

SPECIAL EDITION

18th
annual
competition law
economics & policy
conference 2024

EIGHTEENTH ANNUAL COMPETITION LAW, ECONOMICS & POLICY CONFERENCE

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

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EDITORIAL NOTE

LOOKING FORWARD - THE APPROACH TO COMPETITION CANNOT EXIST IN ISOLATION FROM BROADER ECONOMIC REALITIES

The 18th Annual Competition Law and Economic Policy Conference brought together a diverse array of leaders, policymakers, and experts, under the theme: Looking Back to Look Forward. It was all focused on a critical mission: to explore how South Africa can effectively integrate its industrial policy, trade policy, and competition policies to promote inclusive economic growth.

The conference highlighted the urgent need for a cohesive strategy that integrates industrial policy, trade policy, and competition policies. With a legacy of inequality and market concentration, the call for a unified approach to promote inclusive economic growth has never been more pressing.

Key insights emerged around the importance of supporting small and medium enterprises (SMEs) as essential players in driving economic transformation. Participants recognised that fostering entrepreneurship is vital to reducing unemployment and promoting economic resilience. As the need for diversification becomes increasingly clear, the discussions served as a reminder of the role that various stakeholders must play in creating pathways for new entrants into the market.

A significant focus was placed on the challenges that South Africa faces in

mobilising private sector investment for infrastructure development. The necessity of forging strong social compacts among labour, business, and government was underscored, emphasising that collaboration is essential for overcoming the barriers to growth and inclusion.

The conference also provided an opportunity to reflect on global trends and how they intersect with local policies. Experts shared valuable perspectives on the shifting landscape of industrial policy worldwide, recognising that the approach to competition cannot exist in isolation from broader economic realities. The need to challenge entrenched assumptions within trade and competition policies was a recurring theme, urging policymakers to adopt a more inclusive and pragmatic view.

As we look forward, the insights gained from this conference should serve as a roadmap for navigating the complexities of economic growth. The commitment to embedding inclusivity into policy frameworks is crucial for ensuring that the benefits of economic transformation are felt by all citizens.

The 18th Annual Competition Law and Economic Policy Conference was not just an event but a vital platform for envisioning a more equitable economic future. The conversations sparked here are just the beginning. It is our collective responsibility

to take these insights and turn them into action, ensuring that South Africa emerges as a leader in fostering a robust, inclusive economy for generations to come.

We continue to thank all who participated and contributed to the success of this conference including speakers, delegates, Commission staff and service providers.

EDITORIAL TEAM



Hardin Ratshisusu Deputy Commissioner



Lydia Molefe Communication Coordinator



Siphon Ngwema Head of Communication

Disclaimer: The publication of the proceedings of this conference is based on edited transcripts of the speeches, presentations and discussions that took place over a two-day period. While every effort has been made to ensure the accuracy and formality of the content, some typos and instances of colloquial language may have inadvertently remained. We apologise for any such oversights and trust that they do not negate the overall value of the publication.

The views and opinions expressed in this edition are those of the authors and do not necessarily reflect the official policy or position of Competition Commission (SA).

OPENING REMARKS BY THE COMMISSIONER

COMMISSION SUCCESS A PRODUCT OF HARD WORK, INTELLIGENCE, AND INNOVATION

COMMISSIONER DORIS TSHEPE



In welcoming the delegates to the Conference, Competition Commissioner, Doris Tshepe, highlighted the remarkable achievements of South Africa's competition authorities over the past quarter-century. Her remarks not only celebrated the enduring legacy of these institutions but also addressed the ongoing challenges they face in fostering fair competition and promoting inclusive economic growth.

A Landmark Celebration

Tshepe began her address by contextualising the historical significance of competition authorities, which were established to fulfil the vital objectives outlined in the Competition Act. "As we gather to commemorate a pivotal milestone in our journey toward fair competition and inclusive economic growth in South Africa, we must recognise 25 years of effective competition regulation," she said, emphasising the importance of this anniversary.

This significant occasion serves as a moment to reflect on past accomplishments, evaluate current practices, and envision the future direction of competition law in the country.

Throughout her presentation, Tshepe emphasised the transformative role that competition policy has played in shaping a more equitable economic landscape. She noted that while substantial progress has

been made, persistent challenges remain that require innovative solutions and collaborative efforts among stakeholders. As South Africa looks ahead, her insights remind us of the critical role that robust competition law plays in encouraging an inclusive economy for all.

She highlighted the dual objectives of the Competition Act: to promote consumer welfare and ensure the welfare of workers and those historically excluded from the economy. This broader mandate distinguishes South Africa's competition framework from those in more mature jurisdictions, where the focus is often not on public interest issues. Tshepe noted that the unique context of South Africa necessitated a comprehensive approach to competition law that addresses historical injustices while promoting economic growth.

Achievements in Enforcement and Advocacy

Tshepe underlined the reputation that the Competition Commission and the Competition Tribunal have developed over the years for their high-quality investigations and economic evidence. "The authorities have risen to the challenge, developing a strong reputation for fiercely contested litigation and important victories that have established critical jurisprudence," she added. This reputation has been built through

a steadfast commitment to enforcing competition law, which has often involved navigating complex legal and economic landscapes.

She acknowledged the significant contributions of the Commission to creating a more competitive and inclusive economy, despite the structural challenges inherited from the apartheid regime. "The authorities have been vigilant in merger control, preventing further market concentration while protecting workers and promoting a transformative agenda," Tshepe noted.

The effectiveness of the corporate leniency program and a robust focus on cartel enforcement were also highlighted as crucial elements in dismantling the legacy of state-sponsored cartel behaviour that had plagued many industries. Tshepe emphasised that market conduct enforcement has consistently challenged powerful firms, securing market access and preventing exclusion, thereby enabling greater participation over time.

One notable accomplishment was the proactive approach taken by the Commission in addressing anti-competitive practices. "By dismantling cartels and enforcing compliance, we have paved the way for fairer competition and greater market access," Tshepe said. This commitment to enforcement has not only strengthened market dynamics but has

also assured the public that competition authorities are dedicated to protecting their interests.

The Role of Regional Bodies in Coordination

Tshepe further highlighted the role of regional bodies, such as the African Union and the African Continental Free Trade Area (AfCFTA), in promoting collaboration and creating a counterbalance to dominant global forces. “South Africa has always been the voice for a public interest role for Competition Law,” she explained, noting that this perspective, once considered an outlier, is gaining increasing acceptance globally.

“Institutions are built by people and shaped by the communities in which they operate,” she said, emphasizing the need to acknowledge the contributions of both past and present staff at the Competition Commission and the Tribunal. “The success of these institutions is the product of hard work, intelligence, and innovation,” she noted, calling for recognition of the collective efforts that have shaped the competition landscape.

Tshepe stressed the importance of collaboration with various stakeholders, including academic institutions, businesses, and civil society organizations, in strengthening the effectiveness of competition law. “It is this collective effort that will help us address the challenges we face moving forward,” she asserted.

Looking Ahead: Addressing Future Challenges

As Tshepe reflected on the past, she also cast an eye toward the future, emphasising the need for continuous improvement and adaptation. “While we have made significant strides, the South African economy is still characterized by high levels of concentration,” she stated. This concentration poses significant barriers to entry for small and medium enterprises (SMEs) and historically disadvantaged individuals (HDIs), hindering inclusive economic growth.

She underscored the importance of continuously assessing the impact of competition policies and interventions. “We must ask ourselves whether our efforts

“Institutions are built by people and shaped by the communities in which they operate,” she said, emphasizing the need to acknowledge the contributions of both past and present staff at the Competition Commission and the Tribunal. “The success of these institutions is the product of hard work, intelligence, and innovation,”

- Commissioner Tshepe



to promote competition are translating into tangible benefits for our economy and society,” Tshepe emphasised. This calls for rigorous impact assessments that can provide valuable insights into the effectiveness of the Commission’s initiatives.

In her address, Tshepe also acknowledged the need for competition authorities to remain vigilant in the face of evolving global challenges, such as the rise of digital markets and the increasing influence of global tech firms. “We are living in a time of major economic upheaval that will fundamentally change the structure of our economy,” she noted.

She called for a collaborative approach to tackle issues such as environmental sustainability and the socio-economic challenges associated with market concentration. “We must work together with other authorities, both on the continent and globally, to find effective solutions to these pressing issues,” Tshepe said.

A Commitment to Future Engagement

Tshepe’s address served as a powerful

reminder of the progress made in competition law enforcement in South Africa while also highlighting the work that remains to be done. Her insights provided a framework for understanding the challenges ahead and the critical role that competition authorities will continue to play in shaping a fair and equitable economic landscape.

As the conference highlighted, the legacy of competition authorities is not only about their historical achievements but also about how they can continue to adapt and respond to the evolving economic landscape. The commitment to fostering effective competition will be crucial for ensuring a prosperous and equitable future for all South Africans.

Tshepe’s reflections on the past 25 years of competition law enforcement encapsulate the achievements, challenges, and future directions for competition authorities. The collective efforts of these institutions will be instrumental in advancing economic transformation and ensuring that all citizens have the opportunity to participate in and benefit from a competitive market.

A QUARTER CENTURY OF COMPETITION COMMISSION

Minister of Trade, Industry and Competition

**DEPUTY MINISTER
ZUKO GODLIMPI**



COMPCOM WORK HAS PROFOUND IMPACT ON LOW-INCOME HOUSEHOLDS



competition commission
south africa



The guest speaker at the 18th Annual Competition Law & Economics Policy Conference, Deputy Minister of Trade, Industry and Competition, Zuko Godlimpi, delivered a compelling address that highlighted the remarkable journey of competition authorities in South Africa over the past 25 years.

His speech celebrated the significant milestones achieved in promoting a fair competitive environment while candidly addressing the ongoing challenges these institutions face in their mission to promote equitable competition and drive inclusive economic growth.

As the nation reflects on its quarter-century of competition law, Godlimpi's insights offer a roadmap for the future, emphasising the need for resilience and innovation in a rapidly evolving economic landscape.

A Milestone Celebration

Godlimpi began by acknowledging the historical context in which the Competition Commission and the Competition Tribunal were established. "As we gather to mark a very significant milestone in our journey of fostering a fair competition and inclusive economic growth in South Africa, we must celebrate 25 years of effective competition regulation," he stated. This anniversary provides an opportunity not only to reflect on past achievements but also to consider how far the country has come in establishing a robust competition framework that serves the public interest.

He emphasised that institutions are built by people and shaped by the communities in which they operate. "It is those people and that community we need to acknowledge at times like this," Godlimpi said, highlighting the contributions of both past and

present staff at the Commission and the Tribunal. He noted that the success of these institutions is the product of hard work, intelligence, and innovation, which have been instrumental in promoting a competitive environment.

The Welfare Dividend of Competition Law

Godlimpi stressed the importance of the welfare dividend arising from the work of the Commission. "While the Commission operates in a technical and legalistic framework, its ability to constrain monopolistic pricing has profound implications for low-income households," he explained. Many consumers may not be aware of who intervened on their behalf, but the impact of such interventions is significant, helping them survive in an otherwise exclusionary market.

He acknowledged that although there may be frustrations among businesses regarding the Commission's interventions, the reality remains that these actions are crucial for protecting consumers and promoting fair market practices. "We need to have discussions about how we can expand the intervention scope of the Competition Commission," he urged, advocating for a proactive approach to tackle persistent market challenges.

Navigating Complex Legal Landscapes

Godlimpi referenced a recent case where the Constitutional Court affirmed the Tribunal's decision to prohibit the acquisition of Matlosana Medical Health Services by Mediclinic South Africa. He explained that the Commission argued the merger would significantly lessen competition, leading to higher costs and reduced quality of healthcare services. "This case exemplifies the Commission's commitment to protecting

Godlimpi stressed the necessity of adapting to the rapidly changing economic landscape. “We are living in a time of major economic upheaval that will fundamentally alter the structure of our economy,” he warned. The rise of digital markets and the increasing influence of global tech firms pose new challenges for competition authorities.

consumers, especially those who are uninsured,” he remarked.

In the telecommunications sector, Godlimpi pointed to the Commission’s data services market inquiry, which assessed the factors driving high data prices. “The Commission identified ‘antipoor pricing’ practices that disproportionately affect low-income consumers, demonstrating the need for continued vigilance and intervention,” he noted.

This acknowledgment aligns with economic literature that indicates poorer consumers suffer more harm from increasing market concentration.

The Role of Regional Bodies and Global Cooperation

Godlimpi also highlighted the importance of regional bodies in promoting collaboration and creating a counterbalance to dominant global forces. “South Africa has been a voice for the public interest role in competition law,” he said, underscoring that this perspective, once considered an outlier, is gaining acceptance globally. He pointed out that South Africa’s advocacy for public interest has paved the way for other nations to adopt similar frameworks, making it a leader in this critical area.

