Competition Commission on Performance in Q1, Q2 & Q3 and a Briefing on the Forex Case

Presentation to the Portfolio Committee on Trade, Industry and Competition: 5 March 2024

a growing, deconcentrated and inclusive economy

competition commission
south africa

Outline

PART A:

Non-Financial and Financial Performance

competitioncommission

Introduction

- The purpose of the Competition Act is to;
  - promote an efficient economy with competitive prices for consumers and participation in global markets,
  - promote employment and the economic welfare of all South Africans, in particular SMEs and HDPs that were excluded from the economy.
- The Competition Commission (Commission) is empowered to investigate, and evaluate restrictive business practices (amongst other roles) in order to achieve an efficient and competitive economic environment, balancing the interest of workers, owners, and consumers, and focused development for all South Africans.
- This recognises that the economy we inherited is concentrated, which creates both a competition and an exclusion issue.
- Addressing exclusion is not only about addressing inequality, it is also about removing barriers to new businesses that can contribute to growth, employment and a more competitive economy.

Introduction (Cont.)

- The Commission and the Competition Tribunal were established 25 years ago, with this year marking their 25th anniversary.
- The Competition will retrace its steps to recognise the pivotal role it has played in shaping the country's economic landscape, safeguarding consumer interests, and fostering a culture of competition.
- Over the past quarter-century, the Commission has evolved to meet the challenges of a dynamic and evolving economy, and its contributions have been vital to the development of a more competitive and vibrant marketplace in South Africa.

Current Priorities

- **The Commission continues to focus on:**
  - Competition issues affecting hard-pressed consumers,
  - Exclusion from the economy for SMEs/HDPs and
  - Removal of barriers to economic growth.
- **Our Response includes**:
  - Promotion of SMEs/HDPs both addresses exclusion and promotes growth through unlocking the potential of new businesses & entrepreneurial talent
  - Supporting economic growth and Pro-development cooperation: We have been and continue to open the doors to pro-development cooperation whilst containing the risks of anti-competitive outcomes

Performance in Q1, Q2 & Q3: Overview

The performance of the Commission in Q1, Q2, and Q3 of 2023/4 financial year can be summarised as follows:

Quarter One

Total APP Targets: 46	Q1
Applicable targets	26
Targets not applicable	20
Targets met	15
Targets exceeded	3
Targets not met	8

Quarter Two

Total APP Targets: 46	Q2
Applicable targets	31
Targets not applicable	15
Targets met	26
Targets exceeded	3
Targets not met	2

Quarter Three

Total APP Targets: 46	Q3
Applicable targets	22
Targets not applicable	24
Targets met	16
Targets exceeded	2
Targets not met	4

The Commission expects to conclude the year with an overall performance score of more than 80%

Performance in Q1, Q2 & Q3: Overview (Cont.)

Operational activity levels of the Commission in Q1, Q2, and Q3 of 2023/4 financial year can be summarised as follows:

	Quarter One	Quarter Two	Quarter Three
MERGER ACTIVITY:	• Mergers notified = 72 • Mergers finalised = 77 • Mergers finalised with conditions =26	• Mergers notified = 72 • Mergers finalised = 68 • Mergers finalised with conditions =30	• Mergers notified = 70 • Mergers finalised = 59 • Mergers finalised with conditions =35
CARTELS:	• Cartel cases initiated = 0 • Cartel cases completed = 5 • Cartel cases completed with referrals =0	• Cartel cases initiated = 1 • Cartel cases completed = 9 • Cartel cases completed with referrals =0	• Cartel cases initiated = 1 • Cartel cases completed = 6 • Cartel cases completed with referrals =1
COMPLAINTS:	• Complaints received = 70 • Complaints finalised = 82	• Complaints received = 74 • Complaints finalised = 69	• Complaints received = 82 • Complaints finalised = 84
MARKET CONDUCT:	• Market Conduct Cases under investigation = 61 • Cases finalised = 29 • Cases finalised with referral = 5	• Market Conduct Cases under investigation = 36 • Cases finalised = 5 • Cases finalised with referral = 0	• Market Conduct Cases under investigation = 42 • Cases finalised = 4 • Cases finalised with referral = 4
LITIGATION LOAD:	• Cases currently in litigation = 92	• Cases currently in litigation = 93	• Cases currently in litigation = 92
GOOD GOVERNANCE:	• Audit outcomes = N/A	• Audit outcomes = Clean Audit	• Audit outcomes = N/A

Highlights on Merger Control in Q1, Q2 and Q3

Merger control ensures that acquisition do not undermine competition or the public interest, including employment, SME participation, retention of productive capacity and the promotion of a greater spread of ownership.

