

**19th Annual Competition Commission and Competition
Tribunal – Competition Law, Economics and Policy
Conference
Ms Mondo Mazwai
Chairperson, Competition Tribunal South Africa
9 September 2025 | Cape Town**

**Opening Address and Welcome: Competition Law In
Uncertain Times**

Good morning distinguished guests, colleagues, members of the judiciary, regulators, adjudicators, academics, and friends of competition law who have travelled from far and near.

Deputy Minister Godlimpi - greetings and a special welcome to our conference, thank you for making the time to be with us today.

It is both a pleasure and a profound privilege to open this 19th Annual Competition Commission and Competition Tribunal Conference, here in the mother city, Cape Town – a world class city with a rich heritage and culture, renowned for our

beautiful beaches, the iconic Table Mountain, our biodiversity, our wine regions, and fine cuisine.

I hope you get to enjoy some of this in your time here.

It was here that our complex international economic relations with the world began, in earnest; and as we reflect on current challenges facing not only South Africa, but the world at large, we must accept that history invariably shapes the future. While we cannot change this history, we can shape the future.

This is our 19th conference, but let me hasten to add that, our competition institutions are 26 years old. We stand on the shoulders of those who have gone before us in all of our three institutions, and build on lessons learnt over time, as we also confront new challenges now as “young adults” in competition regulation, able to engage meaningfully and respectfully both with more mature and younger agencies coming up.

It is true that we meet at a time when the instability of global economic trade relations is at an all-time high.

The world has undergone so much significant change which is impacting global trade relations and will continue to have substantial impacts over the coming years.

Just last year, 64 countries went to the polls – more than half of the world's population. Nearly all incumbent parties worldwide lost vote share in elections; and for the first time in more than a century, over 80% of democracies saw a decline in incumbent support.

In response to national challenges countries face, some countries have adopted protectionist policies, focussing on protecting their national players, *inter alia* against competition from countries such as China, raising questions whether globalisation is still a goal to pursue.

Businesses – mainly in the global North – are rapidly adapting to technological innovations and changing markets where the digital economy is disrupting many industries. Let alone the entry of Artificial Intelligence in the fold.

Businesses (and countries) also mainly in the Global North, are changing to green alternatives in response to climate change

and in pursuit of environmental sustainability. Environmental issues are becoming part of the competition debate.

Whilst the global South grapples with issues of poverty, inequality and unemployment; increasingly more countries have adopted competition laws that seek to address these socio-economic challenges.

Competition authorities across the world are seeking to formulate and enforce competition rules in the context of rising complexity and uncertainty.

Competition authorities are expected to provide regulatory certainty, even when so much is uncertain.

As the Tribunal our role remains to adjudicate cases expeditiously; in a transparent manner; and to interpret the law in a consistent and predictable way that provides certainty to our stakeholders.

Therein lies the challenge: **What is the role of competition law in uncertain times? Can we use old legal frameworks to solve new economic and social questions?**

Unsurprisingly, there is no easy answer or a single answer.

However, our experience during the Covid-19 period, although itself a devastating experience, can help us answer some of these questions.

As consumers scrambled for masks, sanitisers and other products and services necessary to combat the spread of the coronavirus, some suppliers increased their prices of sanitisers by over 1000% without objective justification – well above their cost and reasonable margin.

In South Africa, the Babelgi price gouging case was decided on the existing rules – without need for a change in the law, suggesting that it is not necessary to hastily change the law for every uncertainty that arises.

The rise of the digital economy is a direct consequence of finding solutions to carrying on with life and business in the lockdown time during Covid.

As we are confronted with the range of issues facing competition authorities in the digital economy - raising yet again the question whether competition laws are fit-for-purpose in this new world order, I am reminded of my favourite quote by Martin Luther King Jr. that: *“All progress is*

precarious, and the solution to one problem brings us face to face with another.”