Godlimpi recognised that the journey ahead would require collaborative efforts from all stakeholders involved in competition law and economic policy. “We must work together to build a more inclusive and equitable economy,” he added, stressing the importance

of innovative approaches to tackling challenges.

By encouraging partnerships across sectors, South Africa can enhance its regulatory capacity and better address issues of market concentration.

Looking Ahead - Addressing Future Challenges

Godlimpi stressed the necessity of adapting to the rapidly changing economic landscape. “We are living in a time of major economic upheaval that will fundamentally alter the structure of our economy,” he warned. The rise of digital markets and the increasing influence of global tech firms pose new challenges for competition authorities.

He called for a collaborative approach to tackle issues such as environmental sustainability and socio-economic exclusion. “We must work together with other authorities, both on the continent and globally, to find effective solutions to these pressing issues,” he asserted. Godlimpi emphasised that as competition authorities navigate these complexities, they must remain committed to their core mission of promoting fair competition for the benefit of all South Africans.

Recognising the Broader Ecosystem

He further elaborated on the complexities of price-setting mechanisms in the economy. “Reducing poverty and tackling the high cost of living are intrinsically linked to how prices are determined in the market,” he explained. He called attention to the need for the Commission

to address not only collusive behaviours among firms but also the broader economic factors contributing to high living costs.

He expressed gratitude to all stakeholders for their contributions to the legacy of competition law enforcement in South Africa. “Together, we can rise to the challenges of the future and ensure that our competition authorities continue to play a vital role in promoting fairness, transparency, and economic growth for all South Africans,” Godlimpi concluded.

A Commitment to Future Engagement

Deputy Minister Zuko Godlimpi’s address served as a powerful reminder of the progress made in competition law enforcement while also highlighting the work that remains to be done. His insights provided a framework for understanding the challenges ahead and the critical role that competition authorities will continue to play in shaping a fair and equitable economic landscape.

In a world marked by rapid change and complex challenges, the commitment to promoting effective competition will be crucial for ensuring a prosperous and equitable future for all South Africans. The ongoing dialogue among the panellists and participants highlighted a collective determination to strengthen competition policy and its impact on society, emphasizing the importance of independence, collaboration, and strategic foresight.

As the conference highlighted, the legacy of competition authorities is not only about their historical achievements but also about how they can continue to adapt and respond to the evolving economic landscape, ensuring they remain relevant and effective in their mission to promote a fair and competitive marketplace.

CONFERENCE IN PICTURES



PLENARY SESSION 1

NATIONAL AUTHORITIES IN A WORLD OF REGIONAL AND GLOBAL DOMINANCE - STRENGTHENING COLLABORATION AMONG COMPETITION AGENCIES

Moderator

Hardin Ratshisusu (Deputy Commissioner CCSA)

Panellists

M Antonio Andreoni (Professor of Economics: SOAS University of London and Visiting Professor: UJ) | 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)

In an era increasingly shaped by transnational corporations, the urgency for collaboration among competition agencies and regulators has reached new heights. This pressing need was the focal point at the conference particularly at the session on National Authorities In A World of Regional and Global Dominance, moderated by Hardin Ratshisusu, Deputy Commissioner at the Competition Commission of South Africa.

Experts from various sectors convened to explore the challenges and opportunities of regulating private power across borders. This session aimed to unpack the complexities of regulating private power in a globalised economy, particularly in light of the jurisdictional limitations faced by national authorities.

Ratshisusu emphasised the necessity of a multifaceted approach to these challenges, emphasizing that regulatory mechanisms must work in concert rather than isolation.

The session featured an esteemed panel of experts, including Suzan Mangole, Acting Deputy Director-General at the Department of Trade, Industry and Competition; Tshediso Matona, Commissioner of the BEE Commission; Professor Prof Antonio Prof Andreoni from SOAS University; Wang'ombe Kariuki, former Director-General of the Competition Authority of Kenya; and Derek Lotter, Co-head of the Bowmans Competition Practice.

Each panellist contributed a wealth of experience and insight, paving the way for a dynamic discussion on the intersection of competition policy, industrialisation, and economic transformation. This collaborative dialogue not



25 YEARS OF COMPETITION ENFORCEMENT LOOKING BACK TO LOOK FORWARD

DATE: 4 Sept 2024 | TIME: 10:00 - 11:00 | LIVE | STREAM | YouTube icon

PLENARY SESSION I
National authorities in a world of regional and global dominance

SPEAKERS



Hardin Ratshisusu



Antonio Andreoni
Professor of Economics,
SOAS University of London



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





only highlighted the current landscape but also set the stage for future initiatives aimed at enhancing cooperation among competition authorities on a regional and global scale.

The Case for Industrialisation

Suzan Mangole opened the discussion by highlighting the need for South Africa to leverage its competitive advantages in the face of global market dynamics. She pointed out that despite years of effort by the Commission, the South African market remains highly concentrated. A 2016 study revealed that while 95% of firms are small and micro-enterprises, they account for only 25% of market turnover. In contrast, just 5% of firms dominate with 76% of turnover.

For Mangole, the path to inclusive growth lies in an export-led industrialisation strategy that emphasises innovation and the beneficiation of raw materials. “To create jobs and promote an inclusive economy, we must focus on transforming our industrial policies to be more pro-competitive,” she said. Mangole also emphasised the importance of collaboration among government, private sector, and competition authorities to

ensure that national imperatives are met without undermining competition.

The Need for a Policy Ecosystem

Tshediso Matona began by emphasising the shared values and interests that bind nations globally. Issues such as economic development, inclusivity, job creation, poverty alleviation, and environmental sustainability resonate across borders. He highlighted the alignment of these concerns with the Sustainable Development Goals (SDGs), which serve as a universal framework for sustainable progress.

Reflecting on South Africa’s national development priorities, Matona posed a crucial question: Is globalisation beneficial? Since the dawn of democracy, South Africa has embraced globalisation, but not without reservations. While globalisation can facilitate investment and economic fairness, it has often outpaced the convergence of development between advanced and developing nations, exacerbating inequalities.

Matona pointed to the rise of artificial intelligence and automation as further complicating factors. “Machines are taking

jobs faster than they can be created,” he said, advocating for a cautious approach to globalisation. The key lies in managing and regulating globalisation to maximize benefits while minimizing adverse effects.

He called for a global locus of control through multilateral agreements, emphasising that this should not undermine national sovereignty. Instead, robust national authorities are essential for addressing local priorities defined in national development plans. Matona said, “We must reclaim sovereignty while effectively managing local issues.”

Ultimately, he highlighted the importance of public interest as a bridge between national concerns and global challenges. With the necessary diplomatic capital, South Africa is well-positioned to advocate for greater global oversight in competition matters, fostering collaboration and shared principles.

Matona added depth to the conversation by addressing the challenges posed by differing national interests in the global regulatory landscape. “In South Africa, transformation is an imperative for economic growth,” he pointed out. Matona advocated for a coordinated

policy ecosystem that aligns government agencies in addressing national goals, such as economic diversification and inclusivity.

He added that, in the absence of a global regulatory framework, competition between authorities within and across jurisdictions becomes crucial. “We must work together to create an environment that promotes fair competition and economic participation,” Matona urged.

A Call for Inclusivity

Following Matona’s remarks, Prof Antonio Prof Andreoni delved into the evolving landscape of competition policy in light of industrial development and trade policies. He highlighted the transformative impact of digitalisation and platformisation on business models, which complicate traditional market dynamics and concentration issues.

Prof Andreoni explained that the emergence of powerful digital platforms adds a layer of complexity to market competition. “These new business models create conditions for increased concentration,” he warned, emphasising that such trends are not limited to the digital realm but extend to sectors like energy, where a transition to renewables is underway.

As countries adopt more strategic industrial policies, often with a mercantilist approach, the relationship between competition policy and industrial policy becomes increasingly significant. Prof Andreoni argued that industrial policies should not only be informed by competition considerations but can also reshape our understanding of competition itself.

“Successful industrial policies have historically governed competition to yield transformative outcomes,” he said. This perspective is particularly relevant as industrial policies begin to include conditionality tied to grants and subsidies. Here, competition policy can play a crucial role in ensuring that these interventions achieve their intended transformative effects.

Prof Andreoni proposed that in sectors requiring deep restructuring, collaboration

among firms might be necessary to achieve optimal competition levels. “Facilitating exits in some areas while encouraging entry in others could be essential,” he said.

He emphasised the need for an integrated approach that combines competition and industrial policies, particularly in countries like South Africa, where structural transformation is urgently needed. “The concept of a regulatory entrepreneurial state is vital for achieving these goals,” Prof Andreoni said.

Prof Antonio Prof Andreoni emphasised the role of inclusive industrialisation in overcoming regional inequalities and gender exclusion. “Our approach to competition law must consider broader social objectives,” he said. Prof Andreoni’s insights resonated with the panel’s overarching theme: the need for a collaborative, holistic approach to competition policy that promotes not just economic efficiency, but social equity as well.

Prof Antonio Prof Andreoni highlighted the significant opportunities for reindustrialisation, particularly in leveraging a green competitive advantage. However, he emphasised that achieving these goals cannot rely solely on industrial or competition policy. “We need to consider the broader landscape, including financialisation and corporate governance, which are crucial dimensions of both industrial and competition policy,” he added.

Prof Andreoni pointed to the substantial resources being allocated to the economy in the U.S. but questioned what additional benefits would materialize if a highly financialized system fails to reinvest those resources effectively.

Hardin Ratshisusu posed an important question: Should developing countries adopt a defensive or offensive stance in their regulatory approaches? Prof Andreoni responded unequivocally: “Defensive measures alone are insufficient.” He stressed the need for a progressive agenda that starts with identifying specific national priorities and opportunities. Countries like South Africa must engage in different conversations to shape markets that are prepared to embrace new technologies and opportunities.

Collaboration Among National Authorities: A Necessity

Wang’ombe Kariuki brought attention to the capabilities and limitations of national authorities in regulating global private power. He humorously referenced his support for Liverpool FC, paraphrasing their slogan to emphasize that competition authorities cannot operate in isolation: “Competition authorities, you cannot walk alone.”

He recounted an encounter with Lena Khan, chair of the U.S. Federal Trade Commission, illustrating the stark contrast in resources available to competition authorities. With a staff of 1,800, Khan’s team still feels small compared to the vast powers of dominant firms.





Kariuki said that national competition agencies are shrinking due to macroeconomic challenges, leading to decreased budgets and staffing. The need for collaboration among agencies is crucial, yet existing efforts often lack the necessary statutory backing. He proposed creating multi-agency committees to enhance cooperation and accountability.

Why is this cooperation essential? Kariuki pointed to global events, such as disruptions in the potash market, which have direct implications for developing countries. The actions or inactions of one competition agency can significantly affect markets across borders. He emphasized that effective cooperation could lead to better-informed decisions and mitigate detrimental impacts from global market dynamics.

Addressing Market Disruption and Regulatory Complexity

Kariuki also discussed the challenges posed by market disruptions, citing recent entrants in Kenya's telecommunications sector that have unsettled traditional monopolies. He underscored the need for a multi-agency approach to effectively regulate emerging markets, particularly in the context of digitisation. With various entities involved in regulation - from the Central Bank to data protection authorities - interagency collaboration is vital for optimal governance.

He commended South Africa's evolution in market inquiries, which have transformed from voluntary processes to more structured engagements that promote

cooperation with regulated entities. "We have moved from regulating what we know to regulating what we do not know," he remarked, stressing the importance of understanding markets before rushing to implement new laws.

A Shift Towards Broader Societal Outcomes

Derek Lotter, a seasoned legal expert, added his insights on collaboration among African competition regulators. He reflected on the Commission's significant strides in addressing inequality and promoting transformation. "The Commission's track record is self-evident," he said, acknowledging its success in cartel enforcement and promoting public interest.

Derek Lotter opened his remarks by noting a significant trend in competition policy returning to its foundational principles in the US, where the focus is shifting towards the structure of markets and the accumulation of market power. "It has become necessary to consider broader societal outcomes, including implications for democracy itself," he said. While the US may still lean towards retaining the consumer welfare test, a global predisposition is emerging to incorporate wider factors into competition assessments.

Lotter emphasised that traditional competition assessments often blur with public interest evaluations. "There is a growing acceptance that competition ultimately serves the public interest," he said, referencing sustainability as a critical

area where competition law plays an essential role.

He also pointed out that competition assessments across various jurisdictions share more commonalities than differences. "Regulators across our continent largely adopt similar approaches, particularly when analysing the potential impacts of global firms," he explained. This is particularly relevant in sectors such as digital technology and agriculture, where cross-border conduct increasingly invites scrutiny.

However, Lotter acknowledged that some regulators maintain a more conservative stance on issues like vertical integration and portfolio outcomes. "While there are variations, there is a common theme that runs through most analyses," he remarked, highlighting the importance of addressing public interest issues pertinent to specific countries.

