



PROGRAMME

EIGHTEENTH ANNUAL COMPETITION LAW, ECONOMICS & POLICY CONFERENCE

DATE: 4 – 5 September 2024 | **VENUE:** @Sandton Hotel, 5 Benmore Gardens, JHB

MC: Day 1: Itumeleng Lesofe & Ofentse Motshudi

THEME: 25 YEARS OF COMPETITION ENFORCEMENT: LOOKING BACK TO LOOK FORWARD

DAY 1: 4 September 2024 Looking Back	
08h00 – 09h00	Registration
09h00 – 09h20	Opening Address & Welcomes Doris Tshepe (Commissioner: Competition Commission South Africa)
09h20 – 10h00	Keynote Address
10h00 – 11h00	PLENARY SESSION 1: National authorities in a world of regional and global dominance
Background	<i>The transnational nature of private power and business models means that global firms know no borders. Competition laws are jurisdiction specific and national authorities respond to the exercise of global private power within the confines of their domestic laws. However, the evolution of the global economy to one with globally powerful firms in technology sectors particularly, but even in agricultural trade, has challenged the national approach, resulting in moves to greater coordination within the confines of national jurisdiction. Global companies have also sought in cases global remedies to multi-jurisdictional litigation. The failure of national oversight to prevent globally powerful firms has also brought into question whether a narrow view of the domestic market effects remains appropriate for global merger control. The Competition Protocol under the AfCFTA represents one effort to address continental-level challenges but this needs to be given impetus through establishing the institutions that will police these firms. In trade where similar challenges exist, the WTO has provided an example of the benefits but also limits to global coordination. This plenary will discuss the future of the regulation of global private power and the role of collaboration amongst agencies in a globalised world. Is the future likely to be a diversity of rules based on national laws or antitrust coherence, and how can this be achieved?</i>
Speakers	Moderator: Hardin Ratshisusu

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	Panellists: Antonio Andreoni (Professor of Economics: SOAS University of London and Visiting Professor: University of Johannesburg); Wang’ombe Kariuki (Senior Consultant: Bowmans); Tshediso Matona (Commissioner: Broad-Based Black Economic Empowerment Commission); Suzan Mangole (Acting Deputy Director-General – Transformation and Competition Branch: Department of Trade, Industry and Competition); Derek Lotter (Co-Head – Competition Practice: Bowman).
11h30 – 11h45	Tea break
11h45 – 12h45	PLENARY SESSION 2: High expectations and institutional performance
Background	<i>When the competition institutions started work in 1999, they did so under an Act that was envisioned to not only serve consumers, but also those that had been excluded from the economy under Apartheid and the economic development objectives of the country. It was an ambitious attempt to take a law that was widely seen to serve the market economy globally and make it a tool for a more inclusive and de-concentrated development agenda. The institutions tasked with this agenda are widely considered to be amongst the more effective government agencies domestically, and enforcement authorities globally. However, there will always be healthy debate as to whether the institutions have prioritised the right things, achieved the right balance in enforcement and moved the dial on achieving the ambitious objectives. This plenary will discuss the performance of the 25-year-old institutions, what they got right, where they could have done better and what they got wrong.</i>
Speakers	Moderator: Tembinkosi Bonakele Panellists: Kuseni Dlamini (Chairman: Massmart Holdings Ltd); Mzwandile Masina (Chairperson: Portfolio Committee on Trade, Industry and Competition); Lulama Mtanga (Founder: Lulama Mtanga Legal Consultancy); Lizél Blignaut (Executive: ENSafrica).
12h45 – 13h30	CONFERENCE LUNCH
13h30 – 14h30	PLENARY SESSION 3: The contribution of SA to global competition law development
Background	South Africa’s Competition Act drew heavily from global best practice and experience on the typical areas of contravention to fair competition, but also was amongst the first country to incorporate public interest into both the purposes of the Act and the assessment criteria for merger control. This was later extended to abuse of dominance and market inquiries. As founding and active members of the ICN, the ACF and BRICS, the South African authorities have also brought a development perspective to competition issues discussed within continental and global agency forums. Whilst SA was the anomaly in the past, public interest has become more mainstream in competition law thought. This plenary will discuss the contribution of SA to global competition law development and its evolution in the past 25 years.
Speakers	Moderator: Thando Vilakazi Panellists: Bill Kovacic (Professor of Law and Policy: George Washington University); Deshmukh Kowlessur (Chairperson: African Competition Forum); Olivier Guersant (Director General – Directorate-General for Competition: European Commission); Boniface Makongo (Director – Competition Division: COMESA Competition Commission); Mallick Diallo (Head – Competition Division: African Continental Free Trade Area Secretariat).
14h30 – 15h30	PLENARY SESSION 4: The 2019 Amendments and the impetus to enforcement
Background	<i>The 2019 Amendments to the Competition Act represented a major revision to the law aimed at strengthening enforcement to deal with persistent concentration and elevating even more the public interest role in our Act. The amendments found immediate application in Covid, allowing the use of prima facie requirements to expediate price gouging cases and clamp down</i>

