Building a Strong Agency to Support Economic Growth and Development

Tembinkosi Bonakele
Acting Commissioner

I take this opportunity to welcome back and wish all our staff and stakeholders well as we get into 2014. I trust that we enter 2014 with much needed rejuvenation - for this will be a year of action, inside and outside the Commission as we build a strong agency to support economic growth and development.

Externally, the Commission aims to be a respected regulatory agency that supports inclusive economic growth and development in line with the objectives of the Competition Act, 1998. Hence our strategies will continuously be assessed to ensure they focus on proactive enforcement of competition laws in strategic sectors of the economy, as well as promoting collaboration with key stakeholders in formulating pro-competitive economic policies. This year sees the commencement of the inquiry into private healthcare, the finalisation of outstanding settlements with construction firms and the commencement of prosecutions against all construction firms that have failed to settle their cases. We are furthermore working on the enforcement priorities for our Cartels and Enforcement divisions.

As a new administration will commence its term around May 2014, much of the year will be focused on engagements with government on its priorities and direction of competition policy. The policy framework for this work is the National Development Plan, making it a very important year in formulating a five year vision for competition policy and enforcement.

The rebuilding of the Commission internally entails ensuring that we build organisational capabilities required to match the needs of our strategic focus. Practically this entails building a strong leadership and management layer and cultivating an environment where staff are committed and dedicated to the work of the Commission. This must be matched by an organisational structure and a performance management system that supports the strategy. We have already begun a lot of the work internally, including the review of our structure. We have enhanced our internal capacity to develop and monitor strategy. We have also made significant appointments to our...
EDITORIAL NOTE

We heartily welcome Acting Commissioner Tembinkosi Bonakele as he hits the ground running. The Commissioner reflects on the year and announces new senior appointments and charts a new strategic focus for the Commission going into the future.

Trudi Makhaya, Deputy Commissioner, reminisces on “the year that was”; reflecting on some of the major cases the Commission concluded in 2013, including the Telkom settlement that was concluded in June.

In October the Competition Commission successfully hosted the 2013 International Competition Network (ICN) Cartel Workshop in the mother city, Cape Town.

In this special edition of the Competition News, we provide you with a snippet of what transpired at the workshop.

To paraphrase Mr Norman Manoim, the Chairman of the Competition Tribunal, it is ironic that the timing of the Cartel Workshop coincided with the superstar Rihanna's performance at the beautiful Cape Town Stadium. You may be aware that the construction of this venue was one of the projects that were the subject of the Commission's Construction Fast-Track Settlement Process (CSP), which we reported on in our September edition.

It was therefore fitting that the Commission shared its experience of the CSP at a session held prior to the actual Cartel Workshop. You can read Themba Mathebula’s article about this pre-Cartel Workshop session on page 4. Themba also provides you with insight into the main Cartel Workshop on page 6.

The two co-chairs of Sub-Group 2 of the ICN Cartel Working Group, Marcus Beazzi from the Australian Competition and Consumer Commission and Matthew Boswell from the Competition Bureau of Canada sing praises of the Commission and its staff for hosting an “outstanding” Cartel Workshop which was found to be relevant, informative and enjoyable by all delegates who attended. See their comments on page 8.

We have therefore included evidence from the proverbial “horse’s mouth”, the delegates. For example, Alagie Jabang

The year that was

Trudi Makhaya
Deputy Commissioner

A wintry morning - 17 July 2013 - will be remembered as ushering in one of the most remarkable days in the Commission’s history. On that morning, the Commission presented to the Tribunal a settlement worth R1bn to conclude long-standing matters against Telkom. The morning also saw the beginning of the hearings into settlements reached with construction companies involved in rampant collusive conduct.

Commenting on the Telkom settlement, Tribunal chairperson Norman Manoim described it as “one of the most sophisticated settlements ever seen.” He also highlighted that settlements are not inferior to outcomes reached through prosecution but that they can often achieve pro-competitive outcomes in a tangible sense.

