



CCRED
CENTRE FOR COMPETITION,
REGULATION AND
ECONOMIC DEVELOPMENT

8th ANNUAL CAPACITY BUILDING WORKSHOP AND SYMPOSIUM ON COMPETITION LAW AND POLICY DURING THE 6th ANNUAL COMPETITION AND ECONOMIC REGULATION (ACER) WEEK (Online)

Legal Principles in Competition and Consumer Protection

20-24, 27 September 2021

COURSE OUTLINE

The Competition Authority of Kenya (CAK) and the University of Johannesburg's Centre for Competition, Regulation and Economic Development (CCRED) are honoured to host the 8th Annual Capacity Building Workshop and Symposium on Competition Law and Policy during the 6th Annual Competition and Economic Regulation (ACER) Week (ACER VI).

Approach

This course covers core legal principles in competition and consumer protection law and issues of legal due process and decision-making. Practical aspects such as initiating investigations, market inquiries and obtaining evidence will be addressed, in addition to the role of economic evidence in deciding on likely harm to competition. Lessons on drafting pleadings, running hearings and procedural questions will be covered through practical examples. Reaching and writing decisions, and the grounds on which such decisions may be appealed will further be explored.

Lead facilitators have handed down precedent-setting decisions and drafted regulations in a number of countries, including *Jonathan Klaaren* (Professor at Wits University), *Norman Manoim* (Former Chairperson of the Competition Tribunal of South Africa and Professor of Practice, CCRED, UJ), *Rory Macmillan* (Macmillan Keck Attorneys & Solicitors), *Boniface Makongo* (Director: Competition and Consumer Protection, CAK), *Faith Odhiambo* (Council Member, Law Society of Kenya) and *Thando Vilakazi* (CCRED).



Programme

Day 1, 20 September 2021	
0830-1030 SAST/CAT 0930-1130 EAT	Overview of key areas and concepts of competition law and economics <ul style="list-style-type: none"> • Key legal principles of competition law • Introduction to competition economics and policy
Tea break	
1040-1140 SAST/CAT 1140-1240 EAT	Exercise 1: Case study
1140-1210 SAST/CAT 1240-1310 EAT	Exercise 1: Presentation and discussion

Day 2, 21 September 2021	
0830-1030 SAST/CAT 0930-1130 EAT	Legal due process: initiating investigations, inquiries and obtaining evidence <ul style="list-style-type: none"> • Considering statutory powers of authorities and their exercise • The likely bases for substantive and procedural challenges • Information requests, interviews and interrogations • Discussions of examples and learning from experience
Tea break	
1040-1140 SAST/CAT 1140-1240 EAT	Exercise 2: Conducting interviews and conducting hearings
1140-1210 SAST/CAT 1240-1310 EAT	Exercise 2: Presentation and discussion

Day 3, 22 September 2021	
0830-1030 SAST/CAT 0930-1130 EAT	Balancing policy, regulations and competition law considerations <ul style="list-style-type: none"> • Public interest and market inquiries • Rights to participate or intervene on public interest grounds in mergers • Addressing public policy considerations and intervention
Tea break	
1040-1140 SAST/CAT 1140-1240 EAT	Exercise 3: Public Interest in mergers
1140-1210 SAST/CAT 1240-1310 EAT	Exercise 3: Presentation and discussion

Day 4, 23 September 2021	
0830-1030 SAST/CAT 0930-1130 EAT	Resolving matters, negotiating and settling complaints and disputes (RM) <ul style="list-style-type: none"> • Information asymmetries in the negotiating and settling process • Tactics for negotiation • Procedural issues with negotiating settlements and resolving disputes • Substantive effects of settlement and dispute resolution
Tea break	
1040-1140 SAST/CAT	Exercise 4: Negotiating and settling complaints

1140-1240 EAT	
1140-1210 SAST/CAT 1240-1310 EAT	Exercise 4: Presentation and discussion

Day 5, 24 September 2021	
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0830-1030 SAST/CAT 0930-1130 EAT	Pleadings, hearings and procedural questions <ul style="list-style-type: none"> • Scope and framing • Obtaining information • Summons and subpoenas • Confidentiality and privilege • Fairness • Discovery
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Tea break	
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1040-1140 SAST/CAT 1140-1240 EAT	Exercise 5: Pleadings, running hearings and procedural questions
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1140-1210 SAST/CAT 1240-1310 EAT	Exercise 5: Presentation and discussion
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Day 6, 27 September 2021	
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0830-1030 SAST/CAT 0930-1130 EAT	Reaching and writing decisions, and the grounds on which such decisions may be appealed <ul style="list-style-type: none"> • Scope of judicial review: the record, appeals and reviews • Jurisdiction, standing and timing • Remedial powers and discretion • Discretion and the weighing of economic evidence • Writing-up decisions and reasons: Chair/presiding officer; ex parte contacts, impartiality and bias; internal separation of powers; recommendations and multistage decision-making • Findings, conclusions and reasons • Examples from cases
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Tea break	
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1040-1140 SAST/CAT 1140-1240 EAT	Exercise 6: Reaching and writing decisions, and the grounds on which such decisions may be appealed
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1140-1210 SAST/CAT 1240-1310 EAT	Exercise 6: Presentation and discussion
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CLOSURE	
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Programme Lecturers and Facilitators



