in the meeting reluctantly and we encourage competition between us retailers and amongst us wholesalers.

But anyway I think that, that point is now one of those, I think we can consider settled.

Then there was a case on, "where is Bakhe now?" "do you want to talk about this"? There was a case on administrative penalties, in terms of who is a fan who could be liable?

Bakhe is going to talk about that, he knows this better than I do. You will say when you are ready

# SA, SEYCHELLES COMPETITION AGENCIES JOIN FORCES AGAINST COLLUSION

The Competition Commission has signed a Memorandum of Understanding (MoU) with the Fair Trading Commission of the Republic of Seychelles today, Thursday, 31 August 2017.

## The MoU involves the following:

- The exchange of experiences regarding the practical investigation and enforcement of competition law;
- The exchange of experiences in respect of competition law advocacy initiatives;
- The exchange of experiences and views on substantive competition policy issues;
- The exchange of experiences on operational efficiency and best practices;
- The exchange of non-confidential information; and
- The exchange of staff for the purpose of improving skills.

The signing has taken place on the sidelines of the 11th Annual Competition Law, Economics and Policy Conference which is hosting both local and international competition experts.

“The agreement reiterates that fostering cooperation among competition authorities is an integral part of effective competition enforcement, given the increasingly global nature of anti-competitive conduct. The signing of the MoU with the Seychelles is also part of the Commission’s ongoing commitment to strengthen competition enforcement in the African continent, particularly in the fight against cross-border cartel activity,” said Competition Commissioner, Tembinkosi Bonakele.



Mr Francis Lebon, CEO of the Fair Trading Commission of the Republic of Seychelles and South Africa’s Competition Commissioner, Tembinkosi Bonakele at the signing of the MoU.

# 11th Annual Competition Law, Economics & Policy Conference

## REPORT

The 11th Annual Competition Law, Policy and Economics Conference (the Conference) yielded positive and detailed news coverage across all news media platforms (print, broadcast and online). At least 250 individual news items, relating to the event itself and content emanating from it, were recorded. The Conference was well attended by journalists representing various news organisations in the mainstream South African media.

News reports were also recorded beyond the country's borders as a result of local media filing news stories for Reuters and other wire services such as African News Agency (ANA). Widespread news coverage of the Commission and its activities increased the overall visibility of the Commission, its work and successes beyond the walls of the Conference venue.

Pre-event coverage was bolstered through a media breakfast hosted at the venue on Wednesday, 30 August 2017. The event included a Commission-initiated interview session with Commissioner Tembinkosi Bonakele and Deputy Commissioner, Hardin Ratshisusu, followed by a Q&A session with the media and individual one-on-one interviews. A wide variety of topics were covered, ranging from current high profile cases and competition policy issues to market concentration and the upcoming Conference itself.

Keynote addresses delivered by the Economic Development Minister, Ebrahim Patel, and the Deputy President, Cyril Ramaphosa, on 31 August and 1 September respectively, contributed significantly to media interest and coverage of the event.

Coverage also included live broadcasts by Power FM and SABC News as well as live streaming via the Commission's Youtube channel. Social media updates included photo highlights, latest media releases and content emanating from the Conference.



Publication: Pretoria News (Saturday)  
Date: Saturday, September 02, 2017  
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### Cyril lashes cartels, price-fixing practices

DEPUTY President Cyril Ramaphosa yesterday warned against cartels, saying price-fixing hampered development, reduced job opportunities and caused unfair hikes in prices of goods.

"When organised cartels steal from public resources and unsuspecting consumers, they break trust, undermine social cohesion and destroy lives," Ramaphosa said, speaking at the 11th annual competition law, economics and policy conference at the Gordon Institute of Business Science.

"When corporate greed gives rise to price-fixing, market distortions and collusive tendering, governments and citizens alike become poorer. This is not only unfair: it is also unsustainable."

Gauteng Premier David Makhura, Minister of Economic Development, Ebrahim Patel, and Competition Commission head Tembinkosi Bonakele were in attendance, as were other senior government officials and international guests.

Ramaphosa said the competition policy in South Africa couldn't be limited merely to the promotion of market efficiency. He said it had to be an instrument to effect fundamental economic and social change.

"From the advent of democracy, we have argued that competition policy has a greater role to play in redressing the injustices of the past," said the deputy president.

Ramaphosa, who is the leader of government business in the National Assembly, said the economy had to be open to greater ownership by a greater number of South Africans.