The following are worth highlighting in our merger regulation mandate:

In Q1 to Q3 merger conditions yielded a substantial public interest gain to the economy including:

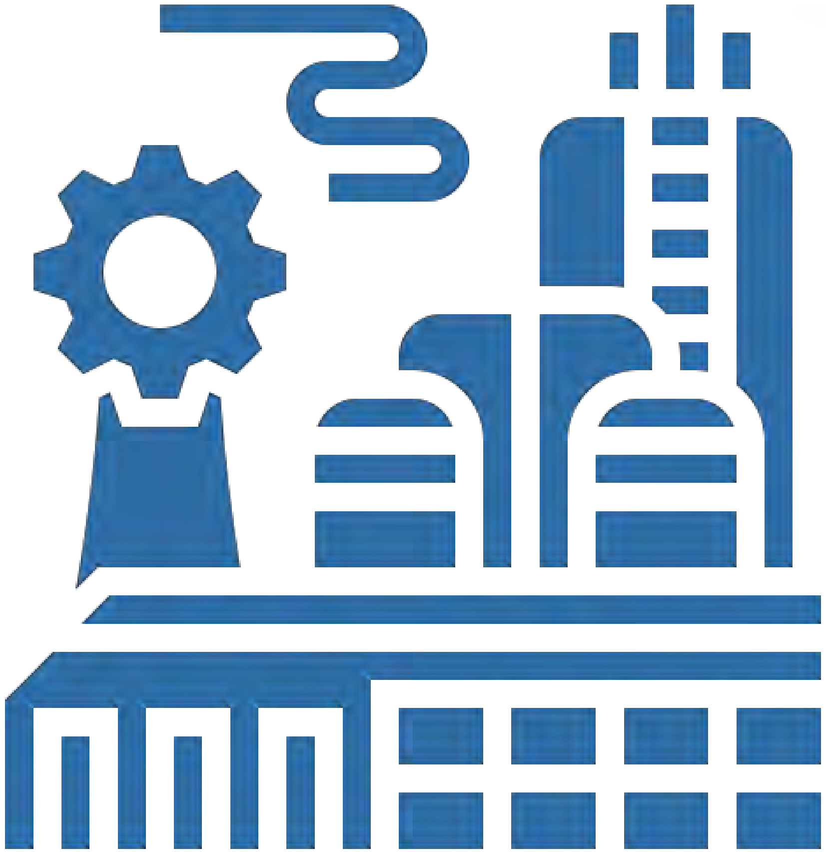
- **2502** The number of jobs saved and/or created through imposition of merger conditions in Q1 to Q3 2023/24
- **23** The number of new ESOPs introduced as a result of merger conditions imposed in Q1 to Q3 2023/24
- **R25 billion** The estimated value of the new ESOPs introduced in Q1 to Q3 2023/24 at the point of the imposition of the conditions
- **R9,9 billion** The estimated value of supplier development and procurement commitments relating to small (SMME) and HDP-owned firms in Q1 to Q3 2023/24.

Further, during the 2023/4 Financial Year, the following were achieved through merger regulation:

Supplier Development fund and grant funds (R)	No of Workers covered by ESOPs	Value of worker equity	Other Localisation commitments	Procurement Commitments (R)	Investment commitments	Training/Skills Development	Consumer Savings (DSMI + OIPMI)	HDP Transaction (value of equity)	Total Impact by value per year (R)
74 500 000	38 400	27 159 423 106	36 000 000	7 934 050 000	7 779 745 500	278 850 000	6 565 388 665	10 804 189 805	60 632 147 076

Case Study on Mergers

- The Competition Tribunal's (Tribunal) decision in ***Heineken / Distell*** merger, required Heineken to divest its Strongbow in SA to an independent firm that is majority owned by HDPs on a perpetual basis.
- Consequently, the Commission approved the acquisition of Strongbow to Cider House Investments (Pty) Ltd (CHI), a firm with 67% HDP ownership.
- The entry of CHI facilitates the entry of HDPs into the beverages manufacturing sector in a significant way as Strongbow is a notable brand. CHI will also benefit from transitional services support from Heineken such as warehousing, logistics, contract manufacturing, distribution etc.
- The Commission has augmented the Heineken/Distell conditions by ensuring that the Strongbow business will remain subject to majority HDP ownership.