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	<p><i>on buyer power abuse. The Commission started applying the ‘promotion of a greater spread of ownership’ in merger control more systematically in 2021 starting with the Burger King decision. Around the same time, the new market inquiry powers were being tested through the launch of the Online Platforms Market Inquiry. Naturally, the outcomes from the increased powers and interventions has also had its critics and resulted in greater push back in some quarters. This plenary will discuss why those amendments were necessary, what has been the experience of the past five years in implementing them and the challenges that remain.</i></p>
Speakers	<p>Moderator: Tanya van Meelis Panellists: Simon Roberts (Professor of Economics: University of Johannesburg); Malebo Mabitje-Thompson (Acting Director General: Department of Trade Industry and Competition); Pamela Mondliwa (Head – Research and Information: Industrial Development Corporation); Daryl Dingley (Partner: Webber Wentzel).</p>
15h30 – 16h00	TEA BREAK
16h00 – 17h00	PLENARY SESSION 5: Institutional design and procedural practice
Background	<p><i>The institutional design in SA involving the separation of prosecution and adjudication, along with further appeal rights, has often been lauded as ensuring sound administrative justice. On legal procedures, the Tribunal’s initially aimed to have a less formal approach but this gave way to more structured legal processes, whilst still retaining their inquisitorial approach. However, the design has also come in for criticism around excessive delays in both merger and abuse cases, open to abuse by both intervenors and respondents looking to defer matters for as long as they can. This plenary will explore how the institutional design and its legal procedures performed, including what has worked and what has not.</i></p>
Speakers	<p>Moderator: Nelly Sakata Panellists: Bill Kovacic (Professor of Law and Policy: George Washington University); Chris Charter (Director and Head of Competition: Cliffe Dekker Hofmeyer); Jerome Wilson SC (Advocate: Group 621); Bukhosibakhe Majenge (Chief Legal Counsel: Competition Commission).</p>
18h00 – 22h00	GALA DINNER FOR CONFERENCE ATTENDEES AND PARTICIPANTS

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MC: Day 2: Khalirendwe Ranenyeni & Ofentse Motshudi

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09h00 – 09h20	Opening Address & Welcomes Mondo Mazwai (Chairperson: Competition Tribunal South Africa)
09h20 – 10h00	Keynote speech: Competition law and constitutionality
10h00 – 11h00	PLENARY SESSION 6: Using competition law for the progressive realisation of constitutional rights
Background	<i>Whilst the Constitutional Court has opined on legal powers and procedures, the Mediclinic judgement was the first to highlight and give impetus to the pursuit of constitutional rights and obligations within the enforcement of the Competition Act. This has been heeded by the courts in cases such as eMedia but is also a feature of certain Commission abuse referrals (Roche) and market inquiry considerations (MDPMI). In response, respondents have sought to argue not just their rights to property but also how their activity may itself improve the rights of citizens through innovations (Roche) or broader distribution (MDPMI). It is likely that the Constitutional lens will become more of a battleground within competition law going forward, requiring legal interpretation as to when constitutional rights have been implicated and the tools to assess competing claims of constitutional impact. In some respects, these were the challenges faced by nascent public interest 25 years ago. This plenary will discuss how the constitutional aspects should be developed within competition law and how one may approach the assessment of how conduct or mergers impact on these rights.</i>
Speakers	Moderator: Sesi Baloyi SC Panellists: Fatima Hassan (Founder: Health Justice Initiative); Michelle Le Roux SC (Advocate: Group 621); Bukhosibakhe Majenge (Chief Legal Counsel: Competition Commission).
11h00 – 11h30	TEA BREAK
11h30 – 12h30	PLENARY SESSION 7: Sustainability and the evolving aims of competition law
Background	<i>As the acceptance of a broader ambit for competition law beyond short-term consumer welfare gains traction amongst even established jurisdictions, countries seek to establish what might be relevant ‘public interest’ factors in their context. A common theme that has emerged is sustainability. This has taken on a narrow climate change perspective in the EU, with exemptions being where most of the competition law action is being done. However, the UN 2030 Sustainable Development Goals (SDG) set out much broader economic and social sustainability goals alongside environmental, which in turn is broader than climate change (goal 13) alone. These are not being taken up by other jurisdictions, despite their decisions potentially impacting on global inequality and environmental damage. Whilst SA public</i>

