

**APPLICANT: JUDGE NORMAN MICHAEL MANOIM****COURT FOR WHICH CANDIDATE APPLIES: THE COMPETITION  
APPEAL COURT****1. The candidate's appropriate qualifications**

1.1. The candidate is appropriately qualified having obtained the following qualifications:

1.1.1. BA (Witwatersrand) 1980;

1.1.2. LLB (Witwatersrand) 1983.

**2. Whether the candidate is a fit and proper person**

2.1. There is nothing to suggest that the candidate is not a fit and proper person.

**3. Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa**

3.1. The Competition Appeal Court currently comprises one black woman, one white woman, one Indian man and one white man.

3.2. The candidate is a white man.

**4. The candidate's knowledge of the law, including constitutional law**

4.1. The candidate has substantial experience in political matters having a constitutional element in the pre-democratic South Africa. The candidate had also written extensively on the topic in published journal articles. He also considers that his career began as a Human Rights lawyer.

- 4.2. The candidate's knowledge of constitutional law and its impact on civil procedure was demonstrated in the unreported matter of *Focus Products (Pty) Ltd v Jones Nyambi and Another* (case number 5747/2020) in which the candidate had to deal with differing interpretations relating to the procedure adopted in provisional sentence proceedings and the *ratio decidendi* given by Brand AJ in the Constitutional Court's decision in *Twee Jonge Gezellen (Pty) Ltd v Land and Agricultural Bank of South Africa t/a Land Bank* 2011 (3) SA 1 (CC).
- 4.3. In this matter, the candidate applied the aforementioned authority, summarised and interpreted the law. In doing so, he clarified the law relating to the provisional sentence procedure. The candidate suitably considered the constitutional basis underlying the test to be applied in defending provisional sentence proceedings.
- 4.4. The candidate also considered the interaction of the rights of accused persons under section 35 of the Constitution with section 59 of the Competition Act (which pertained to *inter alia* the imposition of administrative penalties) in *Competition Commission of South Africa v Federal Mogul Aftermarket Southern Africa (Pty) Ltd and Another* [2003] 2 CPLR 464 (CT) (referred to more fully below).
- 4.5. The candidate's knowledge of administrative law is demonstrated in the decision of *Computicket (Pty) Ltd v Competition Commission* (CR008Apr10/DSM022May11) when the candidate (as presiding member of the Competition Tribunal) dealt with an application to review and set aside a decision by the Competition Commission to refer a complaint against it.

- 4.6. The candidate was required to determine the applicable legal standard for review within the statutory review mechanism provided for in the Competition Act 89 of 1998 (“the Competition Act”).
- 4.7. The judgment is detailed, well-reasoned and provides evidence that the candidate possesses a grasp of both Administrative Law and Competition Law.
- 4.8. In *Nhlanhla Radebe v S* (case number A1183/2019) the candidate handed down judgment in a criminal appeal concerning the conviction of an accused on the basis of his identification by a single witness and circumstantial evidence. The appeal also concerned the Magistrate’s sentencing.
- 4.9. In this regard the candidate displayed appropriate judicial temperament by highlighting the fact that both the appellant and the respondent had misread the record about the reliance that the Magistrate placed on a previous robbery conviction in sentencing. The candidate made a finding based on a reading of the record as opposed to relying solely on submissions by counsel.
- 4.10. The candidate demonstrates in this judgment appropriate knowledge of the law of evidence.
- 4.11. In *Franklin Makela v The Minister of Police* (Case Number A 3055/19) the candidate demonstrated his knowledge of the delictual law of damages as well as the applicable heads of damages in a delictual claim.
- 4.12. Based on the candidate’s previous experience, it is manifest that the candidate has extensive experience in competition law. Apart from chairing the Competition Tribunal for a substantial period of time,

and having sat on the Competition Tribunal for a period of 20 years, the candidate has represented the Competition Tribunal at international conferences, presented papers at these conferences and has been invited to participate on panels by foreign competition and bar authorities.

4.13. The candidate's knowledge of competition law, and his development of the jurisprudence, is demonstrated in various decisions handed down by him during his tenure with the Competition Commission:

4.13.1. In *Competition Commission v Computicket (Pty) Ltd* (Case Number: CR008Apr10) the candidate had to determine whether abuse of dominance had been established.