The package of remedies in this settlement, including price reduction and structural commitments, will have an enduring impact on the market. This theme was reiterated by the deputy chair of the Tribunal, Yasmin Carrim, at our annual conference in September, who advocated for the greater use of remedies in resolving cases.

The Eeufees offramp, the entry point into Tshwane for many cars coming from the direction of Sandton, must be a dreaded one for many executives with an appointment with the competition authorities. The Voortrekker monument looms in the distance. As does UNISA; with a portrait of Madiba gazing in the distance dominating one side of its impressive building. And whizzing through this complex terrain, is the Gautrain. If the Voortrekker monument is a creation of the past, and Madiba a symbol of our bridge to the future, the Gautrain is a promise of better times ahead. Yet this great infrastructure project, commissioned by the state with public funds and built by the private sector, became one of many projects that were preyed upon by cartelists in the construction industry.

On that fateful July morning, the Tribunal began hearing settlements involving 140 projects rigged by 15 firms. The consent orders were confirmed by the Tribunal soon afterwards. With penalties totalling R1.5bn, this was the biggest settlement ever reached in a single process.

In an action-packed year, South Africa was also in the spotlight for its incredible hosting of the International Competition Network’s cartel workshop, attended by more than 50 jurisdictions from around the world. The conference kicked off with a thought provoking welcome address by the Minister of Economic Development, Honourable Ebrahim Patel followed by
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management positions, some of which have been vacant for a while. Liberty Mncube has filled the Chief Economist and Manager of the Policy and Research division position, whilst Junior Khumalo was appointed Divisional Manager of Enforcement and Exemptions and Thomas Kgokolo Chief Financial Officer at the beginning of January 2014. Mncube has been with the Commission for six years and has worked at a senior level in both the Enforcement and Exemptions division, where he led investigations, and the Policy and Research division where he was a Principal Analyst.

Mncube holds a MSc in Economics from the University of York (UK) and is currently completing a PhD in competition economics at the University of KwaZulu-Natal. He has been a visiting PhD graduate student at the Barcelona Graduate School of Economics. He has published widely in competition policy in local and international journals. As Chief Economist, Mncube will be central in ensuring that case and policy analysis is fully compatible with economic learning.

Khumalo takes over from Clint Oellermann as the head of Enforcement and Exemptions. Khumalo is the former Principal Economist in the Policy & Research division and having been at the Commission for over 10 years, is one of the most experienced investigators. He is also the former acting Chief Economist and in addition to his work in policy and research, has worked as an investigator in the Mergers & Acquisitions and Enforcement & Exemptions divisions. Khumalo holds a BCom (Honours) degree from the University of Fort Hare, an MA degree in Economics from Colorado State University (US).

Kgokolo is a Chartered Accountant with extensive experience in both public and private sector finance. His most recent assignment was that of Chief Financial Officer deployed by SAICA to assist with financial management improvement at FET colleges. He served his articles at one of the big four audit firms, where he had audit assignments in banking and financial markets. He is the Chairperson of the Audit and Risk Committee at Mine Workers Provident Fund and a member of the audit committee of the Bank SETA. He has consulted for the Auditor General, where he managed audit projects and worked as a quality assurance reviewer. He also worked with both National Treasury and School of Government to provide training at various government departments on financial accounting. Clint Oellermann moves to the Commissioner’s Office as manager responsible for strategy, monitoring and evaluations, as well as strategic relations. He started working for the Commission on 01 October 2012 and has 11 years of experience in the forensic industry and 15 years management experience.

I take this opportunity to thank my predecessor, Shan Ramburuth, and the Manager of Mergers and Acquisitions, Ibrahim Bah, who both left towards the end of 2013 for their service to the Commission. I wish to also thank management and staff of the Commission for their dedication in what was a challenging year in 2013.

