

Competition Law and Economics:

South African Developments in Light of Recent European Experience

A one-day conference organized by the British Institute for International
Comparative Law (BIICL), in association with RBB Economics

Wednesday 17 June 2009

Hilton Sandton Hotel, Johannesburg



British Institute of
International and
Comparative Law

RBB | Economics

Competition law and economics in South Africa have developed considerably over the ten years since the passing of the Competition Act in 1998 and continue to do so. Indeed, proposals for significant amendments and extensions to the law are currently under review, while jurisprudence in the form of Competition Tribunal and Appeal Court decisions continues to evolve.

Many of the legal and economic debates that have taken place, as well as changes that have occurred in policy and practice, mirror closely legal and economic discussions and developments in Europe. This conference seeks to bring together leading competition agency officials, lawyers, and economists from both South Africa and Europe to discuss these common themes, as well as the pros and cons of any differences in approach.

The conference will be of interest to those working as Counsel within corporations affected by competition law, public officials in the area, or competition lawyers and economists in private practice.

Speakers Include

Simon Baker

RBB Economics

London

Justin Balkin

Edward Nathan Sonnenbergs

Johannesburg

Raphaël de Coninck

European Commission

Brussels

James Hodge

Genesis Analytics

Johannesburg

Stephen Kon

SJ Berwin

London

Andrea Lofaro

RBB Economics

Brussels

Philip Marsden

British Institute of International
and Comparative Law

London

Jean Meijer

Bowman Gilfillan

Johannesburg

Richard Murgatroyd

RBB Economics

Johannesburg

Anthony Norton

Nortons Incorporated

Johannesburg

Derek Ridyard

RBB Economics

London

Simon Roberts

South African Competition
Commission

Pretoria

Nicola Theron

Econex and South African
Competition Tribunal (part-time)

Stellenbosch

Philip Sutherland

University of Stellenbosch

Stellenbosch

Martin Versfeld

Webber Wentzel

Johannesburg

Programme

8.30 Welcome and Registration

9.00 Introduction

Session I

Complex Monopoly and Market Investigations

Chair: Philip Marsden, BIICL

9.15 Expectations of the South African Regime

Speakers: Anthony Norton, Nortons Incorporated;
Jean Meijer, Bowman Gilfillan

9.55 Experience of Complex Monopoly and Market
Investigations in UK and Europe

Speakers: Simon Baker, RBB Economics;
Stephen Kon, SJ Berwin

10.35 Questions

10.45 Coffee Break

Session II

Developments in Abuses of Market Power

Chair: Derek Ridyard, RBB Economics

11.00 Recent Experience of Market Power Investigations
in South Africa

Speakers: Dr Nicola Theron, Econex and South African
Competition Tribunal; Justin Balkin, Edward Nathan Sonnenbergs

11.40 European Guidance on Abuses of Market Power

Speakers: Dr Andrea Lofaro, RBB Economics;
Dr Raphaël de Coninck, European Commission

12.20 Questions

12.30 Lunch

13.45 Keynote Address: 'Enforcement Priorities of the Competition Commission'

Speaker: Simon Roberts, South African Competition Commission

Session III
Merger Control

Chair: Derek Ridyard, RBB Economics

14.15 Current Issues in South African Merger Control

Speakers: James Hodge, Genesis Analytics

Prof Philip Sutherland, University of Stellenbosch

14.55 The Role of Economic Analysis and Evidence in European Merger Control

Speakers: Dr Raphaël de Coninck, European Commission;
Richard Murgatroyd, RBB Economics

15.35 Questions

15.45 Coffee Break

Session IV
Criminal Sanctions for Competition Violations

Chair: Philip Marsden, BIICL

16.00 The Impact on Leniency and Cartel Enforcement of Criminal Sanctions

Speakers: Martin Versfeld, Webber Wentzel;
Stephen Kon, SJ Berwin

16.40 Questions

16.50 Drinks Reception



Simon Baker
RBB Economics

Simon Baker has worked in the field of competition policy since 1989, having spent 6 years as an economist with the OFT and DTI, working almost exclusively on competition matters, and 13 years in private practice, the last 7 as a co-founding Partner of RBB Economics. He has written widely on competition policy issues, in the *Financial Times* and the *European Competition Law Review* amongst others. He is a consulting editor of *UK Competition Law Reports*. Simon has advised clients in numerous domestic, European and international cases, including mergers, abuse of dominance cases, cartels and market investigations. He has authored reports and run training seminars for competition and regulatory agencies and has appeared as an expert witness in a number of jurisdictions. His private client work includes work in oil products, petrochemicals, telecommunications, retailing, transport and manufacturing, amongst others.