4.13.2. In *American Natural Soda Ash Corp v Botswana Ash (Pty) Ltd* [2001 – 2002] CPLR 430 (CT) the candidate gave judgment concerning the jurisdiction of the Competition Tribunal which required that the Competition Commission must have completed its investigations and determined that a prohibitive practice existed before. These facts, according to the candidate, were jurisdictional prerequisites that must have been met before the Competition Tribunal could exercise jurisdiction.

4.13.3. In *Competition Commission of South Africa v Federal Mogul Aftermarket Southern Africa (Pty) Ltd and Another* [2003] 2 CPLR 464 (CT) the candidate handed down a judgment in a matter concerning the constitutionality of section 59 of the Competition Act as the section failed to afford sufficient rights to a respondent facing an administrative penalty as the Competition Tribunal was alleged to not constitute an

impartial and independent forum and the section was said to be irrational insofar as the section utilised turnover as a basis to determine the maximum penalty to be imposed. An argument was also raised that the section fell short of the safeguards provided for in section 35 of the Constitution to accused persons. The candidate in his judgment dismissed these arguments, considered American law in relation to the notion of “double jeopardy”, and held that (at para 35): “*Our Constitution on the other hand, by virtue of section 34, ensures that fairness is not jettisoned from dispute resolution simply because a procedure is not characterised as criminal. In our law ‘non-criminal’ disputes must still comply with section 34. The right to a public trial, the issue in the Engel case, is, in terms of our Constitution guaranteed not only in criminal proceedings (section 35(3)(c)) but also by section 34.20...*”

4.13.4. In *Competition Commission of South Africa v American Natural Soda Ash Corp CHE Global (Pty) Ltd and Others; American Natural Soda Ash Corp CHE Global (Pty) Ltd and Others v Botswana Ash (Pty) Ltd and Another* [2005] 1 CPLR 121 (CT) the candidate gave judgment in a matter concerning an order for interim relief and considered international law. The candidate had due regard to, and applied, customary international law in accordance with section 232 of the Constitution. He also considered the comparative American anti-trust jurisprudence in his judgment.

4.13.5. In *Astral Foods Ltd v Competition Commission and Others* [2003] 2 CPLR 452 (CT) the candidate handed down a judgment concerning the variation or clarifications to the

conditions related to an approved merger and, in doing so, reiterated and detailed the general principles concerning the variation of orders in the High Court and found that same were applicable in the exercise of powers under section 66 of the Competition Act.

- 4.14. The candidate is well versed in the field of competition law and has an in-depth knowledge of this area of South African law. He has been responsible for developing the jurisprudence in this area of law.
- 4.15. The candidate possesses more than sufficient knowledge for appointment to the bench of the Competition Appeal Court.

## **5. The candidate's commitment to the values of the Constitution**

- 5.1. The candidate's professional background demonstrates his commitment to the values of the constitution.
- 5.2. The candidate was a member of several organisations that are involved in upholding human rights, in this regard:
- 5.2.1. the candidate was a member of the National Association of Democratic Lawyers (NADEL) from 1984 – 1998;
- 5.2.2. the candidate was an executive member of Lawyers for Human Rights from 1982 – 1984;
- 5.2.3. the candidate was an executive member of the Freedom of Expression Institute from 1994 – 1997; and
- 5.2.4. the candidate was an executive member of the Independent Board of Enquiry into informal Repression from 1992 – 1997.

- 5.3. In addition to the above the candidate, after articles of clerkship, joined the then newly established practice of Cheadle, Thompson and Haysom which focused on labour law and human rights law.
- 5.4. The candidate specifies that his focus was on human rights. The candidate also represented political detainees as well as persons in certain commissions of inquiry.
- 5.5. The candidate's academic writing further demonstrates a commitment to the Constitution and its values.
- 5.6. It is manifest from the above that the candidate is committed to the values in the Constitution.

## **6. Whether any judgments have been overturned on appeal**

- 6.1. The candidate indicates that four of his judgments were successfully appealed against.
- 6.2. In addition thereto, several judgments which the candidate handed down whilst appointed as a member of the Competition Tribunal were appealed.

## **7. The extent and breadth of the candidate's professional experience**

- 7.1. The candidate possesses substantial professional experience particularly in the area of competition law.
- 7.2. The candidate has been practising law since 1982. During this time the candidate has been an attorney and partner at the law firm of Cheadle, Thompson and Haysom Attorneys and held an appointment on the Competition Tribunal.