Collaboration Among Regulators

One of the most notable developments Lotter observed is the marked increase in collaboration among regulators. He referenced the growing trend of confidentiality waivers, where regulators seek permission to discuss sensitive merger-related issues among themselves.

Recent cases in the agricultural sector demonstrated this collaboration, as regulators from COMESA, South Africa, and various international jurisdictions engaged in open dialogue to better understand complex issues while respecting local concerns.

Lotter highlighted the responsibility of advisors to help clients anticipate potential challenges in securing approvals. "Regulators must ensure that assessments are specific to individual mergers and that their processes are not misused," he cautioned.

Lotter pointed out that competition law is in a state of flux, with traditional concepts like the consumer welfare test being re-evaluated. He emphasized the need for ongoing dialogue and collaboration among regulators to adapt to these changes and ensure that competition law remains effective in promoting fair markets.

Leveraging Economic Partnerships

Suzan Mangole added to the dialogue by discussing the importance of leveraging economic partnerships, such as BRICS, SADC, and AfCFTA, to enhance trade and regulatory harmonisation. “Building a capable state requires sufficient skills, resources, and innovation,” she said, highlighting the need for South Africa to capitalise on these partnerships to expand its economy under preferential terms.

Mangole emphasised the significance of export-led economic growth and localisation. “We need to balance these two objectives while ensuring that we are equipped to meet global demands,” she explained. The Commission has already established several MOUs with international competition authorities to foster collaboration.

She pointed out that regional partnerships, such as those established under SADC, offer mechanisms for cooperation, particularly in consumer policies. The AfCFTA presents further opportunities for South Africa to enhance its economic participation, strengthen regional value chains, and support the transition to a green economy.

Countering Geopolitical Challenges

Tshediso Matona addressed the geopolitical challenges that complicate cooperation in the context of globalisation and global private power. “The dominant powers often impose a ‘do as we say, not as we do’ dynamic on developing countries,” he stated, highlighting how geopolitical tensions between the U.S. and China can undermine trust in multilateral cooperation.

Matona stressed the necessity for developing countries to coordinate among themselves to build a counterweight to these influences. “We need to protect the rules that govern international trade and competition,” he urged, emphasizing the importance of solidarity among emerging economies.

The Role of Regional Bodies

In this context, the significance of regional bodies such as the African Union, AfCFTA, and BRICS cannot be overstated.



These groupings serve as critical counterbalances to the dominant powers and offer platforms for collaboration among developing countries. “They are essential for creating a unified front,” Matona remarked, underscoring their importance in fostering cooperation and solidarity among member states.

Regulatory Mechanisms for the Future

Prof Andreoni spoke to the need for innovative regulatory mechanisms to deal with the increasing global private power while promoting pro-competitive industrial development. “We must recognise that opportunities are not emerging in silos; they are part of a broader ecosystem that needs transformation,” he explained. Prof Andreoni emphasised the importance of understanding interdependencies within this ecosystem, particularly in sectors like agriculture and renewable energy.

He called for a regulatory approach that embraces strategic autonomy and encourages the development of supportive industrial policies. “Conditions for success must be broad and take into account the dynamics of these ecosystems,” he said, pointing to examples from global resilience plans implemented post-COVID.

Challenges and Opportunities in Regional Coordination

Wang’ombe Kariuki highlighted the critical role regional bodies play in facilitating coordination among national competition agencies. “Regional competition bodies have the capacity to analyse issues across

a larger market and create regulatory frameworks that individual countries may struggle to implement alone,” he said.

Kariuki also emphasized the importance of sharing resources and expertise among member states to bolster regulatory capacity. He proposed that regional bodies could establish pools of data technologists to support national agencies, drawing inspiration from successful models like Singapore.

A Call for Collective Action

The insights shared during the session underscored the critical need for national authorities to collaborate. By embracing collaboration, sharing best practices, and enhancing regulatory frameworks, nations can effectively tackle the challenges posed by global private power while seizing the opportunities presented by reindustrialisation and sustainable development. The discussions at this conference serve as a roadmap for advancing cooperation and innovation in competition policy across the continent and beyond.

As we move forward, the importance of a united front among competition authorities cannot be overstated. The challenges of the modern economy demand that regulators not only safeguard local markets but also work collectively to ensure a fair and competitive global marketplace. With strategic collaboration and a commitment to shared goals, national authorities can navigate these challenges successfully and create a more equitable economic future for all.

PLENARY SESSION 2

NAVIGATING HIGH EXPECTATIONS AND INSTITUTIONAL PERFORMANCE IN COMPETITION LAW

Moderator

Tembinkosi Bonakele

Panellists

Kuseni Dlamini (Chairman: Massmart Holdings Ltd) | Elias Monage (President: Black Business Council) | Mzwandile Masina (Chairperson: Portfolio Committee on Trade, Industry and Competition) | Lulama Mtanga (Founder: Lulama Mtanga Legal Consultancy) | Lizél Blignaut (Executive: ENSafrica)

YOU WILL BE TREATED FAIRLY, AND YOU GET A FAIR HEARING – KUSENI DLAMINI

The session on “High Expectation and Institutional Performance,” moderated by former Competition Commissioner Tembinkosi Bonakele, provided a critical platform for key figures from various fields to reflect on the legacy and future of competition institutions in South Africa. The discussions were timely, given the evolving economic landscape and the increasing demands on competition authorities to ensure fairness while promoting market efficiency.

The session featured a distinguished panel including Kuseni Dlamini, Chairman of Massmart Holdings; Lulama Mtanga, founder of Lulama Mtanga Legal Consultancy; Lizél Blignaut, Executive at ENSafrica; Makgale Mohlala, Divisional Manager of the Cartels Division at the Competition Commission of South Africa (CCSA); and Mzwandile Masina, Chairperson of the Parliament Portfolio Committee on Trade, Industry, and Competition.

Their discussions delved into the successes and challenges faced by competition authorities, emphasising the vital roles of leadership, management, and institutional culture in achieving effective outcomes. The insights shared during this session not only highlighted the achievements of the past but also set the stage for future developments in competition law and policy.

A Legacy of Leadership

Bonakele opened the session by welcoming the panelists and focusing on the significance of their collective experiences.

18th annual competition law economics & policy conference 2024

25 YEARS OF COMPETITION ENFORCEMENT
LOOKING BACK TO LOOK FORWARD

DATE: 4 Sept 2024 | TIME: 11:45 - 12:45 | LIVE STREAM | YouTube

PLENARY SESSION 2
High expectations and institutional performance

SPEAKERS

- Tembinkosi Bonakele**
- Kuseni Dlamini**
Chairman: Massmart Holdings Ltd
- Lizél Blignaut**
Executive: ENSafrica
- Makgale Mohlala**
Divisional Manager - Cartels: Competition Commission South Africa
- Lulama Mtanga**
Founder: Lulama Mtanga Legal Consultancy
- Mzwandile Masina**
Chairperson: Portfolio Committee on Trade, Industry and Competition

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He highlighted the rich history of the institutions represented, emphasising that effective leadership is crucial for any organisation's success. "Institutions thrive on effective leadership and management," he said, drawing attention to the need for operational systems and processes that align with institutional goals.

He elaborated on the theme of impact, stressing the importance of clearly defining the objectives that competition authorities strive to achieve. "Every change in political leadership brings uncertainty about what competition authorities are meant to accomplish," he noted, highlighting the necessity of intellectual leadership to navigate these complexities. This sentiment resonates strongly in a rapidly changing economic environment where competition authorities must adapt to new challenges while remaining steadfast in their mission.

As the discussion unfolded, the panelists engaged in a robust dialogue about the challenges of maintaining high expectations while promoting a culture of accountability and performance within competition authorities. They shared insights on how effective leadership can not only enhance institutional performance but also build public trust and legitimacy in the regulatory process.

Bonakele emphasised that leadership must extend beyond merely enforcing regulations; it must also involve engaging with stakeholders, understanding market dynamics, and fostering a culture of transparency. This approach can help demystify the role of competition authorities and reassure the public that they are working in the best interests of the economy.

Cultural Foundations of Success

Lulama Mtanga took the floor to discuss the softer aspects of success within competition authorities. "The culture within these institutions has enabled staff to execute their mandate with professionalism and without fear," she said, emphasising the importance of fostering a supportive work environment. This culture has earned the competition authorities significant respect domestically and has been crucial in attracting talent.

Mtanga also highlighted the strategic public relations approach adopted by competition authorities, which has effectively disseminated information and shaped their public image. "Their brand as competition authorities has been built through consistent and transparent communication," she said, underscoring the value of public engagement. This

proactive communication strategy is vital, especially in a context where misconceptions about competition law can lead to public distrust.

Furthermore, she pointed out the strategic handling of competition law amendments, particularly the 2009 and 2018 changes. "These amendments have bolstered the application of socio-economic objectives and transformed the economy," she explained. The introduction of market inquiries as a tool for enforcing competition law exemplifies this strategic approach. Such inquiries enable the Commission to investigate market dynamics and address anti-competitive practices effectively.

"These amendments have allowed us to address socio-economic objectives more effectively," she elaborated, illustrating how the changes have bolstered the Commission's ability to create an inclusive economy. Mtanga also spoke about the Commission's early engagement on the global stage, emphasising its commitment to training and capacity building. This not only strengthens the institution but also places South Africa on the map as a leader in competition law.

Guarding Independence and Integrity

Lizél Blignaut echoed the importance of

independence, recalling how past legislation had been influenced by political agendas. “Guard your independence jealously; it’s crucial for effective governance,” she urged. Bignaut underscored the need for a clear separation of powers within the competition framework, emphasising that independence is vital for maintaining the integrity of the Commission.

Bignaut also suggested leveraging alumni networks for capacity building within the Commission, highlighting how insights from former staff could enhance regulatory effectiveness. This proposal aligns with global best practices, where lessons learned from past experiences contribute to more robust regulatory frameworks.

Challenges and Opportunities in Oversight

Mzwandile Masina, the Chair of the Portfolio Committee on Trade, Industry, and Competition, provided a legislative perspective on the challenges facing competition authorities. “The dysfunctionality across state institutions is a concern,” he noted, emphasising the need for proper functioning and accountability within the Commission. Masina acknowledged the critical role of the Commission in addressing issues like food pricing and remarked on the importance of collaboration between lawmakers and regulators.

He expressed optimism for the future, highlighting the potential for strategic partnerships to streamline the work of the Commission and enhance its impact. This collaborative approach can lead to more effective regulations that not only protect consumers but also foster an environment conducive to business growth.

Celebrating Achievements in Enforcement

Makgale Mohlala, reflecting on his long tenure within the Commission, highlighted several significant achievements over the past 25 years. “There has been considerable progress in merger regulations, cartel enforcement, and advocacy work,” he stated. Mohlala cited specific examples, such as the dismantling of construction cartels and the successful advocacy for school uniform policies, which liberated markets for small enterprises.

He also pointed to the Commission’s role in reducing data prices through market inquiries, noting the positive impact of interventions during the COVID-19 pandemic, when the Commission acted decisively against price gouging in essential supplies. These efforts demonstrate the Commission’s commitment to protecting consumer interests and promoting fair competition.

Kuseni Dlamini’s Insights

Dlamini emphasised the importance of excellence in the context of competition law. “Excellence is excellence,” he stated, rejecting the notion that excellence is defined by race. Dlamini articulated that the Commission’s reputation for firmness and toughness is complemented by its commitment to fairness, equity, and professionalism.

“As a private sector player, you can trust that you will be treated fairly and you are going to get a fair hearing,” he said. This assurance is crucial for promoting a collaborative environment between the public and private sectors, where businesses can thrive while adhering to regulatory standards.

Dlamini reflected on his experiences with the Commission, particularly during Massmart’s acquisition by Walmart. He described how the engagement with the Commission facilitated discussions around public interest issues, which was a pioneering step in South Africa’s regulatory landscape. “What is in the best interest of the South African economy is also in the long-term interest of the sustainability of our businesses,” he explained, underscoring the interconnectedness of corporate success and national economic health.





However, he also acknowledged challenges, particularly regarding timelines in regulatory processes. Dlamini shared his frustrations about the lengthy approval processes that can jeopardise transactions, especially for foreign investors. “There is a balancing act that needs to be crafted in terms of being firm, yes, being tough, yes, but also creating an environment where foreign investors can be sure what to expect,” he cautioned.

He stressed the importance of regulatory certainty, especially as South Africa competes in a global market where swift decision-making can make or break investment opportunities. Dlamini’s insights highlighted the necessity for the Commission to balance rigorous enforcement with the need for swiftness, efficiency and clarity in its processes.



Dlamini highlighted the Commission’s role as an emblem of global excellence within the South African economic ecosystem. He advocated for increased resources from the National Treasury to enable the Commission to perform its vital work effectively. “The prospects going forward in the next 25 years really look very, very good indeed,” he said, expressing optimism for the future.