Justin Balkin
Edward Nathan Sonnenbergs

Justin Balkin is a director in the competition law department of Edward Nathan Sonnenbergs. He is involved in all aspects of competition law in South Africa. Justin has published numerous articles on competition law and is an editor of the *Butterworths Competition Law Reports*.

Justin has been actively involved in the Competition Law Sub-Committee of the Law Society, in particular in relation to the proposed amendments to the Competition Act.

Justin has acted in many high-profile South African competition law cases since the inception of the Competition Act, including representing: SAA in various abuse of dominance complaints; Gold Fields in the hostile offer by Harmony; the Banking Association in the enquiry into the South African banking industry; Tiger Brands in the bread and milling investigation; BHP Billiton in relation to the South African aspects of its unsolicited offer

for Rio Tinto; MTN in relation to its acquisition of Verizon South Africa; and Tiger Brands in relation to a possible offer for AVI Limited.



Dr Raphaël de Coninck
European Commission

Raphaël de Coninck is a member of the Chief Economist's team in the European Commission's Directorate General for Competition. Prior to joining the European Commission in 2007, he worked as an economic consultant providing economic and econometric evidence in merger and antitrust cases before European and national authorities. In his current and former position, he has been involved in numerous high profile mergers, such as Endesa/Gas Natural, Sony/BMG, Omya/Huber, Travelport/Worldspan, Syniverse/BSG, Thomson/Reuters, TomTom/TeleAtlas, Nokia/Navteq, Itema/BarcoVision, BHP Billiton/RioTinto and EDF/British Energy. At the Commission, he has also been contributing to the current policy developments on private actions for antitrust damages in Europe.

Dr de Coninck has been a post-doctoral research fellow at New York University School of Law and a lecturer in the Department of Economics at the University of Chicago. He holds a PhD in Economics from the University of Chicago and degrees in law and economics from the University of Liège.



James Hodge
Genesis Analytics

James is the managing partner of the Competition and Regulatory Economics practice at Genesis Analytics, the leading South African provider of independent economic advice in these fields. He held a senior lecturer position in the UCT School of Economics before joining Genesis in 2005. He is widely published in an assortment of refereed journals, books and conference proceedings. He continues to teach at the University of the Witwatersrand on a part-time basis.

Since joining Genesis, James has provided expert economic advice and testimony in a

large number of competition cases before the Competition Authorities across a broad spectrum of industries. He has considerable standing in the area of sector-specific regulation, sitting as an expert on the ICASA panel investigating wholesale regulation. He also has a rich history of policy engagement in more general regulation and industrial policy, providing expert advice to the DTI, DoC, National Treasury and the Office of the Presidency. He has assisted South Africa, SADC and the Africa Group in WTO trade negotiations around regulated services.



Stephen Kon
SJ Berwin

Stephen Kon is head of the EU and competition department.

He has extensive experience in representing clients in contentious and non-contentious EU and domestic competition work, as well as general EU law. He regularly represents clients in proceedings before the Office of Fair Trading, the Competition Commission, the European Commission, the Court of First Instance (CFI) and the European Court of Justice (ECJ) in Luxembourg.

He has represented the European Commission in a number of competition cases before the CFI and the ECJ, and has acted in a significant number of merger clearance enquiries. He is a CEDR accredited mediator and has been awarded by the Law Society the right to appear in all higher courts in the UK based on his extensive experience of representing clients before courts and tribunals in contentious EU/Competition matters.



Dr Andrea Lofaro
RBB Economics

Andrea Lofaro started work in economic consultancy in 1998 after completing his PhD. His consulting experience includes work on numerous Phase II EC Merger Regulation cases in a range of industries including banking, online advertising, insurance, oil, paper, packaging and petrochemical products.