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	<p><i>interest already incorporates aspects of these goals, other goals have yet to be considered or developed within our Act. The issue of sustainability goals within antitrust is likely to shape future global public interest debates. This plenary will discuss whether such goals should form part of competition law in SA and globally, how they may be incorporated and where in the Act, and how SA should shape the global debate on sustainability.</i></p>
Speakers	<p>Moderator: Thembaletu Buthelezi</p> <p>Panellists: Teresa Moreira (Former Head – Competition and Consumer Policies: United Nations Conference on Trade and Development); Andrew Whitfield (Deputy Minister: Department of Trade Industry and Competition); Derek Lotter (Co-Head – Competition Practice: Bowman); Andrey Tsyganov (Deputy Head: Federal Antimonopoly Service of the Russian Federation); James Hodge (Chief Economist: Competition Commission SA).</p>
12h30 – 13h30	CONFERENCE LUNCH
14h00 – 15h00	PLENARY SESSION 8: The development of an integrated policy approach: Industrial Development, Trade and Competition Policy
Background	<p><i>The renaming of the DTI to the DTIC in 2020 simply confirmed the shift that had already occurred in government thinking around the need to align trade, industrial and competition law to ensure all tools are working together effectively to support competition policy (as opposed to simply the law), transformation and industrial development. At the most recent Black Industrialist Conference, the President identified competition law as key to unlocking market access for black industrialists whilst state funding institutions supported those opportunities created by competition law. There is also growing coordination with other government departments as competition law is seen as an additional tool that may unlock progress in areas from agriculture to national health. South Africa is also not alone in this regard as the revival of industrial policy in response to a more strategic trade policy has resulted in greater coordination of policy tools. This plenary will discuss how the integration of trade and industrial tools support competition policy, and how competition law is supporting trade and industrial policy both in SA and globally.</i></p>
Speakers	<p>Moderator: Reena Das Nair</p> <p>Panellists: Cristina Caffara (Honorary Professor: University College London and Deputy Director: CEPR Competition Research Policy Network); Neva Makgetla (Senior Economist: Trade and Industrial Policy Strategies); Ayabonga Cawe (Chief Commissioner: International Trade Administration Commission of South Africa); Fiona Tregenna (Professor of Economics and South African Research Chair in Industrial Development: University of Johannesburg).</p>
15h00 – 16h00	PLENARY SESSION 9: The evolution of the South African economy and implications for competition enforcement
Background	<p><i>South Africa’s economy in recent history has been characterised by a lack of economic growth (due to the energy and logistical constraints) and fallout from multiple global crises (including, among others, the covid pandemic, climate change and geopolitical wars). The economic structure is also changing as some traditional industries built on cheap energy now face severe challenges (such as steel), whilst agriculture and tech-related industries (fintech, insurtech, agritech, eCommerce, home broadband and logistics) are rapidly growing. These are also</i></p>

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shaping the world of work and the relationship between labour and business. The infrastructural challenges are also starting to lead to increased private sector involvement in infrastructure from energy to rail transport, transforming the structure but also the incentives at play in these markets. South Africa is also facing increasingly concentrated global markets and value chains in digital, pharmaceutical, commodity trading and agricultural inputs which influence our economic outcomes. Global opportunities are likely to evolve as protectionism increases and global tensions result in shifts of economic relationships. These shifts in the economic landscape necessitate reflections on how competition enforcement might need to evolve in response and how its form and priorities might need to change.

Speakers

Moderator: James Hodge

Panelists:, Bridget Kenny (Professor of Sociology: University of the Witwatersrand); Zuko Godlimpi (Deputy Minister: Department of Trade Industry and Competition); Congress of the South African Trade Unions Representative – TBC; Nthabiseng Moleko (Chairperson: National Empowerment Fund).

16h00 – 16h15

Closing Remarks

Doris Tshepe (Commissioner: Competition Commission South Africa)