Looking Ahead

As the session drew to a close, it became evident that the legacy of competition authorities is not just about past achievements; it is about shaping a future that promotes fairness, transparency, and equitable economic growth. The insights shared during this session serve as a roadmap for advancing cooperation and innovation in competition policy across the continent and beyond.

In a world marked by rapid change and complex challenges, the commitment to promoting effective competition will be crucial for ensuring a prosperous and equitable future for all. The ongoing dialogue among the panelists and participants highlighted a collective determination to strengthen competition policy and its impact on society, emphasising the importance of independence, collaboration, and strategic foresight.

PLENARY SESSION 3

THE CONTRIBUTION OF SOUTH AFRICA TO GLOBAL COMPETITION LAW DEVELOPMENT

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)

SOUTH AFRICA'S LEADERSHIP IN THE ACF INSTRUMENTAL IN CONSOLIDATING ENFORCEMENT CAPACITY IN THE CONTINENT

As global economies become increasingly intertwined, the significance of competition law and economic policy has never been more pronounced. This session served as a crucial platform for discussing these dynamics, especially from the perspective of South Africa's contributions.

While the principles of competition law were largely established before South Africa's regulatory framework emerged, the country has carved out a unique space in global discussions. This article zooms into some of the insights shared during the third plenary session led by Professor Thando Vilakazi, focusing on South Africa's role in shaping competition law both regionally and globally.

A New Era of Competition Law

The plenary session commenced with a call to engage in a critical discussion about South Africa's contributions to global competition law development. Prof Vilakazi highlighted the unique position South Africa holds not only as a national authority but as a leader in the African context. He emphasised the importance of reflecting on past achievements while simultaneously preparing for future challenges.

The panel featured prominent figures in the field: Malick Diallo from the AfCFTA Secretariat; Prof Bill Kovacic from George Washington University; Deshmukh Kowlessur, Executive

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PLENARY SESSION 3
The contribution of SA to global competition law development

SPEAKERS

- Thando Vilakazi**
- 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
- Malick Diallo**
Head – Competition Division: African Continental Free Trade Area Secretariat

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Director of the Competition Commission of Mauritius; and Boniface Makongo, Director of the COMESA Competition Commission.

These experts brought a wealth of experience, discussing how South Africa's competition law framework offers lessons for authorities both within the continent and across the globe. As the session unfolded, three key themes emerged: assessing the impact of South Africa's competition law, identifying current challenges, and outlining the future landscape of competition regulation.

Assessing South Africa's Impact

Diallo initiated the discussion by reflecting on the achievements of the Commission (SA). He acknowledged the challenges faced by competition authorities in Africa, particularly regarding public engagement and awareness. Diallo noted that many jurisdictions struggle with a lack of consumer advocacy and competition culture. In contrast, South Africa has made significant strides in promoting public participation in competition matters, an essential aspect of its regulatory framework.

Diallo attributed this success to two factors: the clear objectives outlined in the Competition Act and the proactive policies aimed at promoting economic efficiency, consumer welfare, and inclusivity. He highlighted the Commission's focus on sectors crucial to citizens, such as cartels and regulatory measures, as vital to its impact.

Diallo's second point was the Commission's role in fostering collaboration among competition authorities across the continent. He reminisced about the establishment of the African Competition Forum (ACF) and South Africa's leadership in uniting various authorities. The ACF has facilitated research, capacity building, and cooperation, showcasing South Africa's commitment to enhancing competition law across the continent.

Diallo also addressed South Africa's involvement in the African Continental Free Trade Area (AfCFTA) negotiations, specifically the competition protocol. He praised South African leadership during this process, noting that the competition protocol emerged as one of the least contentious aspects of the broader negotiations. The incorporation of public interest considerations into this protocol was particularly noteworthy,

representing a significant step forward in aligning competition law with broader developmental goals.

Current Challenges in Competition Law

As the panel shifted to discuss current challenges, Prof Kovacic shared insights from his extensive experience in competition law. He emphasised that while South Africa has made commendable progress, significant challenges remain on various fronts. One key issue is the need for ongoing capacity building within competition authorities, particularly in developing nations. Kovacic argued that enhancing institutional frameworks is essential for effective enforcement and compliance.

Kovacic also highlighted the importance of addressing digital markets, which pose unique challenges for competition law globally. The rapid evolution of technology and the emergence of digital monopolies require authorities to adapt their frameworks to remain effective. He stressed that South Africa's experience could serve as a model for other developing nations grappling with similar issues.

Kowlessur added to this discussion by addressing the challenges faced by smaller economies in enforcing competition law. He shared insights from Mauritius, noting that the competition authority has worked diligently to establish itself and create a culture of compliance. Kowlessur argued that collaboration among African nations is vital for building capacity and sharing best practices, particularly in the context of the AfCFTA.

Makongo rounded out the conversation by discussing the importance of regional cooperation in addressing cross-border competition issues. He emphasised that many competition challenges are not confined to national borders, necessitating a coordinated approach among African nations. Makongo's experience in both the COMESA and Kenyan competition authorities underscored the need for a unified framework to tackle these challenges effectively.

Looking Ahead

As the session moved toward its conclusion, the panellists shifted their focus to the future of competition law in South Africa and beyond. The consensus was clear: while South Africa has made substantial contributions, the road ahead is fraught with challenges that require innovative solutions and collaborative efforts.

Diallo stressed the importance of continuing to build a culture of competition across the continent, emphasising that public awareness and engagement are critical for the success of any competition regime. He advocated for ongoing education and outreach efforts to ensure that consumers and stakeholders understand the benefits of competition law.

Kovacic echoed this sentiment, calling for a renewed commitment to capacity building within competition authorities. He argued that developing nations should prioritise investment in human resources and technology to strengthen their enforcement capabilities. This approach, he suggested, would not only enhance the effectiveness of competition law but also encourage greater economic development.



Kowlessur highlighted the need for flexibility in regulatory frameworks to accommodate the evolving landscape of digital markets. He suggested that competition authorities should explore innovative approaches, such as “sandbox” environments, to test new regulatory measures in real-world scenarios.

Makongo emphasised the importance of regional collaboration in tackling cross-border competition issues. He advocated for the establishment of more robust frameworks for cooperation among African nations, which would enable them to address shared challenges and create a more cohesive approach to competition law.

The Role of South Africa in Regional and Global Contexts

Throughout the discussion, several panellists emphasised South Africa's unique position as a leader in competition law on the continent. The country's experiences and lessons learned can offer invaluable insights for other jurisdictions. As Makongo pointed out, South Africa's Competition Commission has been a vital partner for emerging agencies, providing essential support in capacity building and knowledge sharing.

Kowlessur also noted that South Africa's leadership in the ACF has been instrumental in consolidating enforcement capacity within the region. The CCSA has played a crucial role in mobilizing resources and facilitating capacity-building programs, which have significantly benefited competition authorities across Africa.

As the panel wrapped up, the importance of addressing digital markets emerged as a pressing issue that requires regional cooperation. The complexities of the digital economy necessitate a collective effort among African nations to establish a common framework for competition enforcement. As Kowlessur and Kovacic suggested, sharing information and best practices will be critical for effectively addressing the challenges posed by digital platforms and technologies.

Conclusion

The conference provided a timely opportunity to reflect on South Africa's significant contributions to global competition law while also addressing the challenges that lie ahead. As panellists shared their insights, it became clear that while South Africa has made remarkable strides, the future of competition law will require continued commitment, collaboration, and innovation.

Looking ahead, it is essential for South Africa and its counterparts across the continent to build on their successes and proactively address the evolving challenges of the global economy. By fostering a robust culture of competition and cooperation, African nations can ensure that their competition regimes remain relevant and effective in the face of rapid change. The journey ahead is sure to be complex, but with the right strategies and collaborative efforts, the promise of a more equitable and competitive economic landscape is within reach.

PLENARY SESSION 4

THE 2019 AMENDMENTS AND THE IMPETUS TO ENFORCEMENT

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)

SIGNIFICANT STRIDES HAVE BEEN MADE IN SOUTH AFRICA'S COMPETITION LANDSCAPE

South Africa continues to grapple with an uneven economic landscape characterised by high concentration and skewed racial ownership patterns. Thus, the impact of the 2019 amendments to the Competition Act has become a focal point of discussion.

The plenary session on: The 2019 Amendments And The Impetus To Enforcement, brought together experts and practitioners to reflect on these amendments and their implications for enforcement, competition law and policy, and economic transformation.

This article encapsulates the key insights shared by the panellists, including Daryl Dingley, Partner: Webber Wentzel; Pamela Mondliwa, Head: Research and Information at IDC; Simon Roberts, Professor of Economics at University of Johannesburg; and Malebo Mabitje-Thompson, Acting Director-General: DTIC. They highlighted their perspectives on the successes and challenges faced in the evolving regulatory environment.

The Impetus Behind the Amendments

Opening the session, Van Meelis outlined the rationale behind the 2019 amendments, which aimed to address high levels of concentration and inequitable ownership patterns in the economy. She emphasised that the amendments included provisions to clarify prohibited practices, strengthen penalties, and promote public interest considerations in merger assessments.

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PLENARY SESSION 4
The 2019 Amendments and the impetus to enforcement

SPEAKERS

- Tanya van Meelis
- Simon Roberts
Professor of Economics: University of Johannesburg
- Daryl Dingley
Partner: Webber Wentzel
- Pamela Mondliwa
Head - Research and Information: Industrial Development Corporation
- Malebo Mabitje-Thompson
Acting Director General: Department of Trade Industry and Competition

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Dingley provided a detailed analysis of the amendments related to mergers. “The first major change was making the public interest and competition tests equal, meaning that mergers had to be justified on both grounds,” he said. This shift marked a significant change in the regulatory landscape, emphasising the importance of public interest alongside competition.

Dingley highlighted that while the initial response to these amendments was limited, less than 3% of large mergers incorporated ownership requirements, there were pivotal moments that shifted the Commission’s approach. He referred to the Burger King case, which set a new precedent for public interest considerations. “A significant decrease in HDP (historically disadvantaged persons) ownership was noted, leading the Commission to prohibit the transaction on public interest grounds, despite no competition issues being present,” he explained. This watershed moment illustrated the evolving landscape of merger assessments, where public interest now carries significant weight.

Reflections on Abuse of Dominance and Market Dynamics

Mondliwa shifted the focus to abuse of dominance and the implications for economic development. “Anti-competitive

conduct in South Africa is more prevalent than in other upper middle-income countries, which complicates our development efforts,” she said. Mondliwa pointed out that while the amendments sought to address these issues, the effectiveness of enforcement remains a critical area for improvement.

She highlighted the historical context: “Between 1998 and July 2018, only 23 abuse of dominance cases were referred to the Competition Tribunal, with a mere five determinations upheld.” This record, compared unfavourably to other countries like Chile, underscores the need for a more robust framework in addressing abuse of dominance.

Mondliwa emphasised the importance of coordination among various industrial policy tools to promote competitive markets. “Competition law is largely an export tool, coming into play after the damage has been done,” she noted. “We must think about how to bring these tools together to support competitive rivalry in our markets.” She called for a collaborative approach that integrates competition law with broader industrial policies.

The Role of Market Inquiries in Driving Change

Prof Roberts shifted the conversation towards the emerging trend of market inquiries as a pivotal tool in competition law. He said, “Market inquiries represent a groundbreaking development, evolving competition authorities into market authorities.” This transformation highlights the growing recognition of competition authorities as vital analysts of market dynamics, rather than merely enforcers of competition law.

Prof Roberts said that the success of these inquiries hinges on their focus and the data-driven approach taken by the authorities. “There is a huge temptation to ask for too much; framing the inquiry correctly is essential,” he cautioned. He emphasized, “Without proper data analysis, the authorities are setting themselves up to fail,” highlighting the need for competition authorities to invest in data capabilities to enhance their effectiveness.

He identified three categories of inquiries that could shape future regulatory efforts:

Regulatory and Competitive Interfaces: These inquiries focus on understanding how regulation interacts with competition. Roberts noted, “Inquiries in sectors like telecoms, transport, and healthcare have shown both successes and failures.”

He called for a balanced approach that considers regulatory impacts while promoting competition.

Dynamic Sectors: In rapidly changing industries such as digital platforms and green technologies, Roberts emphasised the need for adaptive regulatory frameworks. “Inquiries are good for evolving rules on the hoof, allowing authorities to respond to emerging challenges effectively,” he asserted.

Market Failures and Vulnerable Consumers: The third category involves addressing systemic issues that lead to exclusion and harm to consumers. Roberts pointed to the UK’s inquiries into vulnerable consumer protection as a model worth emulating.