Highlights on Prohibited Mergers

- **Akzo Nobel N.V ("AkzoNobel") and Kansai Plascon Africa Ltd and Kansai Plascon East Africa (Pty) Ltd (collectively, Plascon)**: On 9 November 2022 the Commission prohibited the intermediate merger wherein AkzoNobel sought to acquire Kansai's Plascon business. Akzo Nobel's Dulux and Kansai's Plascon brands are respectively, the largest and second largest manufacturers and suppliers of decorative paints in South Africa. The merger raised concerns because the merger would reduce alternatives for customers and the merged entity could increase prices substantially post-merger. Also, the merging parties could deny their competitors supply of colourants which are needed to manufacture decorative paints. AkzoNobel and Plascon challenged the Commission's decision at the Tribunal, which, upheld the Commission's prohibition of the merger. The Tribunal's decision was not appealed.
- **Sasol & Draslovka vs Commission & others:** Discussed under the litigation section.

Highlights on Enforcement – Food and Agricultural Markets

Scoping Studies

- The Commission continues its work in the Food and Agricultural Markets, with the following highlights worth mentioning:
  - **Poultry Scoping Study**: The study highlighted the following issues: Poultry industry dominated by a few vertically integrated players; Concentration and vertical integration has limited scope for new players to enter and compete; Slow transformation; Model adopted by big vertically integrated firms is one of contracting growers and farmers, however retaining inputs and markets; Contract growers highly dependent on big vertically integrated firms which is likely to result in concerns of power imbalances, access to markets and/or customers. This Scoping gave raise to an initiation of the Poultry Market Inquiry whose draft TORs have been issued for public comment.
  - **Scoping into the Grains Value Chain**: Scoping focused on three value chains (i) Maize-maize-meal (ii) wheat-bread and (iii) sunflower seed –sunflower oil. The following themes were found to be common on the three value chains: Lack of greater economic participation in some markets which are dominated by few large firms; Excess margins earned at some levels of the value chain and for some grains; Possible exploitation of market power; Vertical integration and horizontal structural links (i.e., cross-shareholding); rising costs due to several factors including, importation of key raw materials and grains, electricity and water supply, as well as transportation costs and The prevalence of the rocket and feather effect, i.e processers and retailers quick to increase prices in the face of cost increase but slow to decrease prices in the face of cost decreases.

Highlights on Enforcement – Food and Agricultural Markets (Cont.)

Essential Food Monitoring Reports

- Commission continues to **proactively monitor food prices.** In the period under review, Commission issued the 9th Essential Food Monitoring Report which monitored prices of Bread, Maize Meal, Sunflower Oil, Individual Quick Frozen (IQF) Chicken, Beef Prices
- The 9th Essential Food Monitoring Report found:
    - Visibility of Rocket and Feather effect;
    - Easing of upstream inflationary pressures on commodities and food production;
    - Consumers not feeling the benefits of the ease in upstream inflationary pressures;
    - A number of reasons cited including loadshedding and the below average rainfall warning in grain growing provinces;
- The findings of The 9th Essential Food Monitoring Report birthed the grain and oil seed and the poultry scoping studies.
- The series of the Food Monitoring reports have also ignited collaborative research between the Commission and DALRRD to expand and include of all zero-rated essential food items.

Highlights on Enforcement – Food and Agricultural Markets (Cont.)

Competition and Food Security Research Study

- The Commission is conducting a joint study Department of Agriculture, Land Reform, and Rural Development (DALRRD) on the interaction between competition and food security in South Africa with a focus on the value chains for essential foods as reflected in the list of the zero-rated food items. The objectives of this study are to:
  - Assess the correlation between market structure and levels of concentration in essential food value chains. Along each value chain, the study will consider: Market shares, Barriers to entry, Price formation, markups, and margins; and Potential competition issues.
  - Benchmark South Africa's concentration and mark-ups and margins for essential foods with a group of countries that have domestic agricultural markets but provide both similarities and differences to the SA agricultural and retail markets, enabling insights on how the market structure and commercial model in SA may impact on efficiencies and margins. :
  - Track SMME participation across essential food value chains and understand the determinants of SMME participation in markets throughout within the value chain.
- The study is expected to be completed in October 2024.