He has also worked on mergers in the telecommunication, energy and transport sectors, and on a number of cartel and abuse of dominance cases. His clients have included Google, GE, Sony BMG, Endesa, Heinz, Pirelli, Autogrill, Bombardier, Total and SEB Bank. He has given oral evidence before the EC Commission, the UK Competition Commission, the Italian competition authority (AGCM), the Belgian Conseil de la Concurrence and the South African Competition Commission and Tribunal. Andrea has published widely on competition policy and industrial economics in journals including the *Antitrust Bulletin*, the *European Competition Law Review*, the *European Business Organization Law Review*, the *European Journal of Political Economy* and the *Journal of Economics*.



Philip Marsden
British Institute of International
and Comparative Law

Philip Marsden is a competition lawyer with a particular interest in abuse of dominance, consumer welfare, and international competition issues. He is Non-executive Director on the Board of the UK Office of Fair Trading and Founder and Editor (with Simon Bishop) of the *European Competition Journal*.



Jean Meijer
Bowman Gilfillan

Jean Meijer joined Bowman Gilfillan as a partner in 2006. She holds BA and LLB degrees from Rhodes University and an LLM from the University of South Africa. She has specialized in competition law since the inception of the South African Competition Act in 1999.

High profile competition cases include: representing Standard Bank in the Competition Commission enquiry into competition in banking, representing Harmony and DRD against ArcelorMittal in the first excessive pricing case to be decided by the Competition Tribunal, representing the American Natural Soda Ash Corporation in a successful appeal to the Supreme Court

of Appeal in relation to the interpretation of the per se prohibition on price fixing and in subsequently settling the complaint with the Commission.

She is rated as a leading South African competition lawyer by Chambers Global and is highly recommended in the field by PLC Which Lawyer. She is rated among the GCR Who's Who of Competition lawyers and was selected for inclusion in the Guide to the World's Leading Competition and Antitrust Lawyers.



Richard Murgatroyd
RBB Economics

Richard Murgatroyd joined RBB Economics in 2004 and is based in London. Richard has advised clients on antitrust matters before the European Commission and many national authorities, including the UK, Belgium, Finland, Australia, Singapore and South Africa.

Richard has a broad range of experience, having advised clients on both horizontal and vertical aspects of mergers as well as in relation to alleged abuses of individual and collective dominance, anti-competitive agreements, competitive positioning, private litigation and regulatory liberalisation.

Richard has experience of a wide range of sectors including, agriculture, aviation, consumer electronics, energy, financial services, health food retail, hospitality, leisure, media rights, minerals, pharmaceutical retail, wholesale and manufacture, telecommunications, tobacco and video games.



Anthony Norton
Nortons Incorporated

Anthony Norton is the Founder and Director of Nortons Inc. His principal areas of practice are South African and African competition law. In particular, merger control, joint ventures, cartel investigations, prohibited practices, advice in relation to horizontal and vertical practices, abuse of a dominant position and general competition litigation

before the South African courts and competition authorities. He was the first South African Competition Law Practitioner to appear before the South African Competition Appeal Court. Anthony has been involved in a number of high profile merger decisions including, Anglo American/Kumba, Unilever/ Best Foods and Alcan/Pechiney, Sasol/Engen, Barclays/Absa to name a few.



Derek Ridyard
RBB Economics

Derek Ridyard has over 20 years experience as a consultant on the economics of competition law, prior to which he worked as an economist in the Office of Fair Trading in London. He has worked on assignments for clients involved in some of the leading competition law cases in Europe, and has acted in competition law proceedings across a wide range of industries as diverse as banking, cement, grocery retailing, shipping and computer software. Derek has represented clients including Scandinavian Airlines, Ticketmaster, Unilever and Coca-Cola at competition law hearings. He has also appeared as an expert witness in court cases in London, Dublin and Oslo, and at a variety of arbitration proceedings.

Derek has published numerous articles on subjects including the economics of merger control, vertical restraints, dominant firm pricing and intellectual property, and is a regular speaker at competition law conferences. He is a member of the editorial board of the *European Competition Law Review*.