What lies ahead - Challenges and Opportunities

Malebo Mabitje-Thompson emphasised the need for a holistic approach to competition law that aligns with broader industrial and transformation goals. “Competition law is not the panacea for equalising markets; it is one of many tools we must use to industrialise and empower marginalised communities,” she explained.

Mabitje-Thompson highlighted the ongoing challenges of ensuring that competition policy fosters inclusivity and supports emerging businesses. “We must remain agile, especially in a context where some transactions do not materialize, leading to economic instability,” she remarked, advocating for a more integrated approach to managing competition and industrial policies.

A Collaborative Approach: Linking Competition and Industrial Policy

The panellists collectively advocated for greater collaboration among policy instruments, improved data capabilities for market inquiries, and a renewed focus on fostering innovation in the economy. Mabitje-Thompson noted, “Coordination is essential within government to ensure investor certainty and effective policy implementation.” She emphasized the importance of creating a supportive environment for businesses, particularly for small and medium enterprises (SMEs).



Dingley echoed this sentiment, stating, “Greater transparency and coordination among industrial, social, welfare, and competition policies are crucial for achieving transformation.” He urged for a comprehensive strategy that addresses the complexities of the regulatory landscape.

In discussing the role of the IDC, Mondliwa highlighted initiatives that support startups through project development units. “We partner with companies from pre-feasibility stages and fund their development until they reach bankability,” she shared, emphasizing the need for a coordinated approach to funding.

Closing Thoughts: Embracing Innovation and Agility

As the session concluded, it became evident that while significant strides have been made in South Africa’s competition landscape, challenges remain. Panellists collectively advocated for greater

coordination among policy instruments, improved data capabilities for market inquiries, and a renewed focus on fostering innovation in the economy.

Dingley encapsulated this sentiment, stating, “We must not forget about innovation; it needs to be reinvigorated, especially in dynamic markets.” The overarching message resonated throughout the session: a multifaceted approach is essential for navigating the complexities of competition law, ensuring that it serves as a catalyst for economic growth and transformation.

The discussions at the conference highlighted the ongoing evolution of South Africa’s competition law framework, reinforcing the need for continuous reflection and adaptation in a rapidly changing economic landscape. As the authorities strive to balance enforcement with developmental objectives, the insights shared during this plenary session will undoubtedly shape the future trajectory of competition policy in the country.

PLENARY SESSION 5

INSTITUTIONAL DESIGN AND PROCEDURAL PRACTICE

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)

SUBSTANTIAL PROGRESS HAS BEEN MADE BUT SIGNIFICANT CHALLENGES REMAIN IN THE SYSTEM

The landscape of competition law in South Africa has evolved significantly over the past 25 years, marked by the establishment of specialised institutions designed to promote fair competition and protect consumer interests. The fifth plenary session dedicated itself to discussing the effectiveness of these institutions and the legal procedures governing them.

Moderated by Nelly Sakata, Advocate of the High Court South Africa, the session featured prominent panellists, including Prof Bill Kovacic, Professor of Law and Policy at George Washington University; Adv Jerome Wilson, Group 621; Chris Charter, Director and Head of Competition: Cliffe Dekker Hofmeyer; and Bukhosibakhe Majenge, Chief Legal Counsel & Acting Deputy Commissioner: CCSA. The panel provided insights into what has worked, what hasn't, and the challenges that lie ahead.

Institutional Design - A Comparative Perspective

Sakata opened the session by outlining the rationale behind South Africa's institutional design, which separates investigatory powers held by the Commission from adjudicatory powers vested in the Tribunal and the Competition Appeal Court (CAC). This structure is often praised for ensuring administrative justice but has faced criticism for causing delays and potential abuses.

Professor Bill Kovacic, a leading expert in competition law, provided a comparative perspective on institutional design. "In

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PLENARY SESSION 5
Institutional design and procedural practice

SPEAKERS

Nelly Sakata
Jerome Wilson SC
Chris Charter
Bill Kovacic
Bukhosibakhe Majenge

Competition Commission 25 Competition Tribunal



the world, there are no right answers, and the debate goes on over how to make the trade-offs that accompany the design of the adjudication and prosecution process,” he said. Kovacic emphasised that while South Africa’s model is widely followed, there is no consensus on which approach yields the best substantive results. “The South African model is in the mainstream of what is regarded as acceptable practice,” he noted, urging continuous experimentation and reflection in institutional design.

He elaborated, “The trade-offs between expertise, procedural fairness, speed, and accuracy of outcomes are universal. South Africa’s choice to separate prosecutorial and adjudicatory functions was significant, aiming to enhance public confidence in the decision-making process.”

Challenges in Delays and Case Management

As the discussion shifted to the challenges faced by the current institutional framework, Advocate Wilson highlighted the systemic delays that plague the competition law process. “Every

competition law practitioner would agree there is a problem with delays in getting matters heard,” he remarked. Adv Wilson pointed out that prohibited practice cases can take upwards of seven years to resolve, while mergers may take three years in fast-moving markets. “This is not good for the merging parties, nor is it beneficial for the Commission,” he added.

Adv Wilson suggested that the delays are not solely due to institutional design but also stem from resource constraints and case management inefficiencies within the Commission and Tribunal. “The Tribunal has an ever-expanding mandate, generating a huge amount more work through market inquiries and investigations, yet it operates with limited capacity,” he explained, noting that the Tribunal currently has only three permanent members and several part-time members, leading to bottlenecks in case management.

He cautioned that the adversarial nature of Tribunal proceedings has compounded these delays. “The Tribunal was initially conceived as more inquisitorial, but it has become highly litigious,” Adv Wilson said, adding that this shift introduces

complications and opportunities for both sides to delay the process. He called for a re-evaluation of the procedural framework to ensure a more efficient and effective adjudication process.

Separation of Powers - Strengths and Drawbacks

Charter offered insights into the separation of powers between the Commission and the Tribunal. “I quite like separation of powers and the rule of law. It provides necessary checks and balances,” he said. Charter acknowledged that while there are benefits to an adversarial system, it is crucial to infuse it with inquisitorial elements to enhance procedural fairness and efficiency.

He admitted that this separation has its drawbacks, particularly regarding delays. “There is a risk of Stalingrad tactics, where parties use the legal process to delay outcomes. This can lead to inefficiencies in the system,” he noted. Charter emphasised the need for a balanced approach that recognises the importance of both procedural rigour and the need for timely decision-making.

Addressing whether there is a rush to appeal decisions, Charter stated, “It is almost inevitable that in hard-fought matters, whatever the outcome, the parties will seek to take the matter to the next level.” He pointed out that while this can contribute to the development of a body of precedent, it can also exacerbate delays if not managed effectively.

Strengths and Weaknesses of Current Institutional Design

Majenge provided an overview of the strengths and weaknesses of the current institutional design. “The division of jurisdiction between the Commission and the Tribunal provides checks and balances,” he affirmed. Majenge acknowledged the importance of procedural fairness and accessibility but emphasised that the expedition of processes remains a significant challenge.

“Currently, we have about 31 active cartel cases and ten abuse cases, but the backlog is substantial,” Majenge explained. He highlighted that the average duration for abuse cases is around five to seven years, indicating a pressing need for reform. “The Stalingrad strategy, where parties prolong litigation, contributes to the stickiness in the progression of cases,” he noted.

Majenge called for a proactive approach to address these issues, suggesting that streamlining workflows and increasing the Tribunal’s capacity could help mitigate delays. “We need to find ways to expedite the process without compromising the quality of decision-making,” he asserted.

Reform and Coordination

As the session progressed, panellists emphasised the need for reform and greater coordination among various institutional actors. Prof Kovacic reiterated the importance of trade-offs in institutional design and underscored the need for continuous learning and adaptation. “There is no one-size-fits-all solution, and jurisdictions must remain open to experimenting with different models,” he said.

Adv Wilson echoed this sentiment, urging stakeholders to collaborate more effectively to address systemic challenges.



“We must focus on streamlining processes and ensuring that resources are appropriately allocated to meet the demands of an expanding workload,” he stated.

Charter added that while the current system has its merits, it is essential to remain vigilant about potential pitfalls. “We must avoid a populist approach that prioritises speed over fairness,” he cautioned, emphasizing the need for a balanced and thoughtful approach to competition law.

Reflections on Effective Institutional Design

During the session, Prof Kovacic shared insights into how jurisdictions can assess the efficiency of their competition systems. He noted, “Jurisdictions have used various approaches to evaluate the effectiveness of their systems. One method is to analyse the speed of resolution at all stages of the process.” He advocated for a comprehensive examination of decision-making processes within the Competition Commission and Tribunal.

Prof Kovacic recounted a case where a competition authority invited external experts to review their operations. “This is a painful and difficult process, but it can yield valuable insights into administrative inefficiencies,” he explained. He emphasised the importance of data-driven assessments, which can help identify bottlenecks and streamline workflows.

He also highlighted the need for collaboration among judges to share best practices in case management. “Meetings of judges can lead to valuable discussions about effective management strategies,” he said, adding that such exchanges can help improve overall outcomes in competition cases.

The Future of Competition Law - Challenges and Opportunities

The panelists reflected on the future of competition law in South Africa. The consensus was clear: while substantial progress has been made, significant challenges remain. The call for increased coordination, better resource allocation, and innovative approaches to case management resonated throughout the discussion.

Majenge encapsulated the sentiment, stating, “The current design provides a solid foundation, but we must be more agile in addressing the challenges ahead.” He emphasised the need for ongoing dialogue among stakeholders to ensure that the competition framework remains effective and responsive to the evolving economic landscape.

Innovative Approaches to Streamline Processes

As the conversation continued, Adv Wilson raised the idea of whether the Commission could exercise discretion in prioritising cases. “We have had a debate for many years about whether the Commission

should say, 'I think this is a prohibitive practice, but it's not that important, so I won't prosecute it,'" he explained. He argued that having the ability to prioritise cases could lead to more efficient use of resources.

Majenge also touched on the importance of utilising acting part-time members to alleviate the Tribunal's workload. "We need to ask whether we are using the provisions for acting members effectively," he stated. "If not, why not? Should we consider pro bono appointments to help clear out non-contentious matters?"

Charter agreed, suggesting that the Tribunal could streamline processes by allowing a single member to handle unopposed mergers or interlocutory matters. "If we can maximise the resources we have, we can address the backlog more effectively," he noted.

Addressing the SMME Challenge

The issue of supporting small and medium enterprises (SMEs) also emerged as a focal point of discussion. Charter emphasised the need for an SME unit within the Commission to expedite the handling of complaints from smaller businesses. "SMEs often lack the resources to bring complaints forward, so a dedicated unit could help unlock valid concerns and support their participation in the market," he suggested.

Majenge acknowledged the importance of addressing the challenges faced by SMEs in the competition landscape. "If we can create a unit that focuses on the specific needs of SMEs, we can help ensure their survival and growth in a competitive environment," he said.

A Call for Innovation and Agility

The discussions during the plenary session underscored the complexities and challenges of South Africa's competition law framework. While significant progress has been made, panellists collectively advocated for greater coordination among policy instruments, improved data capabilities for market inquiries, and a renewed focus on fostering innovation in the economy.

As South Africa navigates the complexities of competition law, the insights shared during this plenary session will undoubtedly shape the future trajectory of competition policy in the country. The overarching message is clear: a multifaceted approach is essential for ensuring that the regulatory framework serves as a catalyst for economic growth and transformation.

The journey ahead is fraught with challenges, but with a commitment to continuous improvement and adaptation, South Africa can build a more equitable and competitive economic landscape for all. The insights from this session will inform ongoing efforts to refine institutional design, enhance procedural efficiency, and ultimately foster a more dynamic and inclusive economic environment.



MOMENTS OF CELEBRATION

THE GALA DINNER





EMBRACING CHANGE: VISION FOR THE FUTURE OF COMPETITION LAW IN SOUTH AFRICA

Competition Tribunal Chairperson
MONDO MAZWAI



In an inspiring address on the second day of the 18th Annual Competition Law Conference, Chairperson of the Competition Tribunal, Mondo Mazwai, reflected on the progress made in South Africa's competition law landscape over the past 25 years while emphasising ongoing challenges and the importance of collaboration.

Mazwai highlighted the significance of looking back to inform the future, encapsulating the theme of the conference: "Looking Back to Look Forward."

A Journey Through Time

Mazwai opened her address with a nod to the historical significance of South Africa, referencing the Cradle of Humankind as a reminder of the nation's rich heritage. "If you have not visited the Cradle of Humankind, I encourage you to do so, because it is deeply tied not only to who we are, but also to what we do and seek to do as humans," she said.

Emphasising the foundational principles of competition law, she quoted Richard Stengel, who described the essence of Ubuntu: "I am, because you are." This philosophy underpins the Tribunal's work, aiming to make markets more inclusive and equitable. "What we achieve is not only of our own doing but is also due to the work of others," she added.

