



**CCRED**  
CENTRE FOR COMPETITION,  
REGULATION AND  
ECONOMIC DEVELOPMENT



## **5<sup>th</sup> ANNUAL COMPETITION AND ECONOMIC REGULATION (ACER) WEEK**

### ***Law for Economic Regulation and Competition***

**15 – 17 July 2019**

### **COURSE OUTLINE**

This Professional Training Programme is targeted at legal practitioners and case handlers in competition authorities, economic regulators and government agencies in southern Africa, as well as those in private practice and company in-house lawyers. The course will cover:

- Key legal concepts in regulation and competition, and the challenges facing legal practitioners and analysts in applying these to particular sectors and markets.
- Legal and practical guidance on initiating an investigation and obtaining evidence, issues in holding hearings, and matters related to confidentiality and privilege.
- Reaching decisions and the grounds on which such decisions may be appealed.
- Key debates in law for competition and regulation of digital platforms, data and privacy
- Procedural and practical issues with negotiating settlements and resolving disputes.
- Pertinent issues of concurrent jurisdiction between competition and regulatory authorities.

The course will be facilitated by highly experienced academics and practitioners including *Professor Jonathan Klaaren* (professor at the School of Law at the University of the Witwatersrand), *Rory Macmillan* (partner at Macmillan Keck Attorneys and Solicitors) and *Sha'ista Goga* (partner at Acacia Economics). *In 2019, the course includes new material on the legal principles for regulation of digital platforms, privacy and competition drawing on international and African experiences.*

### ***Approach***

The course will combine lectures and case study seminars to go into the practical application of legal principles to real-world situations, and drawing on case examples from southern Africa. The lectures will cover key theoretical underpinnings in an accessible way with illustrations as to how the theories are applied in practice. Reference will be made to precedent-setting cases in different jurisdictions so that participants will have a good grasp of the important decisions, as well as why they may differ across regions. The in-depth case study exercises will involve work in breakaway groups. Participants will apply lessons learnt during the sessions and the hypothetical cases will be debated from the perspective of different stakeholders in the feedback sessions.

## Programme

Day 1, 15 July 2019	
0830-0845	<b>Registration</b>
0845-0915	<b>Introduction to competition policy and economic regulation</b> <ul style="list-style-type: none"> <li>• Introduction to economic regulation and legal rationales for regulation</li> <li>• The natural monopoly problem; externalities and network economies</li> <li>• Key principles of competition law</li> </ul>
0915-1030	<b>Legal status, mandate &amp; structure of economic regulators &amp; competition authorities</b> <ul style="list-style-type: none"> <li>• Different international models</li> <li>• Considering statutory powers of regulators and their exercise</li> <li>• Why regulations, policies and guidelines are necessary</li> <li>• The likely bases for substantive and procedural challenges</li> <li>• Discussions of examples and learning from experience</li> </ul>
Tea break	
1100-1230	<b>Exercise 1: Case studies on challenges faced by regulators and competition authorities</b>
Lunch break	
1330-1500	<b>Obtaining information</b> <ul style="list-style-type: none"> <li>• Information requests</li> <li>• Summons and subpoenas</li> <li>• Scope and framing</li> <li>• Interviews and interrogations</li> <li>• Confidentiality and privilege</li> <li>• Examples from cases</li> </ul>
Tea break	
1515-1630	<b>Exercise 2: Drawing up initiation and information request/summons</b> <ul style="list-style-type: none"> <li>• Scenarios for groups to set out initiation and draw up plans for information gathering depending on the key issues of the matter</li> <li>• Draft information requests/summons</li> </ul>
Day 2, 16 July 2019	
0830-1030	<b>Constraints on invasive powers &amp; conducting a public hearing</b> <ul style="list-style-type: none"> <li>• Hearings: the parties, the discovery process, the evidence, cross examination</li> <li>• Writing-up decisions and reasons: Chair/presiding officer; ex parte contacts, impartiality and bias; internal separation of powers; recommendations and multistage decision-making</li> <li>• Findings, conclusions and reasons</li> </ul>
Tea break	
1100-1230	<b>Exercise 3: Conducting interviews and conducting hearings</b>
Lunch break	
1330-1500	<b>Assessing evidence and making decisions and findings</b> <ul style="list-style-type: none"> <li>• Applying evidence to meet tests</li> <li>• Considering alternative explanations</li> <li>• Due process</li> <li>• Administrative &amp; criminal standards</li> </ul>

	<ul style="list-style-type: none"> <li>• Concurrent jurisdiction</li> </ul>
Tea break	
<b>1515-1630</b>	<b>Enforcement and grounds for judicial review</b> <ul style="list-style-type: none"> <li>• Capacity for enforcement</li> <li>• Jurisdiction, standing and timing</li> <li>• Scope of judicial review: the record, appeals and reviews</li> <li>• Remedial powers and discretion</li> </ul>

<b>Day 3, 17 July 2019</b>	
<b>0830-1030</b>	<b>Legal challenges in regulating digital platforms, data and privacy</b> <ul style="list-style-type: none"> <li>• What is different about digital platforms? The challenges for competition law and economic regulation</li> <li>• International approaches for data ownership, data sovereignty and privacy, and implications</li> <li>• Artificial intelligence and privacy – the next frontier?</li> </ul>
Tea break	
<b>1100-1230</b>	<b>Exercise 4: Competition and regulation in mobile money</b>
Lunch break	
<b>1330-1500</b>	<b>Resolving matters, negotiating and settling complaints and disputes</b> <ul style="list-style-type: none"> <li>• Information asymmetries in the negotiating and settling process</li> <li>• Tactics for negotiation</li> <li>• Procedural issue with negotiating settlements and resolving disputes</li> <li>• Substantive effects of settlement and dispute resolution</li> </ul>
Tea break	
<b>1515-1630</b>	<b>Exercise 5: Approaching negotiation and settlement</b>
<b>1630-1645</b>	<b>Wrap up and presentation of certificates</b>

## Programme Lecturers and Facilitators



**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 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).



**Sha'ista Goga** is a Director at Acacia Economics and is also a Senior Research Fellow at the Centre for Competition, Regulation and Economic Development at the University of Johannesburg. Over the last 11 years, she has provided regulatory advice to key stakeholders in the broadcasting, healthcare, financial and energy sectors and has provided analysis and advice to clients on mergers and prohibited practices cases, appearing before both South African and Indian competition authorities. Sha'ista's work in economic regulation has included expert advice on matters in energy, telecommunications and finance in South Africa, Kenya, Uganda and Zambia. She has research and consulting experience within both the corporate and non-profit sectors. Sha'ista holds a bachelor's degree in economics from the University of the Witwatersrand as well as a Master of Philosophy in Economics from Oxford University, where she was a Rhodes Scholar. Sha'ista was an associate lecturer at the University of the Witwatersrand.



**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. Rory has published widely and regularly speaks at conferences.