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The Commission hosted a one-day pre-workshop for select registered participants attending the 2013 ICN Cartel Workshop, to share lessons on the Construction Fast Track Settlement Project (CSP), on 15 October at the Cape Town International Convention Centre (CTICC). Priority was given to competition authorities in Africa and ICN member agencies from Africa, Brazil, Russia, India and the Co-Chairs of the ICN Cartel Working Group (Canada and Australia).

The Commission used the opportunity to host a one-day session wherein to workshop the methodology employed in the CSP with interested participants. The agenda covered issues such as, what led to the decision to roll out the project, getting stakeholder buy-in, developing a project plan, corporate leniency, settlement negotiation strategies and challenges, implementation challenges, private damages claims and where the Commission is at with the project.

This Commission’s CSP was born from the high number of corporate leniency applications received in respect of bid rigging in South Africa’s construction industry. The Commission recently settled a large number of these matters. More on the project itself can be found in the official media release on the Construction Fast Track Settlement Process which can be accessed on the Commission’s website.

Oliver Josie, Deputy Commissioner talking about the development and roll out of the Project Plan.

The pre-workshop allowed the Commission to share lessons on the CSP with competition authorities in Africa and ICN member agencies from Africa, Brazil, Russia, India and the Co-Chairs of the ICN Cartel Working Group (Canada and Australia).

The year that was

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days of enlightening discussion. The organising team; led by Keitumetse Lebelele, received compliments from far and wide. This was quite an achievement especially given the added complexities of organising a Cape Town based conference from a distance.

Looking forward, the Commission will be finalising and embedding its new five year strategy. There are also exciting new projects on the horizon, including the much anticipated inquiry into private healthcare markets; and new and ongoing investigations in sectors including media, aviation and furniture. The Commission will also be sharpening its thinking on the intersection of competition and other government policies.

As the great Talib Kweli would say, ours is a beautiful struggle. May we continue to take competition law and policy to new heights in 2014.

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As we move away from 2013 to look into the future, it is befitting that we once again dedicate ourselves to the ideals of the founding father of the nation, Nelson Mandela. We join South Africa and the world in mourning his passing and celebrating his life. Many of us in the civil service draw our inspiration from his exemplary life of service and dedication to the people. Mandela may be dead, but his legacy lives on. Long live Mandela!
The Commission has been lauded for pulling off a fantastic 2013 ICN Cartel Workshop in true South African fashion. The Workshop saw the participation of 202 participants representing over 50 countries. For the first time a diverse mix of Commission staff from all divisions were given the opportunity to attend the annual cartel event.

On the eve of the workshop, the Commission hosted a cocktail reception to welcome participants to the beautiful city of Cape Town. The cocktail offered delegates an opportunity to meet in a more relaxed environment to kick off the three days of hard work.

In welcoming participants, Deputy Commissioner Trudi Makhaya said “it’s befitting to hold such a prestigious event in the beautiful City of Cape Town. Cape Town is a destination of choice to many tourists all over the world.”

The majestic views from the CTICC's roof-top terrace provided the perfect backdrop for mingling and networking, while the sounds of local melodies soothed everyone into the magnificent Cape night.

Trudi Makhaya captivated participants with a rousing welcome note on the eve of the workshop.
It was with much fanfare and glitz when the 2013 ICN Cartel Workshop finally kicked into gear at the CTICC, for what would be a three-day marathon of discussions aimed at strategies to tackle roadblocks to effective cartel enforcement.

Thanks to technology, Minister Ibrahim Patel, Economic Development, officially opened the workshop and welcomed the more than 200 participants representing competition authorities from more than 50 countries, via a YouTube link. This included competition agencies from 12 African countries and 1 regional competition agency, the COMESA Competition Commission.

The workshop took the form of plenary sessions with interactive panel presentations and smaller breakaway sessions building on the foundations of global cartel enforcement by highlighting tools and detection methods for uncovering and prosecuting cartels globally.

The aim of ICN workshops is to provide a forum for the exchange of views regarding issues of common interest among the participants representing competition agencies and non-governmental advisors (NGAs) from around the world, and to strengthen the links that lead to better international co-operation among ICN.
member agencies as well as with the consumer, academic, business, economic and legal communities.