Simon Roberts
South African Competition Commission

Simon Roberts joined the Competition Commission of South Africa in November 2006 as Chief Economist and Manager of the Policy & Research Division. In addition, he has been Acting Manager of the Enforcement & Exemptions Division from 1 November 2008 to 30 April 2009. Prior to this appointment he was Associate Professor in economics at the University of the Witwatersrand and also

consulted widely on competition matters. He was previously lecturer and senior lecturer at the University of the Witwatersrand, following positions as: Lecturer in Development Economics, University of East Anglia, UK; Senior Research Officer, Bank of Botswana; and, Lecturer in Economics, University College Cork, Ireland.

Simon holds a PhD from University of London (Birkbeck College), MA from University of East Anglia, and BA(Hons) from Oxford University. He has published widely including in the Journal of Competition Law and Economics, Industrial and Corporate Change, Journal of African Economies, Development and Change, Journal of International Development, and the South African Journal of Economics.



Prof Philip Sutherland
University of Stellenbosch

Philip Sutherland has BComm and LLB degrees from the University of Stellenbosch and a PhD from the University of Edinburgh. He is Professor of Mercantile Law at the University of Stellenbosch. He has been teaching and researching in the areas of company law, competition law and financial services law for 10 years. He has published a number of articles in local and international journals and books on all of these topics and is the co-author of the book Competition Law of South Africa. His main interests in the area of competition law are competition law theory, horizontal and vertical restrictions, and mergers.



Dr Nicola Theron
Econex and South African
Competition Tribunal
(part-time)

Nicola Theron is a co-founder and the managing director of Econex. She is also an extraordinary senior lecturer at the University of Stellenbosch where she teaches Competition Economics courses. She holds a Masters degree in Economics (cum laude) from the University of Pretoria, and a PhD (Economics) from the University of Stellenbosch.

Dr Theron has been involved right from the beginning with the new Competition dispensation in South Africa. She was the expert economist for the first large merger handled by the new Competition Authorities at the end of 1999 (Santam and Guardian National Insurance). Since then, she has provided expert witness statements and numerous economic reports for many large clients in proceedings before the Competition Commission and Competition Tribunal.

Dr Theron has given lectures and read papers on the Economics of Competition Policy for numerous students, academics, research institutions and at local and international conferences. She has been appointed as a part-time member of the Competition Tribunal by the Minister of Trade and Industry during 2008.



Martin Versfeld
Webber Wentzel

Martin Versfeld is the Head of Webber Wentzel's Competition Law Department. Martin has been recognised as a leading practitioner in his field by a number of prominent domestic and international journals.

Martin is a member of the Competition Law Sub-Committee of the Law Society of the Northern Provinces.

Martin has been involved in a number highly significant competition law matters including representing JT International in complaint proceedings against British American Tobacco, representing BA/Comair in complaint proceedings against South African Airways, opposing Global Forest Products attempted acquisition of Komatiland, assisting Yorkcor with its acquisition of Global Forest Products, representing Botash in complaint proceedings against Ansac, the longest running cartel proceedings in the history of our Competition authorities, representing Pfizer, GlaxoSmithKline and Aspen Pharmacare in opposing interim relief sought by a number of pharmaceutical wholesalers.

Martin's clients include JT International, BA/Comair Limited, Lafarge, Netcare Healthcare Holdings Limited, Botswana Ash, Yorkcor Limited, Sasol Limited and Adcock Ingram.



British Institute of
International and
Comparative Law

The British Institute
of International and
Comparative Law
Charles Clore House
17 Russell Square
London WC1B 5JP
T +44 (0)20 7862 5151
www.biiicl.org

RBB | Economics

RBB Economics London
The Connection
198 High Holborn
London WC1V 7BD
T +44 (0)20 7421 2410
www.rbbecon.com

We look forward to seeing you at the conference.
Please reply by Friday 5 June 2009.
RSVP khaleda.miah@rbbecon.com

Venue

Hilton Hotel, 138 Rivonia Road,
Sandton, Johannesburg, South Africa