Dr Thando Vilakazi is Executive Director of the Centre for Competition, Regulation and Economic Development (CCRED) at the University of Johannesburg, specialising in academic research, teaching and advice on competition policy and industrial development. He currently also serves as a part-time member of the Competition Tribunal of South Africa. Thando previously worked as an economist at the Competition Commission of South Africa, and has led research and provided teaching and advisory services across various economic sectors for competition authorities, regulators, government departments, international universities and NGOs, and private enterprises in South Africa and various African countries. His research interests include barriers to entry and economic participation, regional integration, competition policy and inclusive growth, and industrial development. He holds a PhD (Economics) from the University of Johannesburg, and a Masters (Applied Economics) from the University of Cape Town.



Rory Macmillan is a founding partner of Macmillan Keck Attorneys & Solicitors which has offices in New York and Geneva. He is a digital services and competition lawyer with extensive experience in emerging markets, particularly in Africa, the Arab World and Asia-Pacific. He regularly advises competition authorities, regulatory agencies, internet companies, telecommunications operators, the World Bank and the ITU among others on competition, digital financial services, telecommunications, data protection, privacy, digital identification and numerous related matters. Rory is currently leading a working group on big data, machine learning, consumer protection and data privacy under the auspices of the Financial Inclusion Global Initiative (FIGI) of the World Bank and ITU, and is a member of the American Bar Association Task Force on Big Data.



Prof Jonathan Klaaren is Professor and former Dean of the School of Law at the University of the Witwatersrand, Johannesburg. He teaches, researches, and writes in the areas of human rights, law, and sociology, having written over forty peer-reviewed publications and co-written several books. His current research interests are in the legal profession, regulation and human rights, transparency, and socio-legal studies in Africa. He has served on a number of editorial committees and boards including those of the South African Journal on Human Rights, Law & Society Review, and Law & Policy. He holds a PhD in sociology from Yale University and law degrees from Columbia (JD) and Wits (LLB). He served as Dean of the Wits Law School from 2010 to 2013 and as Director of the School's Mandela Institute from 2005 to 2007. Beyond his permanent appointment in the Law School, he holds an additional appointment as a Visiting Professor in the Faculty of Humanities and works with the Wits Institute for Social and Economic Research (WiSER).



Norman Manoim is currently a judge at the Gauteng High Court. He was also the Acting Director of the Mandela Institute at the University of Witwatersrand until January 2020. Prior to this, Norman served two terms as the Chairperson of the Competition Tribunal having first been appointed to that position in 2009. He has served as a full-time member of the Competition Tribunal since its inception in September 1999. He was a member of the team that drafted the South African Competition Act of 1998. Prior to joining the Competition Tribunal, he was the managing partner of Cheadle, Thompson and Haysom, a Johannesburg firm of attorneys. AJ Manoim is also a part-time lecturer in competition law at the University of Witwatersrand.







Boniface Makongo has over 15 years of experience in litigation, corporate and commercial law. He joined the Competition Authority of Kenya in 2013 as the Manager, Legal Services. He was appointed Director, Competition and Consumer Protection in 2019, placing him in charge of the Authority's three technical departments. Mr. Makongo has previously worked for both Constituencies Development Fund Board and at the Water Services Trust Fund as a Legal Officer, heading both institutions Legal Departments which he also helped establish. Mr. Makongo holds a Masters Degree in International Economic Law from the University of South Africa, a Bachelors of Law Degree from Moi University and a Diploma in Management of Information systems from the Institute for Management of Information Systems (U.K) as well as a postgraduate Diploma in Corporate Governance and is a Certified Public Secretary. He is an active member of the Law Society of Kenya and ICPS(K).



Faith Odhiambo is a highly experienced practitioner with a focus on competition law and commercial law, including telecommunications law, commercial arbitration, financial services law, securities law, corporate governance, consumer protection law, international trade law, and economic law. Faith's experience includes advising the Ethiopian Trade Competition and Consumer Protection Authority (TCCPA) on developing a framework for dealing with sector regulators and handling consumer complaints. She also took part in the development of the regulatory framework for cooperation with the Competition Authority of Kenya and other sector regulators. She worked closely with the Communications Authority of Kenya in developing a framework for spectrum management and was part of the team in the preparation of the Product Market Review report to analyse the competition concerns in the various sectors of the economy in Kenya. Faith is also a lecturer at the Private Law Department of the University of Nairobi and a Committee Member for FIDA (Federation of Women Lawyers).

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