Highlights on Enforcement – Energy

- The Commission’s work on the Energy Sector includes:
  - **Referral against Sasol on pricing of piped gas**: On 10 July 2023, the Competition Commission (“Commission”) referred two complaints against Sasol Gas (Pty) Ltd (“Sasol Gas”) for the excessive pricing of natural piped gas, to the Competition Tribunal (“Tribunal”), in contravention of section 8(1)(a) of the Competition Act 89 of 1998, as amended (“the Act”). The Commission found that Sasol Gas had extracted mark-ups of up to 72% in its pricing of natural piped gas. The excessive pricing has continued for almost a decade and is still ongoing. The Commission relied on publicly available information to assess the prices charged by Sasol Gas to the complainants against the costs of supplying natural piped gas. Sasol Gas did not provide the Commission with the relevant information it had requested during its investigation. Instead, Sasol Gas elected to file a review application in the Competition Appeal Court (“CAC”) challenging the Commission’s jurisdiction to investigate the complaints. The matter was heard on 30 November 2023 and the CAC has reserved judgment.
  - **Referral Against VICTRON ENERGY B.V.:** The Competition Commission (Commission) has referred to the Competition Tribunal (Tribunal) for prosecution Victron Energy B.V. (Victron) for resale price maintenance in contravention of the Competition Act. Resale price maintenance is an agreement by the manufacturer that prevents downstream distributors or resellers from reselling a product below a stipulated price. This conduct restricts and prevents price competition downstream as it restricts the pricing autonomy of distributors or resellers. Resale price maintenance is prohibited under section 5(2) of the Competition Act, 89 of 1998 (as amended).

Highlights on Enforcement – Retail

- The Commission and the Spar Group Ltd ("The Spar Group") reached a consent agreement aimed at ending long-term exclusive lease agreements in the grocery retail sector. The consent agreement follows a mediation process conducted under the auspices of the Honourable Justice Dennis Davis, the former Judge President of the Competition Appeal Court.
- As part of this agreement, the Spar Group has committed to end exclusive leases by December 2026 and to opening opportunities to Small, Medium, And Micro Enterprises (SMMEs) and Historically Disadvantaged Persons-owned (HDPs) supermarkets immediately. The consent agreement was submitted to the Tribunal for confirmation and ultimately paved the way for greater fairness and competition in South Africa's grocery retail market to the benefit of consumers across the country.
- The Spar agreement is in response to recommendations made by the Grocery Retail Market Inquiry (GRMI) and follows similar consent agreements with Shoprite and Pick n Pay. Collectively, these cover all national chains that had exclusive lease agreements in place.

Highlights on Enforcement – Health

- The Commission initiated a complaint against Johnson & Johnson (Pty) Ltd and its' subsidiary company Janssen Pharmaceutica (Pty) Ltd (collectively referred to as "the Respondents"). The initiation is based on information in the Commission's possession that gives rise to a reasonable suspicion that the Respondents have and continue to engage in exclusionary practices and excessive pricing in the provision of Bedaquiline (trading as Sirturo®) which is a drug used in the treatment of Tuberculosis ("TB"). This conduct may be in possible contravention of sections 8(1)(c) and 8(1)(a) of the Competition Act.
- This initiation followed Johnson & Johnson's extension of its patent in South Africa and globally, and the fact that it raised the price to the Department of Health (DoH), relating to its monopoly drug treating multi-drug resistant TB which is particularly prevalent in South Africa.
- Johnson & Johnson then announced it would not enforce the secondary patent in South Africa and 133 other low and middle-income countries.
- Johnson & Johnson also agreed to a 45% price drop in South Africa.

Highlights on Market Inquiries

- The Commission continues to use the instrument of formal inquiries in respect of the general state of competition, the levels concentration in and structure of market for particular goods and services, without necessarily referring to the conduct of or activities of any particular named firm. The following Inquiries are currently underway at different stages:
    - Completed Market Inquiry: Online Intermediation Platforms Market Inquiry (OIPMI) – Final Report handed to the Minister.
    - Launched Market Inquiry: Fresh Produce Market Inquiry (FPMI) and is currently underway.
    - Initiations of new Market Inquiries: Steel Market Inquiry and Poultry Market Inquiry.
    - Possible initiation of another Market Inquiry.
- As illustrated in the highlights below, this is a very effective instrument that has benefitted a lot from the recent amendments to the Competition Act.