This was the 10th annual workshop on cartel enforcement hosted under the ICN auspices, and was a continuation of the series of agency-led conferences that began in 1999.

It was the second time that an African nation hosted this important event, with Egypt having previously organised the Workshop in 2009.

The Commission also hosted a pre-workshop session for agencies from the region where it shared its experiences and the methodologies used in its Construction Fast Track Settlement Process which saw 15 construction firms settling bid rigging cases with fines totalling R1.46-billion. The Commission and Tribunal participate in the ICN as founding members of the ICN (which was launched in 2001) and have actively participated in its projects for 12 years. The Competition Authorities of South Africa are noted for hosting one of the most successful ICN Annual Conferences in Cape Town in 2006; a reputation that was maintained through the hosting of the 2013 ICN Cartel Workshop.

Grand entrance: Colleagues from the Commission’s Cartels team arrive at the CTICC. The Commission used the workshop as a training opportunity for the Cartels division to attend and participate at the workshop as part of their professional development.

After Minister Ibrahim Patel officially opened the workshop via a YouTube broadcast; former Commissioner Shan Ramburuth echoed the minister’s welcome and helped to get discussions off the ground.

Commission’s Bongani Ngema taking questions after his presentation on the CSP. Bongani presented on the second day of the workshop at Mini Plenary 3 on Cartel Enforcement and Leniency in Developing Agencies.

Brand it: The Commission’s logistics team used innovative and cost effective ideas to brand the workshop.
2013 ICN Cartel Workshop - Reflections from stakeholders

Marcus Bezzi

On behalf of the Australian Competition and Consumer Commission and in my role as the Co-Chair of the International Competition Network Cartel Working Group Subgroup 2 Co-Chair, I would like to extend my heartfelt thanks to the Competition Commission of South Africa for a fascinating and successful workshop.

I was impressed by diligence, enthusiasm, and approachability of the organising committee and of all of the SACC staff that attended and assisted in running the workshop. The 101 small, difficult and time-consuming logistical tasks were dealt with admirably and this allowed the participants to focus on the content of the discussions.

I would also like to thank the SACC for organising some very enjoyable social events which provided a relaxed atmosphere for delegates to develop and deepen their relationships and build upon the collegial approach of the ICN.

Matthew Boswell

The Competition Bureau of Canada was extremely pleased with the organisation and planning of the 2013 ICN Cartel Workshop and feels that it was a resounding success. The hard work and attention to detail of the planning team shone through in every aspect of the Workshop. From the custom made bags and picture frames, to the remarkable venue and well-organised logistics, the Competition Commission South Africa is to be commended on such an extraordinary conference.

In addition to the Workshop sessions, the CCSA organised several outside events, including an amazing cultural dinner that was enjoyed by all.

The Workshop has received overwhelmingly positive feedback. Attendees particularly enjoyed the opportunity to obtain practical experience from, and network with, other agencies. Workshop participants felt that the sessions were highly relevant and useful, and particularly enjoyed hearing about different case examples from the various presenters. Overall, the Workshop was an outstanding event, and the CCSA has set a high standard for future Workshop hosts!

Scott Hammond

Congratulations and thanks to all of you for an amazing Workshop. You all did a wonderful job making sure that we all had everything that we needed, and the Workshop proceeded without a single hitch! As beautiful as the view is from Table Mountain, I am sure that I am not alone in saying that my lasting impression of South Africa will always be the warmth and friendliness of the people.

It was very interesting hearing about the challenges that you face moving forward with cartel enforcement in South Africa. While obstacles exist, it is clear that your team is dedicated and your vision is clear.

I will be cheering for you as I watch your future pursuits and successes.

Scott Hammond is the former head of criminal enforcement at the United States Department of Justice’s antitrust division. He attended the Workshop as an NGA.

Matthew Boswell is the senior deputy commissioner of competition; criminal matters branch at the Competition Bureau of Canada. He is also the Co-Chair of the ICN Cartel Working Group Sub Group 2.