Reflecting on the legacy of apartheid, Mazwai acknowledged the systemic challenges the country faced. "Apartheid put in place structures intended to prevail for hundreds of years after its dismantlement," she explained. The Competition Act, established to address these historical injustices, incorporates

both efficiency and equity goals. "We sought to balance competition and public interest, ensuring that consumers, small businesses, and international competitors could thrive in our markets," she said.

Mazwai praised the Tribunal's efforts in protecting vulnerable consumers and businesses, citing significant cases that exemplify the institution's commitment to fairness. "In the Mediclinic Matlosana merger case, the Tribunal prohibited a

merger that would have increased costs for uninsured patients by as much as 35%," she noted. "This decision reaffirmed our role in protecting consumers and demonstrated that competition policy is about making markets work for people without power."

Navigating Global Challenges

As the world faces unprecedented challenges - including technological

Emphasising the foundational principles of competition law, she (Mondo Mazwai) quoted Richard Stengel, who described the essence of Ubuntu: "I am, because you are." This philosophy underpins the Tribunal's work, aiming to make markets more inclusive and equitable."



advancements, climate change, and economic inequality -Mazwai emphasised the need for the competition authorities to remain adaptable. “2024 has been dubbed the year of elections, with over 60 countries taking to the polls. We are witnessing the emergence of new governance structures globally,” she added. “How do we navigate these uncharted waters brought about by an ever-changing world and economy?”

Mazwai acknowledged the importance of consistency and predictability in the application of law, assuring stakeholders that the Tribunal remains committed to these principles. “As adjudicators, our stakeholders look to us for fairness and transparency in our decisions,” she affirmed.

Mazwai reiterated the progress made in the last 25 years while recognising the challenges that persist. “We have tackled the opposing objectives of balancing efficiency and public interest, and today our global counterparts applaud us for the transparency in our law,” she stated. “However, the economic problems of growing inequality, unemployment, and lack of access to markets remain.”

Drawing inspiration from John Maynard Keynes, she quoted, “The economic problem is not a permanent problem for mankind. It is a problem that can be solved.” Mazwai emphasised the importance of continuous improvement and the need to address the challenges that lie ahead.

Mazwai stressed that the competition authorities cannot achieve their goals in isolation. “We have to fire from all cylinders,” she urged, calling for collaboration across all economic players. “This wall-to-wall cover is what will take us to the next step.”

She also addressed the pressing issue of capacity within the Tribunal. “We must acknowledge the reality that sometimes we have to tell you we cannot sit the matter down this time because we do not have enough capacity,” she noted. “The demand for our services is increasing, and it is imperative to strengthen our financial and human resources to sustain a robust adjudicative body.”

Mazwai stressed that the competition authorities cannot achieve their goals in isolation. “We have to fire from all cylinders,” she urged, calling for collaboration across all economic players. “This wall-to-wall cover is what will take us to the next step.”



Mazwai emphasized the need for ongoing training and capacity building within the competition authorities. “We have invested a lot in building capacity over the years, but we must ensure we are fit for purpose in today’s environment,” she said.

Enforcement and Consumer Protection

In discussing specific cases, Mazwai highlighted the Tribunal’s role in protecting consumers during the COVID-19 pandemic. “In the Babelegi case, we found that a reseller of face masks charged prices almost ten times higher during the pandemic, which constituted excessive pricing,” she explained. “This case exemplifies our commitment to protecting vulnerable consumers during crises.”

She pointed out that while the Tribunal has made significant strides in enforcing competition law, ongoing efforts are required to address new challenges. “We must remain vigilant in ensuring that

competition policy adapts to the changing economic landscape,” she urged.

Building a Competitive Future

Mazwai reiterated the importance of incremental progress. “It is not expected that our work will result in overnight changes, but every rand saved in the consumer’s pocket is a measure of our success,” she stated. “We will continue to draw from the experiences of our global counterparts and share our insights to foster a more equitable economic environment.”

Mazwai’s address encapsulated the spirit of the conference, reflecting on past achievements while looking forward to the challenges that lie ahead. As the competition authorities continue to navigate the complexities of South Africa’s economic landscape, Mazwai’s vision for collaboration, innovation, and inclusivity serves as a guiding light for the future.

PLENARY SESSION 6

USING COMPETITION LAW FOR THE PROGRESSIVE REALISATION OF CONSTITUTIONAL RIGHTS

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) | Justice Chris Jafta (Former Judge: Constitutional Court of South Africa)

CONVERGENCE OF COMPETITION LAW AND HUMAN RIGHTS CONTINUOUS ENGAGEMENT AND REFORM ESSENTIAL TO ADDRESS PERSISTENT CHALLENGES

The intersection of competition law and constitutional rights is a critical area of discourse in South Africa, particularly as the nation reflects on 25 years of competition law enforcement and adjudication.

The sixth plenary session explored this convergence and its potential to advance human rights. Moderated by Lebogang Phaladi, the session featured a distinguished panel including Fatima Hassan, head of the Health Justice Initiative; Bukhosibakhe Majenge, Chief Legal Officer and Acting Deputy Competition Commissioner; and Adv Jerome Wilson from Group 621. They shared their insights on the challenges and opportunities within this framework.

Historical Context

Khalirendwe Raneneyeni, Principal Economist at the Commission, opened the session with a warm welcome and a brief overview of the discussions that had transpired in previous days. She highlighted the historical significance of the conference and the session, noting the landmark ruling by the Constitutional Court in the Mediclinic case, which underscored the necessity of viewing competition law through a constitutional lens. "In that case, the distinction drawn by Justice Mogoeng Mogoeng emphasised that the impact of a merger is significant, particularly for uninsured patients," she stated.



25 YEARS OF COMPETITION ENFORCEMENT LOOKING BACK TO LOOK FORWARD



Phaladi framed the discussion by recalling the early 2000s, when South Africa was grappling with the HIV/AIDS crisis. “Back then, the ordinary South African was desperate for access to lifesaving ARVs, but the barriers were immense,” she said, setting the stage for the subsequent discussion on how competition law can address systemic inequities.

The Role of Activism in Competition Law

Fatima Hassan shared her experiences in advocating for access to medicines during the HIV/AIDS crisis. “We had to approach the Commission for access to lifesaving ARVs because there was no public sector programme,” she explained. “The only way to access these drugs was through private medical schemes, which many could not afford.”

Hassan detailed the pivotal Hazel Tau case, which leveraged competition law to fight for access to treatment. “Zackie Achmat read the Competition Act and found Section 8, and we thought, could this really work?” she recalled. “We spent two years building our case, involving various stakeholders, including healthcare workers and trade unions.”

Ultimately, the Commission’s decision to refer the case to the Tribunal marked a turning point. “When the Commission announced it would refer the matter, we received a call from GSK’s lawyers, stating they were ready to negotiate,” she shared, highlighting the power of collective action.

Navigating the Challenges of Competition Law and Human Rights

Phaladi then turned the conversation towards the implications of the Mediclinic ruling for competition law. “Justice Mogoeng emphasised that it should never be acceptable for corporations to prioritise profit at the expense of the public,” she stated. This perspective aligns with the broader objectives of competition law, which aims to protect consumers and promote equitable access to markets.

Majenge, reflected on how the Mediclinic judgment represented a significant integration of economic inequality considerations into competition law. “It was the first case to analyse price effects through the lens of economic inequality,” he noted. “This integrated approach shows that competition law can and should address public interest issues, not just efficiency goals.”

Majenge emphasised the need for the competition authorities to remain vigilant in their mission to uphold both competition and public interest. “We must ensure that the transformative aspects of competition law are not sidelined,” he cautioned. “The apartheid legacy lingers, and we must confront it head-on.”

Impact on Vulnerable Consumers

The panellists discussed specific cases that illustrate the Tribunal’s commitment to protecting vulnerable consumers. Hassan referred to the Babelegi case, where a reseller of face masks was found guilty of excessive pricing during the pandemic. “Babelegi increased prices tenfold, exploiting consumers at a time of crisis,” she explained. “This case highlighted the necessity of competition law in safeguarding public welfare.”

Majenge reiterated the importance of these interventions, stating, “Every rand saved in the consumer’s pocket is a measure of our success.” He emphasised that the Tribunal’s decisions are not just legal victories but also contribute to broader social objectives.

The Role of Civil Society in Competition Law

The discussion also touched on the essential role of civil society in enforcing competition law and advocating for public interest. Hassan stressed, “The engagement of civil society is crucial in ensuring that the voices of the marginalised are heard.” She emphasised that without active participation, competition law risks becoming detached from its foundational purpose of serving the public good.

Phaladi noted the challenges faced by civil society in the legal process. “When we sought to intervene in the Babelegi case, we encountered resistance from the legal teams of large corporations,” she stated. “The perception was that we would delay proceedings, but our intent was to protect vulnerable consumers.”

Lessons from the Pandemic

Hassan reflected on the lessons learned during the COVID-19 pandemic, particularly in terms of access to essential health products. “The uneven distribution of vaccines and essential goods revealed systemic flaws in our legal framework,” she remarked. “We must advocate for reforms that ensure equitable access to healthcare, especially during crises.”

She called for urgent inquiries into the preparedness of South Africa’s legal system for future pandemics. “If our laws are not ready, we will continue to face these issues,” Hassan warned, urging lawmakers and policymakers to take action.

Addressing Systemic Inequities

Majenge emphasised that the competition authorities cannot operate in isolation. “We must collaborate across all economic players to foster a more inclusive economy,” he said. He acknowledged the role of the government in addressing systemic inequities, stating, “We must work together to ensure that the benefits of competition extend to all South Africans.”

The panellists recognised that the intersection of competition law and human rights is not just a legal issue but a societal one. “It is crucial that we challenge the status quo to ensure that markets work for



everyone, especially the most vulnerable,” Phaladi stated.

The panellists emphasised the ongoing need for advocacy, collaboration, and innovation in the realm of competition law. “We have made significant strides, but the road ahead is long,” Hassan concluded. “We must remain committed to ensuring that competition law serves as a tool for social justice.”

Mazwai’s earlier reflections on the importance of incremental progress resonated throughout the session. “Incremental changes are vital in transforming the economy and increasing

participation by historically disadvantaged individuals,” Majenge reiterated.

The overarching message was clear: while South Africa’s competition law framework has made notable advancements, continuous engagement and reform are essential for addressing the challenges that persist. The insights shared during this session will inform ongoing efforts to refine the intersection of competition law and human rights in South Africa, ultimately fostering a more equitable and inclusive economic landscape.

PLENARY SESSION 7

SUSTAINABILITY AND THE EVOLVING AIMS OF COMPETITION LAW

Moderator

Thembaletu Buthelezi (Competition and Regulation Principal, Genesis)

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)

COMPETITION LAW AND SUSTAINABILITY CALL FOR MORE COORDINATION AMONG STAKEHOLDERS TO BRIDGE THE GAP

As global challenges mount, competition law is evolving to embrace sustainability. The session highlighted the need for a paradigm shift in how competition policy can drive sustainable development.

This session which also brought together policymakers, legal experts, and economists to discuss a pressing issue: the integration of sustainability into competition law. The plenary session focused on how competition policy could support the United Nations' Sustainable Development Goals (SDGs) while promoting a competitive market environment.

Thembaletu Buthelezi - Competition and Regulation Principal, Genesis, the plenary session's moderator, kicked off by emphasizing that the traditional focus of competition law on consumer welfare, primarily defined by price effects, needs to expand to include broader sustainability goals. "Sustainability is not just a buzzword for South Africa; it has been embedded in our legal framework through public interest considerations from the outset," she said.

This foundational approach positions South Africa as a global leader in integrating socioeconomic factors into competition policy.

18th annual competition law economics & policy conference 2024

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LOOKING BACK TO LOOK FORWARD

DATE: 5 Sept 2024 | TIME: 11:30 - 12:30 | LIVE | STREAM | YouTube

PLENARY SESSION 7
Sustainability and the evolving aims of competition law

SPEAKERS

- Thembaletu Buthelezi**
- Teresa Moreira**
Former Head – Competition and Consumer Policies: United Nations Conference on Trade and Development
- Derek Lotter**
Co-Head – Competition Practice: Bowman
- Andrew Whitfield**
Deputy Minister: Department of Trade Industry and Competition
- Andrey Tsyganov**
Deputy Head: Federal Antimonopoly Service of the Russian Federation
- James Hodge**
Chief Economist: Competition Commission SA

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Buthelezi's remarks set the stage for a rich discussion on how competition law can promote sustainable business practices while ensuring market fairness. She noted that sustainability encompasses not only environmental considerations but also social dimensions such as decent work, economic growth, and equitable resource distribution.

