

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

**2 – 4 October 2023, Ravenala Attitude Hotel, Balacava, Mauritius**

### **Professional Training Programme (PTP) 2**

#### **Law in Competition Policy**

##### **DRAFT COURSE OUTLINE**

The Competition Commission of Mauritius and the University of Johannesburg’s Centre for Competition, Regulation and Economic Development (CCRED) are honoured to host the 8<sup>th</sup> Annual Competition and Economic Regulation (ACER) week in person at the Ravenala Attitude Hotel, Balacava, Mauritius.

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. In 2023, 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.

The facilitators are **Prof Jonathan Klaaren** (Professor at the School of Law at the University of the Witwatersrand), **Ms Nelly Sakata** (Attorney of the High Court of South Africa and Principal Legal Counsel at the Competition Commission of South Africa); **Mr Rory Macmillan** (Partner at Macmillan Keck Attorneys and Solicitors); and **Prof Marek Martyniszyn** (Professor of Law at Queen’s University Belfast, UK).

## Programme

| <b>DAY 1, Monday 2<sup>nd</sup> October 2023: Introduction to Competition Policy and Economics</b> |   |
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| <b>08h30-10h30</b>   | <b>Introduction to competition and law policy principles</b> <ul style="list-style-type: none"> <li>• Overview of competition law and policy</li> <li>• Burdens of proof, legal standards</li> <li>• The role of economics in competition law enforcement</li> </ul>  |
| <b>10h30-11h00</b>   | <b>Exercise 1A: Group discussion of policy principles in competition law</b>  |
|  | <b>Tea Break</b>  |
| <b>11h10-12h00</b>   | <b>Introduction to competition and law policy principles (cont.)</b> <ul style="list-style-type: none"> <li>• Enforcement tools in competition law</li> <li>• Guidelines and regulations</li> <li>• Evidence, and form- and effects-based assessment</li> </ul>   |
| <b>12h00-12h30</b>   | <b>Exercise 1B: Group discussion of policy principles in competition law</b>  |
|  | <b>Lunch</b>  |
| <b>13h30-14h50</b>   | <b>Law and the regulation making phase: the regulatory process, substantive balancing, and policy making</b> <ul style="list-style-type: none"> <li>• Public interest and market inquiries</li> <li>• Rights to participate or intervene on public interest grounds in mergers</li> <li>• Addressing public policy considerations and intervention</li> <li>• Discretion and the weighing of economic evidence</li> </ul> |
|  | <b>Tea break</b>  |
| <b>15h00-16h30</b>   | <b>Exercise 2: Exercise on Key principles in competition law and policy</b>   |
|  | <b>CLOSE OF DAY 1</b>   |

| <b>DAY 2, Tuesday 3<sup>rd</sup> October 2023: The Content of Competition Law</b> |   |
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| <b>08h30-11h00</b>  | <b>Legal due process in the regulatory investigation phase: Initiating investigations, inquiries and obtaining evidence</b> <ul style="list-style-type: none"> <li>• Considering statutory powers of authorities and their exercise</li> <li>• The likely bases for substantive and procedural challenges</li> <li>• Information requests, interviews, and interrogations</li> <li>• Summons and subpoenas</li> <li>• Discussions of examples and learning from experience</li> </ul>   |
|   | <b>Tea break</b>  |
| <b>11h10-12h30</b>  | <b>Exercise 3: Group discussion</b>   |
|   | <b>Lunch</b>  |
| <b>13h30-14h50</b>  | <b>Legal principles and emerging issues in cross-border competition law enforcement</b> <ul style="list-style-type: none"> <li>• Competition law and policy in international and transnational contexts</li> <li>• Institutional design of competition law systems</li> <li>• Cross-border conduct cases (special focus on cartels)</li> <li>• The scenario of multi-country merger and cartel enforcement</li> <li>• Limits and challenges of extraterritorial jurisdiction</li> </ul> |
|   | <b>Tea break</b>  |

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| 15h00-16h30    | Exercise 4: Exercise on cross-border enforcement issues |
| CLOSE OF DAY 2 |   |

| DAY 3, Wednesday 4 <sup>th</sup> October 2023: The Practice of Competition Enforcement |  |
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| 08h30-11h00  | <b>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> |
| <b>Tea break</b>   |  |
| 11h10-12h30  | <b>Exercise 5: Competition case simulation exercise</b> <ul style="list-style-type: none"> <li>• Initiation and pleadings</li> <li>• Investigation and evidence</li> <li>• Interrogations and interviews</li> <li>• Referral and negotiation</li> <li>• Settlement</li> </ul>  |
| <b>Lunch</b>   |  |
| 13h30-14h50  | <b>Exercise 5: Competition case simulation exercise (cont.)</b>  |
| <b>Tea break</b>   |  |
| 15h00-16h20  | <b>Exercise 5: Competition case simulation exercise and group discussion</b>   |
| CLOSE OF DAY 3, HANDING OUT OF CERTIFICATES  |  |

### Programme facilitators

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|  | <p><b>Prof Jonathan Klaaren</b> 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 &amp; Society Review, and Law &amp; 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).</p> |
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**Ms Nelly Sakata** is an admitted attorney of the High Court of South Africa with over 18 years' experience in a legal environment, which includes competition law litigation and enforcement. She is currently a Principal Legal Counsel at the Competition Commission of South Africa. She represents the Commission on a wide range of competition matters before the Competition Tribunal, including the prosecution of abuse of dominance and cartel cases, and merger litigation. Prior to joining the Commission, Nelly was practicing as an attorney at a reputable law firm, which specializes in Intellectual Property Law. Nelly holds a B Com Law, LLB and Master's (in Corporate Law) degree from the University of Pretoria. She is currently a fellow Doctorate student in Law at the University of Pretoria. She is also a guest/sessional lecturer at the University of Pretoria and Wits University. She has also trained various African competition authorities on competition law matters.



**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.



**Prof. Marek Martyniszyn** is a Professor of Competition Law & Policy at Queen's University Belfast (Northern Ireland). He specialises in international and cross-border aspects of competition law and policy, including the limits of extraterritorial jurisdiction and state involvement in anticompetitive practices (including the issue of foreign subsidies). His research has a strong perspective of new competition systems and new agencies, especially those in developing countries and economies in transition. Prof. Martyniszyn is a Non-Governmental Advisor to the International Competition Network (ICN). He had presented his work also on various other fora, including ICN, UNCTAD, COMESA and BRICS. His online profile is available at: <http://go.qub.ac.uk/Martyniszyn>

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