Marcus Bezzi is the executive general manager; enforcement and compliance division at the Australian Competition and Consumer Commission. He is also the Co-Chair of the ICN Cartel Working Group Sub Group 2.
Alagie Baboucarr Jabang

I totally agree that the theme “TACKLING ROAD BLOCKS FOR EFFECTIVE CARTEL ENFORCEMENT” was very appropriate and timely. This workshop has availed to all participants the opportunity to learn from other Commissions in advanced jurisdictions about their best practices in Cartel enforcement. Cartel activity is a global concern and resolutions can be ‘one size fits all’ or may require little changes for individual adoption in other jurisdiction; of course taking into consideration the legislation in place. From the presentations by the speakers, it came out clear that cross-border collaboration is a key element in tackling the road blocks for effective cartel enforcement.

My personal interaction with colleagues from other agencies indicated that all participants left the workshop with a high level of confidence after a careful comparison of their achievements in terms of how they were able to tackle anti cartel activities using authorities from advanced jurisdictions as a yardstick. The convergence of the different legislation on how to tackle anti cartel activities is apparent and I believe over a short time all jurisdictions will eventually adopt the criminal prosecution of individuals involved in cartel activities in order to successfully curb its adverse effects on our economies. Everyone must step the campaign for global adoption of criminal prosecution of anti-cartel activity.

I therefore challenge the Cartel working group to continue this good work in order to equip and enable individual authorities to be in the position to register significant impact and lure policy makers into total commitment to eradicate completely anti-cartel activities. The collaboration of the ICN and the South African Competition Authority in organising such a capacity building and advocacy exercise is the only way forward and we must all integrate what we have learnt into our country cartel work plans.

Finally, all authorities must continue to use this networking forum to share information and resources especially for the young authorities.

I therefore seize this opportunity to thank everyone.

Alagie Baboucarr Jabang is the director of corporate services at the Gambia Competition Commission. The Commission is a member of the ICN.

John Oxenham and Mfundo Ngobese

Thank you very much for allowing both of us to attend the 2013 ICN Cartel Workshop. Given the importance of the subject matter of the Workshop, it was incredibly enlightening to have attended. We were both very much of the view that the Commission’s efforts in organising and hosting the workshop were exemplary and having attended other ICN functions in variety of jurisdictions can safely say that the Cape Town event was without peer.

The vast majority of the breakout sessions which we attended were well structured and catered for a broad audience of both practitioners and enforcers. The manner in which these were hosted by the respective panelists ensured broad audience participation. Of particular relevance to local practitioners were the sessions dedicated to leniency and investigative techniques. These proved incredibly beneficial.

While it was appreciated that the combination practitioners and enforcer has to terminate given the sensitivity of some of the topics, it may be more prudent in future events to ensure greater combined participation as it would have ensured greater learnings for both parties. Finally it must be stated that there was a glaring lack of input from local legal practitioners and in our view the Workshop suffered as a result.

John Oxenham and Mfundo Ngobese work at Nortons inc as director and economist respectively. They attended the workshop as NGAs.
I thought the cultural dinner was amazing and certainly one of the highlights of the 2013 ICN Cartel Workshop.

Our visitors were transported from a world-class venue in one of the most beautiful cities in the world to an authentically African, five star-style dining experience at Moyo Stellenbosch in the splendour of the historical Spier Wine Farm.

From the ethnic décor and feel of the venue to the beaming and welcoming faces of staff at Moyo, there was no doubt that we were in for a special evening. Guests were welcomed amidst the sound of the African drum and singing and were treated to some face painting.

The recitation of the speech “I am an African” by Mziwodumo Rubushe of the Commission was most appropriate and it set a wonderful tone for the rest of the evening. I really felt that the message in the speech also resonated with the delegates from the rest of Africa who must have also felt proud as hosts of our counterparts from the Americas, Europe and Asia.