Global and Local Perspectives on Sustainability

Panellist, Teresa Moreira, Head of the Competition and Consumer Policies Branch of UNCTAD, joined the conversation virtually, underscoring the importance of aligning competition policy with the SDGs. She highlighted a crucial point: "Sustainability involves balancing economic growth, social inclusion, and environmental protection." Moreira urged competition authorities to adopt soft law instruments and guidelines to navigate the complexities of sustainability, particularly for developing countries with limited resources.

Deputy Minister Andrew Whitfield, also a panellist, echoed these sentiments, emphasising the South African

government's commitment to inclusive growth. He outlined the medium-term development plan that incorporates the SDGs as a guiding framework for economic policy, stating, "Competition policy must enable us to achieve rapid and sustainable inclusive growth and job creation." He emphasised the need to strike a balance between promoting competition and addressing pressing social issues like poverty and inequality.

The Role of Competition Authorities

Central to the discussions was the role of competition authorities in facilitating sustainable development. Another panel member, James Hodge, Chief Economist of the Commission, articulated a vision for how competition law can adapt to support sustainability initiatives. He pointed out that while the focus has traditionally been on consumer welfare, there is ample room for integrating sustainability into the competition framework.

Hodge noted: "The issue is not whether competition law can affect sustainability goals but where the priorities should lie." He argued that competition authorities can help businesses navigate the complexities

of sustainability, particularly in sectors like renewable energy, where barriers to entry often inhibit innovation.

Also on the panel was Derek Lotter, a legal practitioner. He emphasised the importance of providing clarity and certainty to businesses regarding competition law as it relates to sustainability. He warned against disincentivizing investment through overly restrictive regulations and highlighted the need for a balanced approach that encourages sustainable practices while fostering market competition.

The panellists shared insights from various countries that have begun to integrate sustainability into their competition frameworks. Andrey Tsyganov, Deputy Head of the Russian competition authority, discussed how Russia has prioritised sustainable development within its competition policy, focusing on sectors such as agriculture, IT, and energy. He noted that fair competition is a constitutional value in Russia, and the country's competition authority actively seeks to balance sustainability with compliance to antitrust laws.

Tsyganov's remarks aligned with Moreira's observation that competition authorities worldwide are increasingly using a variety of tools, beyond traditional enforcement, to promote sustainability. She pointed out that many countries are exploring how competition law can contribute to sustainability, but there remains hesitation to formalize these considerations into legal amendments.

A recurring theme throughout the session was the delicate balance that competition authorities must strike between promoting competition and achieving broader societal outcomes. Prof Thando Vilakazi from the Competition Tribunal raised a critical point about the historical framing of public interest in South Africa's competition law. He argued that sustainability should not be treated as a side issue but rather as a core component of competition policy.

This sentiment was echoed by other panellists, who emphasised that the challenges posed by climate change and social inequality require a rethinking of traditional competition frameworks. As competition authorities face pressures to adapt, they must also consider how their decisions will impact vulnerable populations, particularly in developing countries.

The importance of collaboration emerged as a vital theme. The panellists called for more coordinated efforts among competition authorities, government agencies, and businesses to achieve sustainable outcomes. Moreira underscored the necessity of sharing best practices and experiences to foster innovation and drive meaningful change.

Whitfield added that the government must act swiftly in decision-making processes to facilitate investment and growth in sustainable sectors. "Capital flows through the path of least resistance," he said, emphasising that government must be decisive in enabling a conducive environment for sustainable business practices.

The insights shared at the plenary session illuminate a transformative path for competition law. As sustainability becomes an increasingly critical consideration, competition authorities must evolve their



frameworks to address the complexities of modern economic challenges.

By integrating sustainability into competition policy, South Africa and other nations can foster a more inclusive and equitable economy. The discussions highlighted not just the challenges ahead but also the opportunities for innovation and collaboration. As the global community grapples with pressing issues like climate change and social inequality,

competition law can serve as a powerful tool for driving sustainable development.

The journey towards a more sustainable future will require commitment, creativity, and cooperation among all stakeholders. The conference underscored a shared vision: that competition law must adapt to meet the needs of today's society while paving the way for a more sustainable tomorrow.

PLENARY SESSION 8

THE DEVELOPMENT OF AN INTEGRATED POLICY APPROACH: INDUSTRIAL DEVELOPMENT, TRADE AND COMPETITION POLICY

Moderator

Reena Das Nair

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).

COLLABORATION KEY TO BREAKING BARRIERS FOR GROWTH AND INCLUSION IN SOUTH AFRICA'S ECONOMY

As delegates reconvened after lunch on the final day of the conference, the atmosphere buzzed with anticipation for a critical discussion: how can South Africa effectively integrate its industrial policy, trade policy, and competition policies to promote inclusive economic growth? With a legacy of inequality and market concentration, the stakes are high, and the need for innovative solutions has never been more pressing.

The moderator, Reena Das Nair, acting director at the Centre for Competition Regulation and Economic Development, opened the session with a compelling challenge. "It's time to move beyond just helping big players; we need to create real pathways for challenger firms and new entrants," she declared. This shift is essential for breaking down barriers that have historically limited economic participation for many South Africans.

The statistics surrounding South Africa's economic participation tell a compelling story. With fewer than 5% of individuals self-employed, substantially lower than China's 25% and the average of 17% in other upper-middle-income countries, the need for change is urgent. This lack of entrepreneurial activity plays a significant role in the country's high unemployment rate, which is currently at 40%, starkly contrasting with the average seen in similar economies.

Moreover, South Africa's heavy reliance on mining, which accounts for over half of the country's exports, poses its own



25 YEARS OF COMPETITION ENFORCEMENT LOOKING BACK TO LOOK FORWARD

The banner features a header with a calendar icon, 'DATE 5 Sept 2024', a clock icon, 'TIME 14:00 - 15:00', and buttons for 'LIVE' and 'STREAM' with a YouTube icon. Below this, the text reads 'PLENARY SESSION 8' and 'The development of an integrated policy approach: Industrial Development, Trade and Competition Policy'. A 'SPEAKERS' section follows, displaying four circular portraits with names and titles: Reena Das Nair, Ayabonga Cawe (Chief Commissioner: International Trade Administration Commission of South Africa), Neva Makgetla (Senior Economist: Trade and Industrial Policy Strategies), Cristina Caffara (Honorary Professor: University College London and Deputy Director: CEPR Competition Research Policy Network), and Fiona Tregenna (Professor of Economics and South African Research Chair in Industrial Development: University of Johannesburg). The bottom of the banner includes logos for the Competition Commission of South Africa, the 25th anniversary, and the Competition Tribunal of South Africa.



challenges. While mining is a key revenue driver, it generates just 3% of employment. “We need to diversify our economic base and support sectors that can provide more jobs,” Das Nair remarked, calling attention to the urgent need for policy focus that fosters job creation and economic resilience.

Dr. Neva Makgetla, a senior economist at Trade and Industrial Policy Strategies (TIPS), provided critical insights into the limitations of current competition policies. “These policies were designed to regulate established businesses, not to reshape the economy fundamentally,” she explained. This reactive stance means that competition authorities can impose conditions on mergers but lack the proactive power to drive structural change.

Makgetla emphasised the necessity of crafting policies that do not just support existing businesses but also encourage new entrants. “We need to rethink how we design our industrial and trade policies to create opportunities for small and medium enterprises to thrive,” she stressed. This shift is crucial for addressing the unique challenges South Africa faces, particularly in the context of its historical economic

landscape.

Ayabonga Cawe, Chief Commissioner of the International Trade Administration Commission, addressed the complex relationship between trade policy and competition policy. “In South Africa, many trade policies currently protect large incumbents through tariffs and duties, which undermines our goals of widening participation and promoting competition,” he noted.

This contradiction raises significant questions about the effectiveness of current regulatory frameworks. While the intention behind these policies is to protect local industries, they often inadvertently reinforce existing barriers, making it difficult for smaller players to compete. “We must ensure that our trade policies align with our competition policies to create a level playing field,” Cawe insisted.

Despite the challenges, the panellists highlighted potential opportunities for growth in sectors like clothing, textiles, and furniture, where smaller firms continue to play vital roles. “In these industries, we see opportunities for collaboration among smaller players,” Cawe said. By utilising

block exemptions created by competition authorities, these firms can band together to access incentives that would otherwise be difficult to reach.

“When small firms work together, they can fill shipping containers to benefit from rebates that an individual firm could never achieve alone,” he explained, signalling a promising avenue for small enterprises to enhance their competitiveness in a challenging market.

A Global Perspective on Policy Integration

Cristina Caffara, an international expert on competition policy, shared her observations on global trends. “There’s been a significant shift in how countries approach industrial policy,” she said. “What was once seen as a dirty word is now recognised as essential for economic development.”

Caffara emphasised the need to address the broader economic context, stating that competition policy cannot exist in isolation. “We must confront the political economy that shapes competition. The focus is shifting from pure efficiency to a more inclusive approach that considers

equity and fairness,” she remarked.

She pointed out that the assumptions baked into current trade policies, particularly those related to perfect competition, are deeply problematic. “When policymakers assume that markets operate under perfect competition, it leads to misguided regulations that don’t reflect the realities of the market,” Caffara argued.

The panellists discussed how the principles embedded in the World Trade Organization (WTO) agreements often do not align with the realities faced by developing economies. “We need to challenge the notion that any intervention to address unfair competition is distorting an otherwise perfect market,” Caffara said.

This conversation about the flaws in the WTO framework is not just theoretical; it has real implications for how South Africa navigates its trade relationships. The panellists agreed that a re-evaluation of these assumptions is necessary to create a more equitable trading environment.

The Importance of Inclusivity

As the discussions progressed, the conversation also tackled the critical issue of inclusivity. “Inclusivity shouldn’t just be a buzzword; it must have tangible meaning,” Makgetla stated. She urged policymakers to consider various dimensions of inclusivity, including race, gender, and firm size. “We must dismantle barriers to entry and growth to create opportunities for all,” she reiterated.

The panellists highlighted that addressing these barriers is vital for fostering an environment where all businesses can thrive. “It’s about creating space for small firms to grow and diversify,” Makgetla noted, emphasising that this growth is essential for job creation and economic resilience.

The discussions underscored the critical need for collaboration among government departments, industry stakeholders, and civil society. “We can’t work in silos anymore,” Cawe stated. “It’s about building a cohesive strategy that includes all stakeholders.”



This collaborative approach is essential for overcoming the barriers that have historically limited growth and inclusion in the South African economy. The urgency for an integrated approach to industrial policy, trade, and competition was clear.

As the conference wrapped up, it was evident that South Africa stands at a crucial juncture. The integration of industrial policy, trade policy, and competition policies is not just a theoretical exercise; it is vital for creating a more inclusive and dynamic economy.

Delegates left the session with a renewed sense of urgency and purpose, recognising that while the challenges are significant,

the opportunities for meaningful change are equally compelling. By promoting collaboration and embedding inclusivity into policy frameworks, South Africa can pave the way for a brighter economic future, one that benefits all its citizens.

The path forward is filled with potential, and as the session broke, the call to action was clear: it’s time to take meaningful steps to ensure that every South African has the opportunity to contribute to and benefit from economic growth. With determination and a unified approach, South Africa can create an environment where businesses of all sizes can flourish.

PLENARY SESSION 9

THE EVOLUTION OF THE SOUTH AFRICAN ECONOMY AND IMPLICATIONS FOR COMPETITION ENFORCEMENT

Moderator

James Hodge

Panellists

Bridget Kenny (Professor of Sociology: University of the Witwatersrand) | Zuko Godlimpi (Deputy Minister: Department of Trade Industry and Competition) | Nthabiseng Moleko (Chairperson: National Empowerment Fund) | Tamara Mokoka (Divisional Manager: Competition Commission South Africa) | Tshepiso Kobile (Chief Executive Officer: Southern Africa Venture Capitalist Association)

PANELLISTS FOR INCLUSIVITY, VENTURE FUNDING AND INNOVATION FOR THE ECONOMIC FUTURE OF SOUTH AFRICA

The Like the rest of the conference, the final session brought together a diverse panel of experts to discuss the challenges and opportunities facing South Africa's economy in a rapidly changing global landscape. With issues ranging from the impact of technological advancements and geopolitical tensions to the imperative for economic transformation, the discussions underscored the importance of proactive measures in competition policy and economic strategy.

James Hodge, the Commission's Chief Economist and the moderator, set the tone by highlighting the dual nature of the current economic climate, historical successes juxtaposed with looming challenges. He opened the session with a sobering reminder of the recent turmoil in both the global and local economies, emphasising the need for South Africa to adapt to these changes.

On the panel was Deputy Minister of Trade, Industry and Competition, Zuko Godlimpi who echoed this sentiment, emphasising the need for South Africa to rethink its approach to industrialisation in light of the changing global economy. He pointed to the lasting effects of the 2008 financial crash and the COVID-19 pandemic, which have exacerbated existing vulnerabilities in South Africa's network industries, particularly in energy and logistics.