Deputy President Cyril Ramaphosa answered questions from MPs in the National Assembly. Picture: David Ritchie

"We said that the purpose of the act is to provide all South Africans equal opportunity to participate fairly in the national economy and to promote employment and advance the social and economic welfare of South Africans."

He said the purpose of the Competition Act was to facilitate economic transformation that was radical, inclusive and sustainable.

Ramaphosa said that as stakeholders worked together to fundamentally change the economy, they "are bound to ask whether - in substance and practice - our policies, laws and institutions sufficiently advance these objectives".

Ramaphosa said South Africa inherited a "racially skewed economy that had a few dominant players". Therefore, market dominance in the South African context referred not only to specific sectors in which significant market share had been unfairly captured and retained by a few companies, but also to the concentration of ownership and control in the hands of white South Africans, specifically white men, he said.

"Black South Africans saw for the first time excluded from exercising control over the most important economic levers.

"We must, therefore, measure the effectiveness of our competition policy by the extent to which it contributes to reducing the racial and gender dimensions of economic concentration," said Ramaphosa.

"As minister Ebrahim Patel said yesterday, our competition policies should concern themselves not only with the conduct of companies but also the structure of the market. "Where the structure of markets are found to inhibit competition, innovation, and new entrants, then we need to have appropriate policy instruments to change the structure."

The deputy president carried a story of struggling South Africans whose daily existence was dependent on affording bread.

He said the said situation was "made even more desperate" by the actions of companies that colluded to keep the price of bread artificially high. "When cartels fix the price of a necessity like bread, poor families are sometimes forced to choose between paying for school transport or staying," Ramaphosa explained.

"When the costs of telecommunications, including data, are high, small businesses can be forced to close shop or lay off personnel. When the private health care system fixes prices for life-saving drugs and overcharges for admissions, individuals and families find themselves compelled to use the already overburdened public health system."

He said in its deliberations the commission must remain alert to the indignity of poverty that affects many young South Africans. "We must refuse to be misled by it."

- ANA

<sup>1</sup> Source: Newsclip Media Monitoring (Pty) Ltd. Newsclip is the Commission's service provider for tracking and monitoring news reports, relating to the Commission, across all media platforms nationally and on the continent.

The content of news coverage around the Conference is discussed in detail the Content Analysis section of this report. It is evident from Conference (and non-Conference) related news coverage that the Commission continues to enjoy positive media sentiment. The organisation continues to be lauded for its excellent work and continues to build on its outstanding reputation as one of the country's most well-respected and best-functioning institutions.

**The media, as a mass disseminator of information, continues to be crucial for the Commission and its activities for a number of reasons:**

- Viewed traditionally as an important pillar in democratic society, the media communicates information about the Commission to consumers, industries, business, policy makers and civil society at large;
- Consistent positive media exposure enhances the Commission's reputation and the importance of its work;
- Media exposure reaches millions simultaneously, both locally and abroad;
- Sustained visibility in the media continues to build on the Commission's profile and creates a greater awareness around its work as well as competition-related issues;
- The media relays the Commission's messaging and helps explain complex concepts to wide audiences;
- The media continues, through its coverage at large, to showcase the Commission's work and successes which, in turn, continues to build awareness, public confidence and trust in the institution;
- The media can help the Commission grow public awareness and visibility around its advocacy campaigns, announcements and requests; and
- Public awareness, through the media, has led to greater public participation such as in the case of the Commission's public hearings.

The communications and media strategy, implemented by the team, succeeded in yielding widespread visibility of the Commission and its annual Conference – ultimately achieving an estimated total circulation of 124 241 3811 through news coverage alone<sup>2</sup>.

At least 81 print articles were published, over 100 broadcasts took place (including the live broadcasts from the event) and more than 70 online news articles were published in relation to the Conference and issues around Competition Law, cartels, market concentration and cooperation between competition agencies, among other topics. A final assessment indicates there was no negative publicity relating to the Conference.



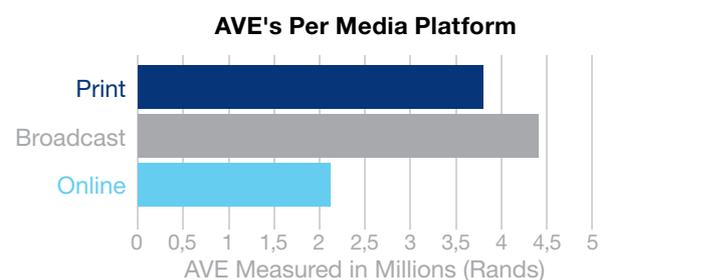
**ADVERTISING VALUE EQUIVALENCY (AVE)**

Media coverage (or news coverage) is measured through the use of Advertising Value Equivalency (AVE). AVEs are calculated by measuring the column inches (in the case of print), or seconds (in the case of broadcast media) and multiplying these figures by the respective medium's advertising rates (per inch or per second).