The menu was impressive and our traditional cuisine wonderfully presented. I had a great time explaining and describing the various dishes to our visitors at my table and encouraging them to sample as much as possible. Guests were treated to a buffet of African dishes including venison bobotie, potjie, lamb tagine, calamari dophi, gemsbok kebab and springbok wors, samp, with sweet afterthoughts such as malva pudding and Moroccan baklava.

The performance by the live band was out of this world and it got almost everyone on their feet moving to distinctly African sounds. I watched in amazement as Dirk Van Erps from the European Commission ran to the stage and started singing the Xhosa words to Brenda Fassie’s song “Vulindlela” and was even more impressed when he let rip with his dance moves. The following day Dirk told me that the experience was one of the best nights of his life.

I echo Matthew Boswell’s observation that I too had never seen colleagues at a work function shouting for the party to carry on so late into the night which is further testament of the good time and experience that was had by all.

I have no doubt that our visitors felt the warmth of our hospitality and took with them memories of that night in Africa which they will cherish for many years to come.

Overall, I thought the entire Conference was a resounding success and thanks to the organising committee for a job well done.
Switzerland’s Rafael samples the spread of local delicacies from the buffet.

Delegates were spoiled to a wide array of locally flavoured salads.

Delegates were treated to face painting and African entertainment.

Barbeque to some, braai or Shisa nyama to us; participants were treated to our finest choice grade meat.

The 2013 ICN Cartel Workshop was a resounding success due to the joint effort of the multi-jurisdictional organising team, made-up of: (from left to right) Themba Mathebula, Itebogeng Palane, Keitumetse Letebele, Nerice Barnabas, Kristen Pinhey and Parnos Munyard (back).

Kholiswa serenaded the group to the songs of local favourites such as Merriam Makeba, Brenda Fassie and Zahara.

The OECD’s Antonio Capobianco and friends relaxing to the evening’s festivities, after a hard day of presentations and deliberations.

After all the feasting and meat (ing), participants stormed the dance floor with some dance moves you only see in the movies; a great way to end the night.
I had the honour of presenting at the pre-ICN workshop on the Commission’s experiences of the Construction Fast Track Settlement Process. My presentation was on stakeholder engagement. The Commission first held stakeholder engagements with the construction companies who were involved in bid rigging between 1 February 2011 and 15 April 2011, to explain the invitation to settle, the risks of not settling, and the benefits of settling. The aim was to encourage construction firms that engaged in collusive tendering or bid rigging to apply to settle with the Commission, as invited. The Commission also held meetings with the clients of the construction firms - mainly government departments, state-owned companies and municipalities to inform them how they have been affected by collusive tendering in their infrastructure projects and to advise them of their right to claim for civil damages in terms of the Act.

The highlights for me from the ICN Cartel Workshop were the presentations by Mathew Boswell, Senior Deputy Commissioner Competition Bureau of Canada and Scott Hammond, former head of the US DOJ Antitrust Division. Cartel conduct is criminalised in both Canada and the United States. Mr Boswell indicated that criminal prosecution is not easy and Mr Hammond said “South Africa should not think that introducing criminal liability is going to solve all your problems”.

My lesson from the Workshop was that countries with criminal liability have a very low rate of Corporate Leniency Applicants. This lesson sent a chill down my spine for the simple reason that most of the Commission’s successful cartel prosecutions were driven by Corporate Leniency Policy (“CLP”) applicants. I asked myself many questions like what would be the likely effect of the introduction of criminal liability on the CLP in South Africa; are we also likely to have fewer CLP applicants? Are we likely to have fewer prosecutions? What are the implications for the Commission’s Cartels Division?

On a lighter note the delegates were treated to an authentically South African experience at a cultural dinner at Stellenbosch’s Moyos. I rendered a poem to remind delegates that they are in Africa. As is customary South Africa displayed its well-oiled organisational machinery, the positive feedback has been overwhelming. I would like to thank the Commission’s logistics team for a World Class Workshop. You made the Commission and South Africa proud.
Dubbed the “cartel busters”, more than 200 representatives of competition authorities from over 50 countries met in Cape Town recently for the 2013 ICN Cartel Workshop. It was the second such workshop hosted in Africa and attended by delegates from throughout the world.

