GUEST EDITORIAL

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The field of competition economics has grown rapidly around the world over the past two decades. While its roots are in industrial organisation theory, the growth has been driven by application to cases examined by competition authorities. Such cases provide economists with access to detailed data on firm conduct, the analysis of which in turn stimulates developments in economic theory.

The work of the competition authorities established under the South African Competition Act of 1998 has followed this trend in stimulating extensive economic analysis of markets and firm conduct. Contested cases typically involve in-depth engagement with economic theory and data, with both local and international economists presenting their analyses and testifying at length in Competition Tribunal hearings. The challenge for universities is to match the demand represented by the growth in this area, in terms of both teaching and research. This is the rationale for the establishment of the *Centre for Competition Economics at the University of Johannesburg* at the beginning of 2011.

The articles in this special issue were drawn from the 4th Annual Conference on Competition Law, Economics and Policy held on 2 September 2010 by the South African Competition Commission, Competition Tribunal and Mandela Institute. The articles make important contributions to our understanding in this field, critically reflecting on questions that have come up in South Africa, in the context of theory and the international literature. We are grateful to the *Journal of Economic and Financial Sciences* for this special issue.

The article by **Paul Anderson**, **Fatima Fiandeiro** and **Keshav Choudhary** reviews the literature on buying power and argues that joint purchasing agreements, even where they create monopsony power, should not be treated the same as selling cartels even although they appear to be covered under the same section of the Competition Act. The per se cartel prohibition in section 4(1)(b) covers the fixing of purchase or selling prices and thus deters small firms from joint arrangements that may be efficiency-enhancing and pro-competitive. But, while purchasing arrangements can lead to welfare loss, they are also likely to have benefits especially where upstream concentration levels are high. Small buyers can create efficiencies through joint purchasing arrangements and can balance the effect of upstream market power.

Jason Aproskie and **Sha'ista Goga** examine two popular claims that fines are passed on to consumers and that high fines could lead to poor competitive outcomes such as firms exiting the market. This contrasts with economic theory. Aproskie and Goga conclude that administrative penalties do not lead to higher prices for consumers, as fines do not generally impact on the optimum pricing levels of a firm. Only in very specific circumstances would a fine lead to firm

closure. The authors note that the impact of fines is a rich area for further study.

Next, **Simon Roberts**, **Catherine Corbett** and **Reena das Nair** critically assess the way in which the Competition Tribunal addressed the questions of market definition, market power and price determination in two mergers which turned on relative bargaining power with concentrated suppliers and buyers. To do this they compare the Competition Tribunal's approaches in evaluating two mergers: Sasol/Engen and Chlor-Alkali Holdings/Botash. They find that an analysis of bargaining power should play a more important part in the assessment of the effects on competition, including the identification of competitive constraints that fall within market definition.

Excessive pricing is a controversial issue in antitrust economics and law. This controversy arises not out of the debate on the relevance of the abuse, but from the theoretical and empirical complexity of isolating high prices that are not anti-competitive from excessive prices. In this issue, **Richard Murgatroyd** and **Simon Baker** methodically explore this controversy and review the necessary conditions under which charging import parity prices would be presumed excessive pricing. The authors also question the feasibility and desirability of remedies in cases where an authority manages to establish excessive pricing. The article thus emphasises the need for caution when evaluating alleged excessive pricing in cases where dominant firms charge import parity prices.

Avias Ngwenya and **Genna Robb** analyse the relative merits of structural and behavioural conditions to address likely anti-competitive effects of mergers. South Africa is consistent with the practice in less experienced European jurisdictions in having a greater proportion of problematic mergers being approved subject to behavioural conditions, for horizontal as well as vertical mergers. This reflects a desire to allow mergers with apparent efficiencies to proceed, but it relies on effective crafting and monitoring of the merged firm's behaviour. By comparison, more experienced jurisdictions such the USA impose a much higher proportion of structural conditions than behavioural conditions. A review of a merger approved subject to both structural and behavioural remedies illustrates the challenges in monitoring behaviour conditions.

The proper recognition of the way in which markets and competition work in practice is important for the extent to which market power can be inferred from market shares. **Nicola Theron** and **Johann van Eeden** explore this in the specific case of mobile phone call termination. They draw on developments in economic theory understanding such markets as 'two-sided' where there is interdependence between calling and called parties, and customers derive benefit from being part of a network with a larger number of members (whom they can call). Using the example of Cell C they note that, given its small number of subscribers, it had a greater proportion of off-net calls on which termination charges are levied. While call termination may be viewed as separate markets in which each cell phone company has a monopoly over its subscribers and has market power in setting termination charges for those subscribers, recognition of the two-sided nature of the market implies a different view of market power. Such a view should take into account wider competitive conditions and Cell C's relatively small size in the mobile market more broadly.