The resulting number is the equivalent of what you would have paid if you placed an advertisement of that size or for that time period. By assessing news/media coverage in this way, and aggregating all such calculations, a value can be assigned to the coverage received within a specified time period.

**This year's AVE values**

The 2017 annual Conference yielded an overall AVE of at least R10 384 525. Print coverage amounted to at least R3 855 310; broadcast yielded an AVE of at least R4 408 412 and online coverage was measured at a value of at least R2 120 802.



**CONTENT ANALYSIS**

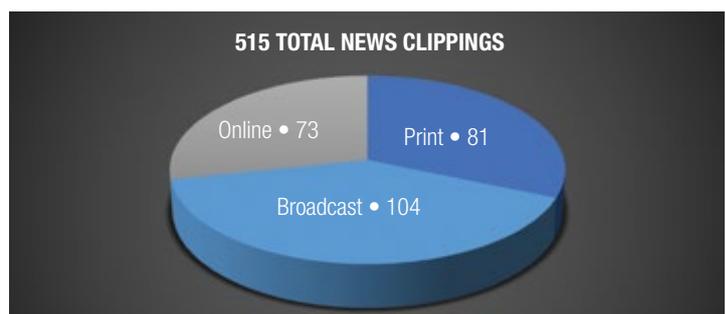
**Main Focus Areas**

The respective keynote addresses by the Economic Development Minister and the Deputy President made news headlines. The content focused on topics including data, cartels, price fixing, and strengthening the powers of the Commission.

The pre-event media breakfast also gained widespread media coverage with a particular emphasis on the Commission's probe into banks accused of fixing the Rand/Dollar exchange rate and latest developments around the matter. Content on the Commission's social media platforms included live coverage as the Conference unfolded.



**News Coverage by Numbers**



<sup>2</sup> Source: Newsclip Media Monitoring (Pty) Ltd. This figure excludes social media reach.

# CONFERENCE IN THE NEWS



**Southern African competition agencies join forces**

Competition Commission and its working group have met to discuss the possibility of a joint investigation and enforcement unit for the Southern African Development Community (SADC) region.

The meeting was held in Johannesburg on 21 September 2017. It was attended by the heads of the Competition Commission, the Competition Tribunal, the Competition Appeal Court, the Competition and Consumer Commission of Kenya, the Competition and Consumer Commission of Uganda, the Competition and Consumer Commission of Tanzania, and the Competition and Consumer Commission of Malawi.

The meeting was chaired by the Competition Commission's Deputy Director-General, Mr. Mphahlele. He welcomed the participants and highlighted the Commission's commitment to promoting competition and consumer protection in the SADC region.

The meeting also discussed the Commission's recent findings on the Telkom South Africa case, which involved an alleged cartel agreement between Telkom and its competitors to fix prices for mobile services.

## Cartels, collusion a concern as business mergers soar – competition body

South Africa will see a sharp increase in the number of cartel investigations and collusion cases in the coming year, says the Competition Commission. This is due to the fact that the number of business mergers and acquisitions is expected to rise significantly.

The Commission's Deputy Director-General, Mr. Mphahlele, said that the Commission is currently investigating several cases of cartel collusion. He noted that the Commission has received a number of complaints from businesses and consumers regarding alleged cartel activities.

Mr. Mphahlele also said that the Commission is working closely with the Competition Tribunal and the Competition Appeal Court to ensure that all cases are handled in a timely and efficient manner. He added that the Commission is also working with the Department of Trade and Industry to promote competition and consumer protection in the SADC region.

## Banks 'collude on responses'

The Competition Commission has set sights on high data costs, following the release of the 2016/17 financial year results by several banks. The Commission is concerned that the banks may be colluding to keep prices high.

The Commission's Deputy Director-General, Mr. Mphahlele, said that the Commission is currently investigating the banks' pricing practices. He noted that the Commission has received a number of complaints from consumers regarding high data costs.

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## Body concerned about the rise of cartels, collusion

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**THE FUTURE OF COMPETITION POLICY**

Key note speaker, Deputy President Cyril Ramaphosa

Key note speaker, Deputy Director-General Mphahlele

## Companies pay the price for cartel practices

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## Cartels, collusion a concern as mergers soar: competition body

South Africa will no longer do deals with banks offering to cooperate in a case into alleged rigging of the rand, the head of the Competition Commission said yesterday. He said that the Commission is currently investigating the banks' pricing practices.