Cartels are responsible for one of the most serious infringements of competition law throughout the world because their activity generally results in higher prices.

They also contribute to a loss of competitiveness and are a threat to sustainable development as the companies concerned become less innovative than they would be had the forces of competition been in full swing.

The programme was kick-started by a pre-workshop on the Commission’s Construction Fast Track Settlement Project.

This project arose out of the high number of corporate leniency applications received in respect of bid rigging in South Africa’s construction industry. The Commission has recently settled a large number of these matters.

The purpose of the pre-workshop was to share the lessons learned from the project with other competition authorities in Africa.

In line with the Commission’s zero tolerance stance towards cartel conduct, the main workshop focused on strategies to tackle impediments impacting on successful cartel enforcement, particularly in the face of increasing challenges to competition agencies around the world.

The discussions included consideration of barriers to effective co-operation and information sharing, alternative means of cartel detections outside the leniency, case prioritisation and challenges related to digital evidence gathering.

The Commission has always maintained a robust stance against anti-competitive practices, in particular cartel conduct. It has identified cartels as a key focus area and reviewed the corporate leniency policy in order to catch the most egregious offenders of competition law.

The increased emphasis on cartels in South Africa is in line with global developments, as competition authorities have stepped up their enforcement efforts with a growing number of investigations and higher penalties.

The workshop was a great success. It was a good platform for networking with the representatives from other jurisdictions, engagements that are ongoing. Many lessons were learnt from the workshop and these will be useful in enhancing the commission’s approach when dealing with cartels.
Goodbyes are not forever; until we meet again

Themba Mathebula

The story goes back to October 2012, when the Commission announced the appointment of Clinton Oellermann and Ibrahim Bah as divisional managers to head the Enforcement & Exemptions and Mergers & Acquisitions divisions respectively. I bumped on to the story and breezed over with no amount of thoughtfulness as to me then; it was just another executive filling-in the shoes of someone who probably left for greener pastures. Rightfully so as I was still working for the United States Agency for International Development, and only indulged on current affairs programmes and news to keep abreast on matters of national interest.

All that soon changed three months later when I joined the Commission as one of the co-ordinates in the Advocacy and Stakeholders Relations division. Now the news of the two chaps became ever so relevant to me, as one of my first assignments was to interview Clint. It was going to make for an interesting discussion safe to say, I’m still trying to pin him down for the interview.

It was a matter of second time lucky when recently I spoke to Ibrahim about a farewell interview which he instantaneously granted. The Commission had just learned two months ago that Mr Bah has decided to return to Ireland to be closer to his “young family”, as the fatigue of trotting between two countries finally caught up with him.

Our meeting is initially postponed for 30 minutes as he rushes to an emergency meeting with senior staff in his Mergers and Acquisitions division. We finally sit in his office for what promises to be an animated interview with one of the Commission’s energetic Divisional Managers who many have chosen to call “IB”, maybe for obvious reasons of the rhyming of his initials. I ask IB to reflect on his tenure at the Commission, and his eyes lights-up as he recalls, “It was a privilege and honour to have been given the opportunity to come and work in South Africa at the Competition Commission, to head the Mergers and Acquisitions unit. I hold this institution very close to my heart because I contributed in the initial process of setting it up.”

It certainly baffles one why leave when you’ve enjoyed your stay thus far? To which he responds, “The plan was to come and work at least for five years, but because of personal family issues. My wife and kids could not join me; so I’ve decided to return to take care of my young family. I have three boys Mohamed (13), Sheik (12) and Alpha-Amadu (5) and a girl, Kultumi (14).” IB previously worked at the Commission as a Senior Economist/Investigator and was involved in the development and implementation of aspects of the South African Competition Act of 1998, in particular, the setting of merger thresholds and assessment of dominance.

