



LAW ASSOCIATION OF ZAMBIA

in conjunction with the



SOUTHERN AFRICAN INSTITUTE
for POLICY AND RESEARCH

Workshops on Law

OFFICIAL PROGRAMME
2014

Competition Law & Policy by Prof George Hay

Lusaka, 25-27 June

Course Content:

The object of the course is to teach students the underlying principles that would/should guide any nation's competition policy regime. The vehicle for doing so will be to examine some of the historically important US cases as well as contemporary cases, with some reference to possible differences between the US and the EU on certain issues. To the extent possible, the course will endeavour to make some reference to issues that have arisen in Zambia or elsewhere in Africa. The course will cover horizontal agreements (agreements among competitors), vertical agreements (agreements between a single manufacturer and its wholesale or retail dealers), monopolisation (or abuse of a dominant position), and mergers (especially horizontal mergers, i.e., mergers between competitors). The class discussion will include a substantial component of fairly basic (and non-technical) economics, because economic analysis underlies and has shaped competition law in all major jurisdictions. The course will start with an overview of the US antitrust system (the objects, the statutes, the enforcers, the defendants, the process, and the possible penalties) in order to provide some context for the students to understand some of the cases. Then we will move on to substantive areas as outlined above.

Professional biography:

George Hay is one of the foremost antitrust authorities in the United States. After he received his Ph.D. in economics from Northwestern University, Hay taught economics at Yale University for five years, until he joined the U.S. Department of Justice's Antitrust Division in 1972. Hay served as Director of Economics, and won several awards for service to the Justice Department. Hay became a Professor of Law and a Professor of Economics at Cornell University in 1979, and was named to the Edward Cornell chair in the Law School in 1992. Professor Hay teaches a variety of law and law-related courses in both the Law School and the College of Arts and Sciences and lectures on antitrust throughout the United States and the rest of the world. He has appeared as an expert witness in many antitrust cases all over the world.

An Introduction to Transactional Lawyering by Prof. C. Whitehead

Lusaka, 11-13 August and Copperbelt, 14-16 August

Course Content:

The purpose of this course, entitled “An Introduction to Transactional Lawyering”, is to introduce participants to basic concepts and tools used in structuring deals, including transaction costs, information economics, and risk-sharing and incentives. A full understanding requires years of transactional experience, not something that can be bottled into a two- or three-day course. This course will provide participants with a basic introduction to how a deal is structured and what a deal lawyer does—familiarising them with some common problems and the tools used to address them.

Among other topics, I expect the course to focus on issues addressed by (i) representations and warranties, (ii) covenants, (iii) conditions to closing, and (iv) indemnification provisions in a standard transactional contract. It will also discuss other issues that may affect the structure of a deal, such as (v) asset specificity, where one party is required to make a costly investment in advance of the other party’s performance, with the risk of the other party acting opportunistically, (vi) how long-term contracts deal with problems that arise from changing circumstances and exogenous risk over the life of a contract, and (vii) the role of reputation. Time permitting, (viii) we may also ask participants to engage in a mock negotiation that illustrates issues that may arise when unwinding an existing business, in particular when the parties have different levels of information about each other and the business’s value.

The course will use (i) simple economic models and (ii) standard contractual provisions to illustrate the issues that arise in transactions and how transactional lawyers address them through contract and structuring. It will be most suitable for law students, junior attorneys, and attorneys with limited transactional experience.

Professional biography:

Charles K. Whitehead specialises in the law relating to corporations, financial markets, and strategic transactions. After clerking for the Hon. Ellsworth A. Van Graafeiland, U.S. Court of Appeals (2nd Circuit), Professor Whitehead practiced in the United States, Europe, and Asia as outside counsel and general counsel of several multinational financial institutions. Before joining Cornell, he was on the faculty of the Boston University School of Law and was a research fellow at Columbia Law School. He was recently the first “foreign expert” visiting professor at Peking University Law School. See: “Peking University Law School’s First ‘Foreign Expert’ Visiting Professor” (in Chinese). Professor Whitehead’s current scholarship focuses on the financial markets, financial regulation, and corporate governance.

An External View of the Zambia Companies Act by Prof James Hank

Lusaka, 27-29 August

Course Content:

An External View of the Zambia Companies Act will examine various sections of Zambia's Companies Act (including formation, capital investment and maintenance, debentures, duties of directors and officers and business combinations) and compare them to corporation statutes in the United States, principally the Model Business Corporation Act, and to the South Africa Companies Act, both of which I have assisted in drafting. Reference would also be made to the U.K. Companies Act, with which I am also familiar. The course would be directed at (a) practitioners, academics and judges who would like to consider further and better understand the intellectual foundations and practical implications of various provisions of the Zambia Act, especially in comparison to external counterparts, (b) lawyers, policy-makers and others who would be interested in considering the possibility of revisions to the Zambia Act, (c) judges who wish to update and enhance their understanding of basic company law principles and rules as applied in real-world situations, and (d) practitioners who seek a better understanding of U.S., U.K. and South Africa company law in order to better serve inbound and outbound clients.

Professional Biography:

In private practice, Jim represents publicly- and privately-held corporations and other entities in a wide variety of general corporate law and governance matters, securities offerings and other capital markets transactions. Jim has advised buyers or sellers in more than 250 mergers or acquisitions, including many valued at more than one billion dollars. In recent years, Jim has served as Maryland corporate counsel to Capital Automotive, Arden Realty, Town and Country Trust, Bedford Properties, MeriStar Hospitality, Prentiss Properties, Pan Pacific, Reckson and, most recently, Equity Office Properties, Innkeepers USA Trust and Eagle Hospitality in their mergers, as well as to General Growth Properties, 3M, Huntington Bancshares and Stanley Works in acquisitions by them. He has also represented parties in cross-border mergers and acquisitions, joint ventures and other transactions.

Jim is Senior Lecturer at Northwestern Law School and Visiting Senior Lecturer of Management at Cornell Graduate School of Management, where he has taught securities regulation, mergers and acquisitions and corporate governance. He has also taught classes in corporation law at various law and business schools in the United States, the Republic of South Africa and Guatemala and at the Institute of Law in Beijing. Jim was a member of the Committee on Corporate Laws of the Section of Business Law of the American Bar Association from 1984 to 1990 and from 1996 to 2002. Jim has also been a drafter of the Corporate Director's Guidebook (3d, 4th and 5th eds.) and the Fund Director's Guidebook (all editions) and is Co-Editor of the Handbook for the Conduct of Shareholders' Meetings.