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## Commission ends talks with banks

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## CRUNCHING CARTELS



Private sector cartels, collusion being cracked out

CRACKING the past few weeks has been a busy time for the members of a cartel investigation unit at the Competition Commission. The unit is currently investigating several cases of cartel collusion.

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## Corruption stifles development

SA is losing at least R27bn in corruption, says the Competition Commission. This is due to the fact that the number of business mergers and acquisitions is expected to rise significantly.

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## Blow for banks: no more deals on rand-rigging

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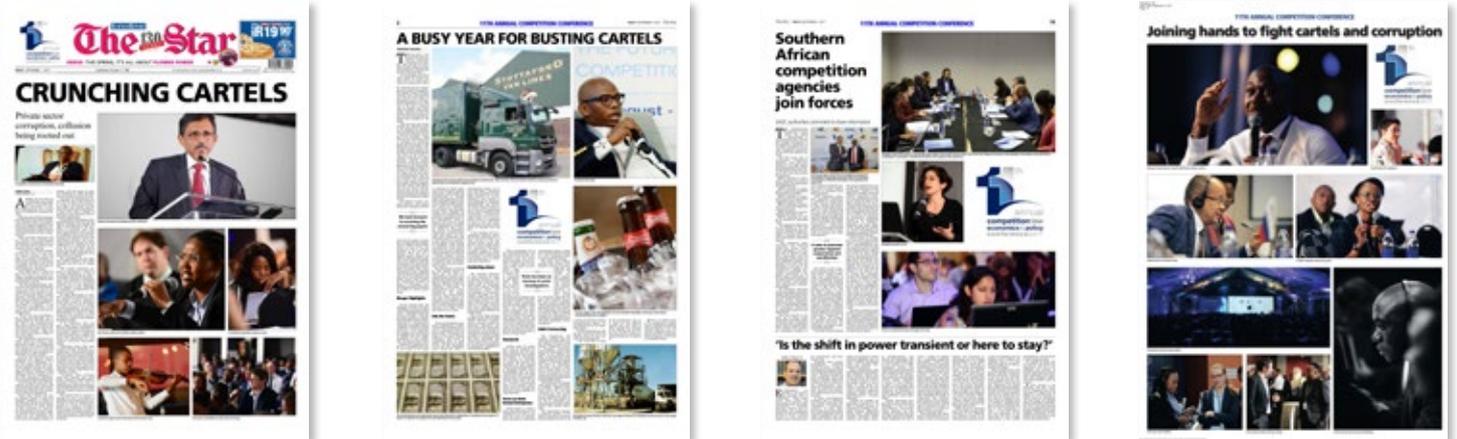
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## The Wraparound

Independent newspapers was commissioned to produce and publish a wraparound on the conference, to coincide with the last day of the proceedings. A wraparound is a high impact, engaging and creative way to grab newspaper readers' attention. It's probably one of the most effective advertising tools offered by the print media.

The newspaper wraparound was published on the morning of 1 September 2017, the last day of conference proceedings. Deputy President, Cyril Ramaphosa delivered his keynote address on the day in a packed conference venue. The wraparound featured news and photographs from the previous day's Conference proceedings. Each delegate received a newspaper copy.



## Live Broadcasts

While SABC News broadcast several live interviews on its SABC3 and DStv404 channels, Power FM was commissioned to broadcast live from the event. Seasoned journalist, Iman Rappetti presented her mid-morning talk show from the venue and interviewed several Commission officials. Radio listeners also had an opportunity to phone into the station and ask questions live on air.

The Conference was also broadcast live via the Commission's Youtube channel and regular live updates were posted across the social media platforms throughout i.e. signing of a MOU with Seychelles and keynote speeches by the Deputy President, Minister of Economic Development and the Commissioner's opening address. Coverage also included daily photo highlights.



## Courting the Media

Pre-event media coverage was secured through media advisories as well as a media breakfast hosted by the Commission on the eve of the Conference. Commissioner Tembinkosi Bonakele and Deputy Commissioner, Hardin Ratshisusu, were afforded an opportunity to engage directly with members of the media on a wide range of topics, including current cases and other issues such as market concentration and competition policy and legislation.





# MEDIA BREAKFAST IN PICTURES



# CONFERENCE IN PICTURES











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