As we overcame Covid-19, a new challenge which is already facing many competition authorities, including South Africa, is jurisdiction over the so-called “GAFAM” firms (being Google, Apple, Facebook/Meta, Amazon and Microsoft) since in most cases, the firms are registered outside the jurisdiction of a competition authority.

The “effects doctrine” as a dimension applied in certain instances the EU merger system, is well established. COMESA applies a similar system and the newly established AfCFTA is set to be modelled on a similar basis.

The Constitutional Court here in South Africa recently heard the forex Banks case in which banks, including foreign banks with no local presence but having economic activity in, within or “having an effect” in South Africa; are alleged to have manipulated the US Dollar/Rand exchange rate.

Again, this suggests that the existing legal frameworks – if correctly interpreted and applied – can go a long way in dealing with the new competition challenges in the digital

economy. As Martin Luther King Jr says this is not to say we may not be confronted with new issues, but applying current legal and economic frameworks underpinning a competition assessment, remains the starting point.

Some have suggested that competition laws are too rigid and that in uncertain times, or crisis time, they should give way to targeted interventions by government in strategic sectors to promote growth. This is especially so in digital markets where governments have responded differently to this new world order.

I am certain we will hear from others more qualified on the intersection between competition law; and industrial and trade policy.

For the moment, it suffices to say competition law is a versatile instrument to deal, at least in the South African context, with efficiency and public interest issues. This is clear from the preamble to our Act which, in the interest of time I will not repeat.

Competition law, is not meant to be a substitute for industrial policy. Thus, industrial policy and competition law ought to be complementary to achieve pro-competitive outcomes.

Related to the digital economy is the issue of access to data and the internet, as a means to access opportunities and basic needs in a changing environment.

In this regard, the much-publicised Vodacom and Maziv merger also suggests that competition issues and public interest ones are two sides of the same coin and are reinforcing, rather than being disparate and distinct ideas.

We had competition concerns at a horizontal as well as vertical levels.

While we found Maziv to be dominant in the provision of dark fibre, Vodacom, as the largest Mobile Network Operator in the country, and a large customer of Maziv, was growing and planning to further grow its own network infrastructure in competition to Maziv without the merger.

The merger would give rise to a permanent change in the structure of the market. Vodacom and Maziv argued that the

merger would accelerate the roll-out of fibre in the public interest. This raised the issue of the balance between competition and public interest issues.

In Mediclinic, the Constitutional Court made it clear that a price effect and reduced choice which affect consumers, are public interest issues; and therefore the lens through which public interest is to be understood is not necessarily distinct to efficiency.

If certain public interest gains benefit consumers in the short-term, then are they worth more than the long-term harmful impact on consumers arising from a structural change in the market, and long-term anti-competitive effects? This question was at the heart of the assessment.

The merger also raises important questions pertinent to our deliberations this week.

In an economy that has experienced a sustained period of low economic growth which in itself leads to considerable uncertainty, the expectation is that any investment contributes to setting the economy on the right path for the long term.

However, the emerging scholarship and international experience in digital markets, for example, points out that long term growth arises from investments that specifically drive competition and dynamic efficiencies; attributes which are not necessarily an outcome of all mergers and acquisitions.

Therefore, it is important in these challenging times for competition authorities to have regard to their role in evaluating transactions that are market shaping. This requires balancing critically the evidence on efficiency, consumer welfare and public benefit as we seek to align with the broader transformation and industrial policy goals of South Africa.

Ultimately, Vodacom and Maziv presented additional conditions to address the competition concerns that led to the prohibition, and also enhanced other public interest conditions; and the merger was approved by the Competition Appeal Court on these additional conditions.

Two key take-away points relevant to “Competition in Uncertain Times” arise: 1) Firstly, the existing framework was adequate to deal with evolving and relatively new and dynamic aspects of technology markets; and 2) Secondly, the

robustness and strength of our institutions is demonstrable through the rigour with which this transaction was considered, and ultimately from the better outcomes achieved for the public good.

