



COMPETITION LAW AND REGULATION

14-16 October 2024, [Sarova Stanley Hotel](#), Nairobi, Kenya

Professional Training Programme

9th Annual Competition and Economic Regulation (ACER) Week and 11th Annual
CAK Symposium on Competition Law and Policy

DRAFT COURSE OUTLINE

This course covers core legal principles in competition law and their application, including relevant issues of legal due process and decision-making in an economic regulatory context. Practical aspects such as initiating investigations, commissioning market inquiries, running hearings, and using the law to gather evidence will be addressed, in addition to the role of economic evidence in deciding on likely harm to competition. With particular attention to the overlap between law and economics and recent African cases, this professional training programme will also explore reaching, justifying and defending/appealing against the economic regulatory decisions of competition authorities.

Facilitators include those who have participated in regulatory processes and precedent-setting cases as well as legal drafting and include Prof Jonathan Klaaren (Professor at the School of Law at the University of the Witwatersrand), Mr Boniface Makongo (Director, Competition Division, COMESA Competition Commission); Mr Rory Macmillan (Partner at Macmillan Keck Attorneys and Solicitors); and Ms Yasmin Carrim (Acting Judge and former Member of the Competition Tribunal (South Africa)).

Programme

14 October 2024: The Economic Policy of Competition Law	
0830-1040	1. Introduction to policy principles & key economic tests <ul style="list-style-type: none"> • Overview of competition policy • Market definition and market power • Horizontal restrictive practices • Merger control
1040-1100	Exercise 1A: Short discussion of policy principles in competition law
Tea Break	
1110-1210	2. Introduction to policy principles & key economic tests cont. <ul style="list-style-type: none"> • Vertical arrangements • Abuse of dominance
1210-1230	Exercise 1B: Short discussion of policy principles in competition law
Lunch	
1330-1450	3. Intro: policy principles & economic tests cont. <ul style="list-style-type: none"> • Abuse of dominance cont. • Market inquiries • Insights from recent African cases
Tea break	
1500-1600	Exercise 2: Key economic tests in competition law (application)
1600-1630	Exercise 2: Presentation and discussion
CLOSE OF DAY 1	

15 October 2024: The Content of Competition Law	
0830-1030	4. Legal due process in the regulatory investigation phase: 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 • Summons and subpoenas • Discussions of examples and learning from experience
1030-1100	Exercise 3: Gathering evidence
Tea break	
1110-1200	Exercise 3: Gathering evidence cont. & Presentation
1200-1230	Exercise 3: Reflections and discussion
Lunch	

1330-1450	<p>5. Law and the regulation making phase: the regulatory process, substantive balancing, and policy making</p> <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 • Discretion and the weighing of economic evidence
Tea break	
1500-1600	Exercise 4: Exercise on the regulatory process
1600-1630	Exercise 4: Presentation and discussion
CLOSE OF DAY 2	

16 October 2024: The Practice of Competition Enforcement	
0830-1000	<p>6. Merger control and cartels in regional markets (Guest speaker – COMESA CC) (combined class with core economics)</p> <ul style="list-style-type: none"> • Cross-border impacts of mergers • Approach to mergers in digital markets • Cross-border cartels and coordinated conduct • Key cases from COMESA
1010-1100	<p>7. Practicum in relevant legal issues in competition law enforcement: The view from Arusha</p> <ul style="list-style-type: none"> • Competition law and policy in international and transnational contexts • The scenario of multi-country merger and cartel enforcement • International and export cartels (focus on cross-border mergers) • Limits of extraterritorial jurisdiction
Tea break	
1115-1230	Exercise 5: Practical exercise & Analysis/Discussion
Lunch	
1330-1450	<p>8. Negotiating and settling complaints and disputes</p> <ul style="list-style-type: none"> • Information asymmetries in the negotiating and settling process • Tactics for negotiation • Procedural issue with negotiating settlements and resolving disputes • Substantive effects of settlement and dispute resolution
Tea break	
1500-1600	Exercise 6: Settlements
1600-1620	Exercise 6: Presentation and discussion
CLOSE OF DAY 3, HANDING OUT OF CERTIFICATES	

Programme facilitators



Prof Jonathan Klaaren is Professor of Law and Society at 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 or co-edited several books including two volumes from past ACER conference papers. His current research interests are in the legal profession, regulation and human rights, transparency, and sociolegal 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) and is a Research Associate at CCRED and the Public Affairs Research Institute (PARI).



Ms Yasmin Carrim currently serves as an acting judge in the Gauteng Division of the High Court (Johannesburg). She has served as a full time Tribunal Member of the Competition Tribunal of South Africa for 17 years. She has previously also served as a part-time member on the National Consumer Tribunal, as a councillor on the Independent Communications Authority of South Africa (ICASA) and as Group Executive of Regulatory Affairs at MTN SA. She has produced two editions of a seminal publication, the Competition Tribunal Handbook of Case Law, which spans some 20 years of Tribunal jurisprudence and serves as a guide to practitioners, academics, and students. She has also co-edited a handbook on Telecommunications Regulation in South Africa. An attorney by profession, Ms Carrim was a director at the law firm Cheadle Thompson & Haysom and a founding trustee of the Women's Legal Centre. She comes from a community activist background.



Mr Boniface Makongo is currently the Director Competition at the COMESA Competition Commission. He has nearly 20 years of experience in litigation, corporate and commercial law. Mr. Makongo 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. He previously worked for both the 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).



Mr. Amenity Joel Omari is the Director of Competition & Consumer Protection at the Competition Authority of Kenya. He is a public sector legal counsel with over 15 years of experience. He is responsible for overseeing the realization of the Authority's core mandate of promoting and safeguarding competition in the national economy through availability of competitive products and services by overseeing investigation and sanctioning impediments to competition, promotion of investment and economic growth by superintending merger control and enhancing and sustaining consumer welfare through protection of consumers from unfair and misleading market conduct. Mr. Omari holds a Master's in Competition Law from the Brussels School of Competition, a Masters Degree in Law from the University of Zimbabwe, a Bachelor of Law from the University of Nairobi and a Postgraduate Diploma in Law from Kenya School of Law.



Mr 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. He is currently active on several digital economy and competition matters in Africa.