

2022 tralac Alumni Conference
11-12 October 2022

Songezo Mabece, RSA

Competition Aspects of Public Procurement (The South African Perspective)



tralac | trade law centre



Sweden
Sverige

STRUCTURE OF PRESENTATION



UNDERSTANDING COMPETITION AND PROCUREMENT



- (Public) Procurement in Action
- Competition in Action
- Difference and/or Similarities?



HISTORICAL ROOTS

- *Constitutional of RSA:*
- *Public Procurement:*
- *Competition Law:*

HISTORICAL OVERVIEW: THE CONSTITUTION

Apartheid

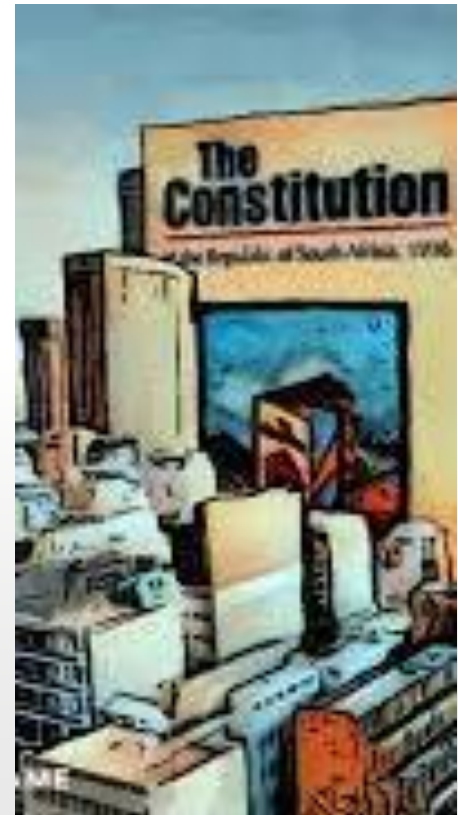
Codesa & MPNF

Interim Constitution

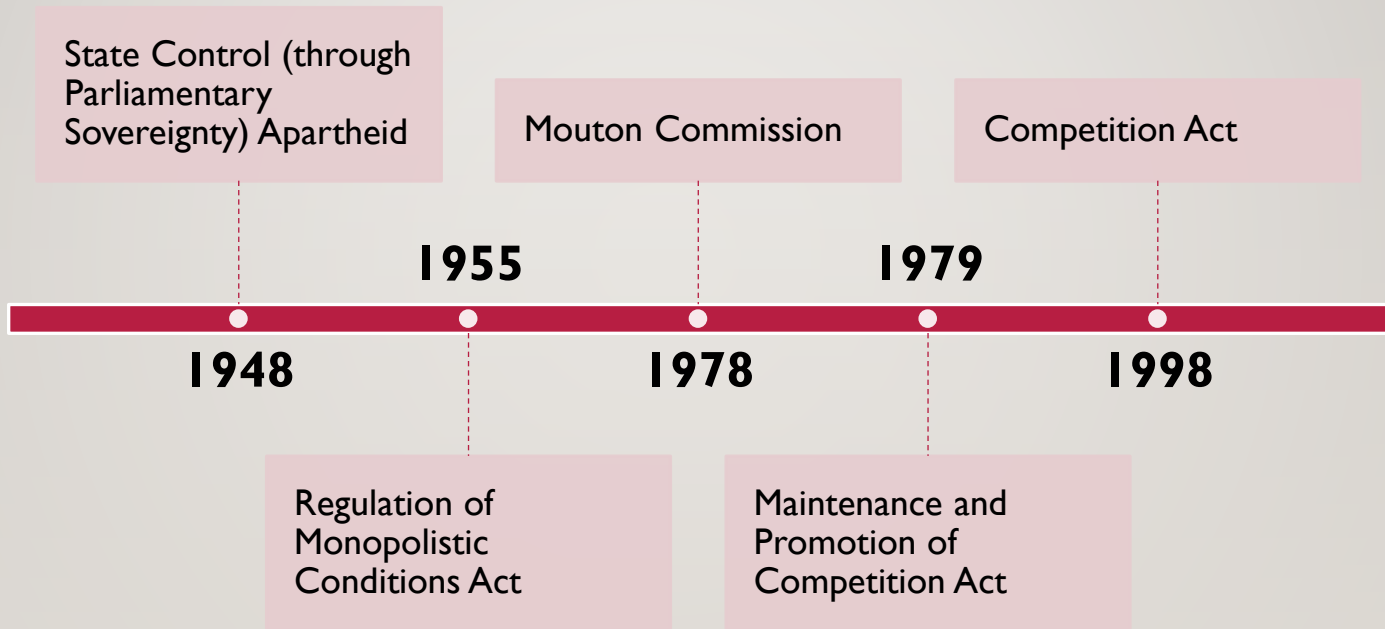
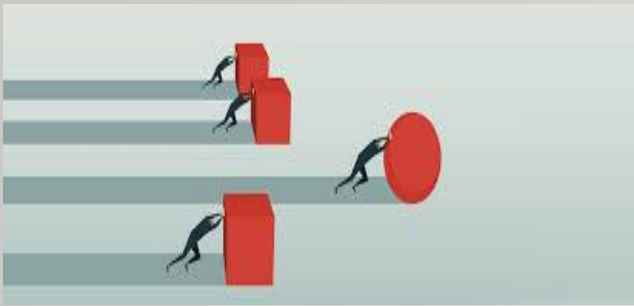
Final Constitution (Bill of Rights)

Socio-Economic Rights Programmes (& Legislation)

- RDP (1995) and GEAR (1996)



HISTORICAL OVERVIEW: COMPETITION LAW



PUBLIC INTEREST CHARACTERISTICS

- *Public Procurement Law and Competition Law Public Interest*

- *Black*
- *Women*
- *Youth*
- *Person's with Disabilities*



COMPETITION ISSUES IN PUBLIC PROCUREMENT



- • *Collusive tendering/bid rigging (including cover quoting,*
- *losers' fee, bid suppression/rotation)*
- • *Market allocation*
- • *Cross directorships and cross shareholding*
- • *Collusive conduct by spouses or family members*
- • *Economic interest groupings and joint ventures*
- • *Excessive pricing*
- • *Predatory pricing*
- • *Exclusionary bid specifications*
- • *Exclusionary contracting models such as transversal contracts*



THE ROAD AHEAD

Government Policy Must
be Clear

Independence of
Institutions is Vital

Coordination and
Collaboration

AfCFTA: Engage Early and
Participate Meaningfully

ENKOSI KAKHULU



- tralac
- Competition Commission of South Afrika
- Stellenbosch University
- George Washington University
- The People of Kenya
- Sarova Hotel, Nairobi



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