In his second coming (no pun intended), IB presided over some of the most interesting, controversial and complex mergers the Commission dealt with in 2013. In his personal view, one such interesting merger was the Oceana/Foodcorp1 transaction. As he explains, “Oceana has challenged the conditions that we imposed and I think it’s good. The Commission needs to be challenged sometimes and it’s a great opportunity to engage again with the market players that we interviewed during our field investigation.”

According to him, the fishing sector needs to be sorted out and he hopes the challenge by the parties will bring out issues that need to be addressed as the sector is important to the country’s economy. Another case that was very interesting and difficult for the team was the IDC/Rio Tinto2 merger “because the team had to go out and do a field investigation which gave them a good understanding of the issues. There were no competition concerns at the acquisition level, however when you look at the deal, it was going to raise significant public interest concerns.” IB lauded his team for eliciting the public interest issues that were specific to the merger.

IB also oversaw the Juta/Van Schaik proposed merger, the only transaction that was prohibited by the Commission in 2013. He says it was a very interesting case to work on. “This is a merger that I suspected from the onset that the parties knew it was a problematic merger and that it will face high hurdles to pass the competition test.”

IB says he applauds the Commission for the extensive investigation and thorough analysis that eventually led to the prohibition of the merger.

He says these and other cases are testament that the South African merger review regimen is very admirable, because the Commission is able to assess the wider impact of a transaction before making a decision.

IB says the Commission, however, still needs more co-operation from the lawyers, in terms of providing information to the case team. He says some complain that some of the cases take longer whilst they withhold information from the Commission. He says good lawyers advise their clients properly.

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1 http://www.compcom.co.za/assets/Uploads/AttachedFiles/MyDocuments/Media-release-Oceana-final.pdf
Conditions placed on mergers during September – November 2013

The Commission imposed conditions in 3 cases from September to November 2013. Two of the cases, dealt with structural remedies. In the Oceana case, the structural remedy dealt with an obligation to divest of the Foodcorp pelagic fishing rights and the Glenryck canned pelagic fish brand to an independent third party. This condition was imposed as the Commission found that the acquisition of additional pelagic fishing rights and another canned fish brand would grant Oceana market power and the ability to unilaterally increase prices. This case is currently pending a review process at the Competition Tribunal (“Tribunal”).

In the Pinnacle Technology merger, the Commission recommended to the Tribunal that conditions be imposed to address the possibility of the exchange of sensitive customer information between Pinnacle and Datacentrix, as Datacentrix competed with certain of Pinnacle’s customers in the downstream reseller and system integration level of the information technology market. The recommendation was accepted by the Tribunal.

In the CA Sales merger, the Commission recommended to the Tribunal that the parties exercise the call option to acquire a further shareholding in the target firm by 31 October 2013, or if exercised beyond that date, the transaction be re-notified. The Commission was concerned that its assessment, which was based on the market circumstances at the time, may not be valid at a later date should the parties exercise the option at a later stage and the market circumstances change. The Tribunal accepted this recommendation.

Goodbyes are not forever; until we meet again

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IB says although there’s still a lot to be done by the Commission, it has achieved a lot and remains vigilant in tackling competition issues that are relevant to the South African society. He thanks his team for the support and motivation and also the Executive Committee for what he calls cordial and respectful deliberations during EXCO meetings.

Deputy Commissioner and fellow EXCO member, Trudi Makhaya says it was a wonderful experience working with IB, “we’ll miss his perfectionism, energy and commitment during the robust discussions at EXCO meetings”.

Principal Analyst at the Mergers and Acquisitions division, Seema Nunkoo says “It has been a great pleasure working with IB over the year! He has a wealth of knowledge and experience and has made a major difference in the division’s work”.

The Commission might not be losing IB for good; as he puts it, “I hope to return when I’m a bit older and wiser, and when the kids are independent”. IB says he will always be available to the Commission if he’s called to assist.
Where to get hold of us

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