All these issues suggest that, even in uncertain times, competition laws, if properly formulated and applied, remain appropriate tools in the kit to deal with change.

Naturally, competition law entails an interpretation of the law based *inter alia* on economic analysis. In uncertain times, it is important that competition regulators should seek to provide “certainty and predictability” but this can take time as new theories of harm are tested and as jurisprudence evolves. So, each case and decision bring us closer to certainty.

In this regard, a word on procedural certainty and predictability for investors. How long it takes for competition authorities to decide cases affects certainty for markets; and we are acutely aware of this and always strive to hear matters, and especially mergers - expeditiously.

In this past financial year 2024/25, we heard a total of 103 mergers, including Vodacom which was the only merger prohibited in the year.

We issued 100% of our orders in all the mergers within 10 business days. 91% of our reasons were issued within 20 business days.

The total transaction value of all domestic and global mergers evaluated that affect South Africa, almost tripled in the 2024/2025 financial year to R33 trillion, compared to just over R12 trillion in the 2023/2024 year. It is evident therefore that in terms of shaping investment in our economy, the competition authorities play an important and strategic role.

In 26 years, the Tribunal has adjudicated more than 1,900 mergers and the volume of large merger cases has increased significantly over the past decade. Of those mergers, only 17 have been prohibited; and none on public interest grounds alone. This is to contextualise the recent debates on whether the authorities unduly prohibit investment; as we continuously recognise the importance of enhancing our

processes to improve the ease of doing business in our economy.

Regarding concerns about public interest interventions which form part of contemporary debates, it is trite that the authorities have a legislative mandate to evaluate these public interest effects of transactions, as we continue to do. We believe these remedies make a difference for vulnerable groups in our society, as the legislature intended.

We also acknowledge the need to be reflective as authorities, 26 years on. Sound assessment of the impact of the work on public interest provisions, rather than unsubstantiated criticism, is required so that can we do more of the things that work, and less of the things that do not work.

To do this, requires commitment on the part of the business and practitioner community to provide access to data and to their clients affected by these remedies to enable thorough empirical evaluation of the outcomes and we invite much more rigorous scholarship on these issues.

For our part the David Lewis Scholarship founded in recognition of the first Chairperson of the Tribunal will endeavour to do this type of assessment.

More broadly, in the past five years, the Tribunal has adjudicated over 500 merger cases, compared to approximately 300 in the preceding five-year period. It is evident, therefore, that the work of the authorities has increased in scope.

However, our resources have not kept up with the rise in volumes and complexity and must be swiftly addressed to enable us to achieve the important mandate of the competition authorities, for the benefit of the consumer.

DM in order to keep up with the global, regional and national issues that impact our work, we need to capacitate the institutions; and we look forward especially to the imminent appointment of Tribunal members.

Ultimately, as the saying goes: *“Every crisis is an opportunity”*.

Where then are the opportunities in the uncertainty?

Long established traditions of collaboration through forums such as the ICN, OECD, UNCTAD, BRICS and others remain invaluable sources of knowledge sharing.

AfCTA is also set to transform the African continent's economy in significant ways. Substantial progress in the creation of a common regional market has been made and I am certain we will hear more from the panels on this issue later today.

The BRICS conference opens tomorrow and will further explore some of the challenges and opportunities of competition law in uncertain times.

In times of uncertainty, there is an opportunity to build agility and resilience in our institutions in order to adapt to the significant shifts in our domestic and global environment. As markets and societies evolve, so too should our institutions.

Learning from others in the international arena enables us to strengthen the impact of authorities, cognizant that every decision we make ultimately impacts consumers, economic growth and the poorest of the poor in our societies.

Closing

Our task is not to predict the next crisis, but to ensure that when it comes, we response appropriately.

The conference presents a timely opportunity to share insights and build towards agencies that are adaptable and resilient in these uncertain times.

Let us debate candidly, even critically, but always constructively.

We look forward to the deliberations this week; and I wish you all a stimulating and fruitful conference.

Thank you.