25th annual competition law economics & policy conference 2024

25 YEARS OF COMPETITION ENFORCEMENT
LOOKING BACK TO LOOK FORWARD

DATE 5 Sept 2024 | TIME 15:00 - 16:00 | LIVE | STREAM | YouTube

PLENARY SESSION 9
The evolution of the South African economy and implications for competition enforcement

SPEAKERS

- James Hodge**
- Bridget Kenny**
Professor of Sociology: University of the Witwatersrand
- Zuko Godlimpi**
Deputy Minister: Department of Trade Industry and Competition
- Nthabiseng Moleko**
Chairperson: National Empowerment Fund
- Tamara Mokoka**
Divisional Manager - Mergers and Acquisitions: Competition Commission South Africa
- Tshepiso Kobile**
Chief Executive Officer: Southern African Venture Capital and Private Equity Association

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Godlimpi outlined a vision for the future that includes a pivot toward green industrialisation while also considering the country's historical reliance on heavy industries. He argued for a strategic reduction in the export of raw critical minerals, advocating for domestic production to feed into future green technologies. This approach reflects a shift not only in industry focus but also in the relationship between business and labour, emphasising inclusivity in economic transformation.

The deputy minister noted that the transition to a green economy does not imply a complete abandonment of traditional industries. Instead, he argued that these sectors must be reimagined to contribute to sustainable growth. For instance, heavy mining could play a role in providing the necessary inputs for green technologies, provided that the sector adapts and evolves. This dual approach is critical for ensuring that South Africa does not fall behind in the global race toward sustainable development.

The Role of Venture Capital in Economic Growth

Tshepiso Kobile, a panellist from the

South African Venture Capital Association, provided insights into the burgeoning venture capital landscape in South Africa. He noted that, despite global declines in venture capital activity, South Africa saw significant fundraising in 2023, highlighting the resilience of local startups. Kobile emphasised the importance of venture capital beyond mere funding; it brings specialised skills and networks that are essential for the growth of tech startups.

Venture capitalists not only provide financial backing but also mentorship, strategic guidance, and access to broader markets. This support can be crucial, especially for startups navigating the complexities of the South African market. The role of venture capital in promoting innovation and entrepreneurship cannot be overstated, particularly in a country where access to traditional funding sources is often limited.

The discussion also revealed that while fintech continues to dominate investment, emerging sectors such as cleantech and biotech are beginning to attract attention. Kobile highlighted that venture capital investment in South Africa is still concentrated in fintech and software, but there is a growing interest in areas like

renewable energy and health technology. This shift is not only a reflection of global trends but also an indication of South Africa's unique needs and opportunities.

However, Kobile warned that local startups often struggle with access to capital, particularly from pension funds that are traditionally risk-averse. He stressed the need for a robust regulatory environment that encourages investment while ensuring that benefits accrue to South Africa. This regulatory framework should facilitate easier access to funding for startups, particularly those led by historically marginalised groups.

Another panellist, Prof Bridget Kenny, a sociologist at WITS University, addressed the changing nature of work in the context of the platform economy. She pointed out that while technology can create jobs, it often results in precarious employment conditions that lack the protections traditionally afforded to workers. This dynamic raises critical questions about the quality of jobs being created and who benefits from the technological advancements.

In the platform economy, many workers find themselves classified as independent

contractors rather than employees, stripping them of benefits such as health insurance and job security. This reality is particularly poignant in South Africa, where unemployment rates are high, and many individuals are forced into gig work out of necessity. Prof Kenny emphasised that while the proliferation of platforms like Uber and Takealot has created new job opportunities, it has also led to the erosion of traditional employment conditions.

Dr Nthabiseng Moleko, representing the National Empowerment Fund and the BBBEE Advisory Council, echoed these sentiments by discussing the historical context of economic exclusion in South Africa. She argued that meaningful transformation cannot occur without deliberate political decisions that enforce compliance with transformation mandates. Dr Moleko called for a comprehensive approach to capital allocation that includes pension funds in supporting emerging industries, particularly to empower previously excluded communities.

Dr Moleko's emphasis on political will is crucial; without strong leadership and commitment to transformation, the economic gains achieved through technological advances may only benefit a small segment of the population. The need for inclusive economic policies that address historical disparities is essential for fostering a more equitable society.

Competition Law in a Changing Landscape

Tamara Mokoka, Head of Mergers and Acquisition at the Commission, discussed the implications of these economic shifts for competition law. She highlighted the need for the Commission to adapt its tools and methodologies to address new market dynamics, particularly in digital economies. Mokoka emphasised the importance of understanding the counterfactual in merger assessments, suggesting that traditional metrics may not adequately capture the potential harm or benefits of mergers in rapidly evolving sectors.

The complexity of modern markets requires competition authorities to be more agile and responsive. Mokoka pointed out that the dynamics of digital markets differ significantly from those of traditional



markets, necessitating a re-evaluation of how mergers are assessed. For instance, the impact of a merger may not be fully understood until after it has occurred, making it imperative for regulators to adopt a more proactive approach.

Moreover, Mokoka noted that the competition landscape is increasingly characterised by conglomerate mergers, particularly in the energy sector. As firms seek to consolidate their positions in the market, competition authorities must remain vigilant to ensure that such mergers do not stifle innovation or limit market access for smaller players. The challenge is to strike a balance between encouraging investment and protecting competition.

The panel also addressed the geopolitical tensions between major global powers, particularly the US and China, and how these dynamics present both challenges and opportunities for South Africa. Godlimpi articulated a vision of non-alignment that allows South Africa to leverage its position to attract investment from both sides. He argued that by consolidating the African market, South Africa can enhance its bargaining power and maximize benefits from foreign investments.

The deputy minister's perspective on non-alignment is particularly relevant in the current geopolitical climate. By avoiding rigid alliances, South Africa can negotiate more favourable terms with both American

and Chinese investors. This flexibility allows the country to position itself as a strategic partner, rather than merely a pawn in global power struggles.

Kobile added that while venture capitalists often view South Africa as too developed, there are significant opportunities for startups to scale across the continent. However, this requires an enabling environment that encourages innovation and collaboration between large corporates and emerging businesses. The potential for South African startups to enter African markets presents a unique opportunity for growth, particularly in sectors like fintech and e-commerce.

As the discussions unfolded, it became clear that South Africa's approach to economic policy must be holistic and interconnected. The challenges of unemployment, economic exclusion, and

the need for sustainable growth cannot be addressed in isolation. A comprehensive economic strategy that integrates various sectors, encourages collaboration between public and private entities, and promotes inclusive growth is essential for the country's long-term stability.

Moleko's call for a more integrated approach to capital allocation is vital. The financial sector, including pension funds and development finance institutions, must play a proactive role in supporting emerging industries. This includes not only providing funding but also promoting an environment conducive to innovation and entrepreneurship.

The role of government in facilitating these changes cannot be overstated. Effective policy frameworks, regulatory support, and targeted interventions are necessary to guide the economy toward

sustainable growth. The government must work collaboratively with the private sector to create an ecosystem that nurtures innovation while ensuring that the benefits of economic growth are equitably distributed.

As the conference concluded, it became clear that the path forward for South Africa's economy will require concerted efforts from all stakeholders, including government, business, and civil society. The discussions underscored the need for a proactive approach to competition policy that anticipates future challenges rather than merely reacting to them.

Panellists' insights revealed a consensus on the importance of inclusivity in economic growth, the need for a robust venture capital ecosystem, and the critical role of competition law in shaping a fair and dynamic market landscape. As South Africa navigates these complexities, the call for collaboration and innovation will be paramount in ensuring that the benefits of economic transformation are felt by all citizens.

The 18th Annual Competition Law & Economic Conference served as a vital platform for addressing the interconnected challenges facing South Africa today. The discussions highlighted the necessity of a multi-faceted approach to economic policy, one that embraces technological advancements, promotes inclusivity, and takes into account the geopolitical realities shaping the global economy.

South Africa stands at a crossroads, with the opportunity to leverage its unique position in the world. The insights gained from this conference should serve as a roadmap for navigating the complex landscape of economic growth, ensuring that the nation not only survives but thrives in the face of global challenges.

Through collective action and a commitment to innovation, South Africa can build a resilient and equitable economy for the future, one that not only meets the needs of its citizens but also positions the country as a leader in the global economic landscape.



COMPETITION COMMISSION STRENGTHENS TIES WITH ANGOLA AT THE CONFERENCE

In a significant development for regional collaboration in competition law, the Commission of South Africa signed a Memorandum of Understanding (MoU) with the Angolan Competition Authority (ACA) during the conference..

This agreement establishes a framework for enhanced communication and cooperation in competition law and policy enforcement between the two nations.

The MoU is part of broader multilateral initiatives aimed at reinforcing bilateral ties, facilitating technical cooperation, and promoting the sharing of information on competition laws and policies. This collaborative effort is particularly vital for developing economies that face unique challenges in the realm of market regulation.

At the signing ceremony, Commissioner Doris Tshepe highlighted the importance of collaboration among competition authorities, particularly in addressing the specific needs and challenges of developing economies. “Working together is essential for us to tackle the complexities of modern economic realities,” Tshepe stated.

The agreement outlines several key areas of cooperation, including:

1. Knowledge Sharing – both authorities will exchange best practices related to legislative and policy developments.
2. Capacity Building – the MoU emphasises joint initiatives aimed at enhancing the skills and capabilities of both parties.
3. Joint Research- collaborative research projects will focus on areas of mutual interest, furthering understanding of each other’s legal frameworks.

A notable aspect of the MoU is its focus on technical cooperation. The agreement paves the way for joint training sessions for technical staff and opportunities for staff exchanges and secondments. This initiative aims to build expertise within both organisations, ultimately enhancing their ability to enforce competition laws effectively.

The partnership between South Africa and Angola signifies a proactive approach to addressing the challenges posed by an ever-evolving economic landscape. By working together, both authorities aim to promote a more competitive and equitable market environment, benefitting their respective economies and the broader region.

This MoU marks a significant step forward in strengthening cooperative ties in competition law across Southern Africa, reflecting a commitment to shared growth and development.



NEF AND COMMISSION FORGE NEW PATH FOR ECONOMIC DEVELOPMENT



In a pivotal step toward promoting economic inclusivity, the National Empowerment Fund (NEF) and the Commission entered into a groundbreaking Memorandum of Understanding (MoU) at the signed on the sidelines of the Conference in Sandton in September 2024.

This partnership highlights their mutual dedication to empowering historically disadvantaged persons (HDPs) and promoting a more competitive market landscape.

The MoU outlines a strategic partnership focusing on four key areas: merger control, development fund management, market research, and the introduction of an Employee Ownership Fund. These initiatives are designed to facilitate sustainable growth and provide comprehensive support for enterprises owned by HDPs.

One of the pivotal aspects of the MoU is the management of development funds derived from penalties imposed by the Competition Tribunal on non-compliant firms. These funds will be allocated for developmental purposes within affected sectors, with the NEF entrusted to manage the distribution effectively. The collaboration will ensure that these resources meet the specific needs of the industries impacted.

In addressing the challenges faced by HDPs and Small, Medium, and Micro Enterprises (SMMEs) in mergers and acquisitions, the Commission will actively consult with the NEF. This partnership will facilitate the sharing of information and expertise, allowing both entities to create tailored solutions that promote economic inclusion.

The agreement also emphasises the importance of data sharing. The Commission will provide the NEF with critical market research and sector-specific insights, aiding in the identification of opportunities and barriers for HDPs. This valuable information will inform funding strategies and development programs, further enhancing economic participation. A standout feature of the MoU is the establishment of the Employee Ownership Fund (EO Fund). Both organisations will contribute resources to this fund, which the NEF will manage. The EO Fund aims to promote value chain opportunities and boost participation among HDPs, aligning with the broader objectives of economic empowerment and growth.

The signing of the MoU, which replaces a similar agreement from 2021, was celebrated as a testament to both parties' dedication to promoting a more inclusive economy. Dr Nthabiseng Moleko, NEF Chairperson, highlighted the importance of this partnership in empowering black

industrialists and enhancing market competitiveness while maintaining operational independence.

"This MoU establishes a framework for effective cooperation and transparent information sharing," she stated. "It paves the way for meaningful advancements in economic development."

Echoing this sentiment, Mzwabantu Dayimani, Acting CEO of the NEF, said that the collaboration with the Commission significantly strengthens their mission to support black-owned businesses, providing them with crucial resources and opportunities for growth.

Doris Tshepe, Competition Commissioner, noted, "This agreement illustrates our commitment to fostering inclusive growth and advancing the participation of historically disadvantaged persons in South Africa's economy. Through this partnership, we aim to leverage each other's expertise to drive impactful economic development."

As the conference continues, the MoU stands as a beacon of hope for economic transformation in South Africa, promising to empower those historically marginalised and to cultivate a more equitable economic landscape.

CONFERENCE THROUGH IMAGES





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