

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

**4 October 2023, Ravenala Attitude Hotel, Balaclava, Mauritius**

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

### **Key Principles for Assessing Evidence in Competition Tribunals and Courts**

#### **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, Balaclava, Mauritius.

Targeted at decision makers and those in adjudicative positions within African competition law agencies and judiciaries, this brand new one-day intensive Professional Training Programme emphasises key principles and practical insights from highly experienced facilitators, including those who have adjudicated cases in specialist tribunals and in courts around the world. The course covers decision making in key areas of competition law, the application of economic concepts in decisions, the challenges faced in hearing evidence and in writing decisions as well as sharing lessons from successes and failures in different jurisdictions. The sessions combine lectures and discussions of key cases to illustrate principles.

The course facilitators include **Prof Frédéric Jenny** (Chair of the OECD Competition Committee and former Judge of the Supreme Court of France); **Ms Yasmin Carrim** (Acting judge in the Gauteng Division of the High Court (Johannesburg) and former full-time member of the Competition Tribunal of South Africa) and **Mr John Davies** (UK Competition Appeal Tribunal Member). **Prof Thando Vilakazi** (Associate Professor at UJ, Executive Director of CCRED, and Part-time Member at the Competition Tribunal of South Africa) will also facilitate discussions in the session.

## Programme

4 October 2023	
0830-1000	<b>Key principles in adjudicating competition law matters</b> <ul style="list-style-type: none"> <li>• Introduction to the course</li> <li>• Overview of key areas of competition law</li> <li>• Differences between legal form-based and economic approaches to competition cases</li> <li>• The role of economic evidence in deciding likely harm to competition</li> <li>• Pleadings, running hearings and procedural questions</li> <li>• Settlements</li> </ul>
1000-1100	<b>Economic evidence in competition matters and decision-making</b> <ul style="list-style-type: none"> <li>• Applying evidence to meet tests</li> <li>• Considering alternative explanations</li> <li>• Burden of proof, onus</li> </ul>
<b>Tea break</b>	
1110-1140	<b>Economic evidence in competition matters and decision-making cont.</b> <ul style="list-style-type: none"> <li>• Written and oral evidence and its interrogation</li> <li>• Case examples</li> </ul>
1140-1230	<b>Debates in tests in competition cases: assessing effects in practice</b>
<b>Lunch</b>	
1330-1450	<b>Decisions, debates and emerging issues in competition law</b> <ul style="list-style-type: none"> <li>• Decision making in times of crisis (COVID-19, energy etc.)</li> <li>• Bid rigging: <ul style="list-style-type: none"> <li>○ The thin line between tender fraud and collusive tendering</li> <li>○ Alternative explanations for apparent price fixing</li> </ul> </li> <li>• Mergers: Findings, conclusions and reasons in selected mergers <ul style="list-style-type: none"> <li>○ What is the appropriate counterfactual?</li> <li>○ Market definition</li> <li>○ How to weigh up efficiencies</li> </ul> </li> </ul>
<b>Tea break</b>	
1500-1600	<b>Facilitated discussion with participants</b>
<b>CLOSE OF SESSION, HANDING OUT OF CERTIFICATES</b>	

## Programme facilitators



**Prof Frédéric Jenny** is Chairman of the OECD Competition Committee since 1994, Professor at ESSEC Paris Business School, and Head of the International Committee of the Review Concurrences. He is also Co-Director of the European Center for Law and Economics of ESSEC since 2008. He was previously Non-Executive Director of the Office of Fair Trading in the United Kingdom for 7 years, Judge on the French Supreme Court from 2004 to 2012, Vice Chair of the French Competition Authority for 9 years and President of the WTO Working Group on Trade and Competition from 1997 to 2004. He has a Ph.D. in Economics from University Paris II and from Harvard University. His research areas concern the relationship between structure and performance in European countries, particularly France, and antitrust legislation in Europe. He was Global Professor of Antitrust at the New York University School of Law's Hauser Global Law School (2014), Visiting Professor at University College London Law School (2005-2012), Haifa University School of Law in Israel (2012), University of Cape Town Business School in South Africa (1991), Keio University Department of Economics in Japan (1984), and North Western University Department of Economics in the United States (1978).



**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 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 John Davies** is a Tribunal Member at the UK Competition Appeal Tribunal. Prior to this, he was an Executive Vice President with Compass Lexecon, based in Paris and London. His previous roles included Director of Economic Analysis and Chief Economist at the UK Competition Commission (CC) from 2003 – 2008, leading the CC's team of economists and responsible for economic analysis on all the CC's cases, including around 50 mergers. In 2008, John founded the Competition Commission of Mauritius where, as Chief Executive, he established the organization and led it through its first years of enforcing the new competition law. In 2011, John moved to head the OECD's competition division. He led the team in organizing regular 'roundtable' meetings of competition agency heads from around the world and advised governments at ministerial level on competition policy. Since joining Compass Lexecon, John has advised clients on mergers and abuse of dominance cases in the EU and UK, follow-on litigation for cartel damages and on matters relating to intellectual property rights and technical standards. He has provided expert testimony on behalf of both defendants and claimants in cartel follow-on damages cases in the UK. He has also advised clients throughout market inquiries conducted by the CMA, notably in the tech sector in the CMA's investigations of online advertising and music streaming.



**Associate Prof Thando Vilakazi** is Executive Director of the Centre for Competition, Regulation and Economic Development 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 Ph.D (Economics) from the University of Johannesburg, and a Masters (Applied Economics) from the University of Cape Town.

We are grateful to the following sponsors for supporting the wider participation of staff from authorities and regulators across the continent.