- 7.3. In particular, the candidate was a full-time member of the Competition Tribunal from August 1999 to July 2009 and was from August 2009 until July 2019 the chairperson of the Competition Tribunal.
- 7.4. He is the longest serving member of the Competition Tribunal and has substantial quasi-judicial experience.
- 7.5. The candidate is well versed in competition law.
- 7.6. The candidate has also obtained practical judicial experience having acted as a Judge in the Gauteng Local Division of the High Court and, more recently, having been appointed a permanent judge of that Court.
- 7.7. Apart from the above, the candidate also held the position as the Acting Director of the Mandela Institute at the University of the Witwatersrand from August 2019 until January 2020.

## **8. The candidate's linguistic and communication skills**

- 8.1. The fact that the candidate has published several articles, and has presented papers and has participated in panel discussions, demonstrates that the candidate has sound linguistic and communication skills.
- 8.2. The judgments written by the candidate are clear and understandable.
- 8.3. It appears that the candidate possesses the necessary linguistic and communication skills.

**9. The candidate's ability to produce judgments promptly**

9.1. No adverse comments have been received.

**10. The candidate's fairness and impartiality**

10.1. No adverse comments have been received.

**11. The candidate's independent mindedness**

11.1. No adverse comments have been received and there is nothing to suggest that the candidate is not independent minded.

**12. The candidate's ability to conduct court proceedings**

12.1. No adverse comments have been received.

**13. The candidate's administrative ability**

13.1. The candidate was the Chairperson of the Competition Tribunal for ten years, in which role he would have gained and exercised extensive administrative skills.

**14. The candidate's reputation for integrity and ethical behaviour**

14.1. No adverse comments have been received and there is nothing to suggest that the candidate is not fit and proper.

**15. The candidate's judicial temperament**

15.1. No adverse comments have been received and the candidate appears to possess a suitable judicial temperament.

15.2. His substantial experience as a member and later chairperson of the Competition Tribunal further reiterates that the candidate possesses the necessary temperament.

**16. The candidate's commitment to human rights, and experience with regard to the values and needs of the community**

16.1. The candidate's career as a human rights lawyer evidences his commitment to human rights and his experience with regard to the values and needs of the community.

**17. The candidate's potential**

17.1. The candidate's wealth of quasi-judicial experience in competition law evidences the candidate's potential for appointment to the bench of the Competition Appeal court.

**18. The message that the candidate's appointment would send to the community at large**

18.1. The candidate's appointment would send a positive message to the community at large especially considering his extensive experience in competition law.

## **ANNEXURE: LIST OF JUDGMENTS CONSIDERED**

### **Reported decisions:**

*American Natural Soda Ash Corp v Botswana Ash (Pty) Ltd* [2001 – 2002] CPLR 430 (CT)

*Astral Foods Ltd v Competition Commission and Others* [2003] 2 CPLR 452 (CT)

*Competition Commission of South Africa v American Natural Soda Ash Corp CHE global (Pty) Ltd and Others; American Natural Soda Ash Corp CHE global (Pty) Ltd and Others v Botswana Ash (Pty) Ltd and Another* [2005] 1 CPLR 121 (CT)

*Competition Commission v Arcelomittal South Africa Ltd and Others* [2010] 2 CPLR 386 (CT)

*Competition Commission of South Africa v Federal Mogul Aftermarket Southern Africa (Pty) Ltd and Another* [2003] 2 CPLR 464 (CT)

### **Unreported Decisions:**

*Competition Commission v Computicket (Pty) Ltd* (Case Number: CR008Apr10)  
*Computicket (Pty) Ltd v Competition Commission*  
(CR008Apr10/DSM022May11)

*Focus Products (Pty) Ltd v Jones Nyamambi and Another* (Case Number 5747/2020)

*Franklin Makela v The Minister of Police* (Case Number A 3055/19)

*Nhlanhla Titus Radebe v The State* (Case Number A183/2019)

**Judgments upheld on appeal:**

No judgments could be found.

**Judgments overturned on appeal:**

*Competition Commission v Arcelomittal South Africa Ltd and Others* [2010] 2  
CPLR 386 (CT)

*Gold Fields v Harmony Gold Mining Company Ltd and Others* [2004] 2 CPLR  
358 (CT)

*Nationwide Poles CC v SASOL (Oil) (Pty) Ltd* [2005] 1 CPLR 156 (CT)