Highlights on Market Inquiries (Cont.)

Online Intermediation Platform Market Inquiry (OIPMI)

The Commission handed over the final report and decision of the Online Intermediation Platforms Market Inquiry (OIPMI) to the honourable Minister of Trade, Industry and Competition Ebrahim Patel in July 2023. The OIPMI began in May 2021 to assess the impact of B2C online platform markets on competition. Key Findings:

- Google Search favors large platforms, creating a barrier for smaller ones;
- Booking.com's restrictions limit competition and lead to higher commission fees;
- Takealot's conflict of interest disadvantages marketplace sellers;
- Google Play and Apple App stores have unconstrained commission fees;
- Lack of transparency on menu surcharges disadvantages competitors to Uber Eats and Mr D Food; and
- Lack of interoperability hinders competitors to Property24 and Private Property.

Impact to the Economy:

Ad Credits	Training/Skills Development	Black Founders Fund Initiative *	HDP Benefits (Direct)	Benefits from dealing with self-preferencing, and local filters and units **	Removal of parity (wide and narrow)	Discounts and promotions for independents	Listings and branding / Flexi package (10-15% differentials)	Total Projected Savings (R)
180 000 000	150 000 000	50 000 000	90 000 000	120 000 000	445 540 116	55 000 000	69 559 036	1 160 099 152

Progress on the Inquiry:

The OIPMI completed its Inquiry and has had some appeals and reviews from certain stakeholders, Apple, Booking.com, Private Property, Famous Brands and UberEats. Apple has filed a review in the High Court and the rest of the parties, Appeals with the Tribunal. The Commissions incl. LSD have been undertaking filing the record with the Tribunal and High Court. A stay application has been sent to the parties and each have agreed to stay the proceedings until negotiations have taken place. The Commission team and the affected parties are undergoing settlement negotiations on some of the remedial actions.

Highlights on Market Inquiries (Cont.)

Fresh Produce Market Inquiry

- The Fresh Produce Market Inquiry ("FPMI”) was launched on 31 March 2023 as the Commission has reason to believe that there may exist market features which impede, distort, or restrict competition in the South African fresh produce market. The FPMI is focusing on particular issues at each layer of the value chain. Specifically, the scope of the FPMI covers aspects from the sale of fresh produce by the farmer to the customer. In line with this, the FPMI’s scope is divided into three themes, namely:
  i. Efficiency of the value chain, with an emphasis on the dynamics around fresh produce market facilities;
  ii. Market dynamics of key inputs and its impact on producers; and
  iii. Barriers to entry, expansion and participation.
- The FPMI commenced Q3 with its first round of public hearings between 18-27 October 2023. Fifteen stakeholders participated in the hearings and provided informative and valuable information for consideration by the FPMI. For the remainder of Q3 the technical team continued its engagement with stakeholders to refine its understanding of the issues under consideration.
- The FPMI is preparing the provisional report, which it aims to publish in the first half of 2024.

Highlights on Market Inquiries (Cont.)

Steel Market Inquiry

- The team held a follow up meeting with Department of Minerals and Energy ("DMRE") on 30 November 2023 to discuss the mandate of the DMRE around electricity price determination and issues of mining rights. The team also received a submission from the Department of Trade and Industry ("dtic") around the work been done by the dtic on some of the themes proposed by stakeholders to be added as part of the inquiry. The team reviewed all submissions from stakeholders and updated the terms of reference. The final terms of reference will be published once approved for publication.

Media And Digital Platforms Market Inquiry

The MDPMI launch in October 2023. One the same day the team sent the first round of RFIs and received the first round of submissions on December 2023. The team then sent follow-up (2nd round of RFIs in December) which are due in January 2024. The team also published its Statement of Issues and FSOI in the same period. And we received 45 submissions from various stakeholders on the SOI incl. media houses, publishers, and digital platforms. The Inquiry is now receiving the rest of the second round of submissions from RFIs and FSOI, to prepare for the upcoming public hearings in March 2024.

Highlights on Market Inquiries (Cont.)

- The Commission decided to launch the Poultry Market Inquiry in Q3. The main objectives of the inquiry into Poultry Industry value chain are to:
  - Evaluate whether market features distort competition throughout the value chain including affordable access to quality key inputs such as genetic stock, parent stock, feed, day-old chicks of pullets (for both broiler and egg-laying hen rearing), abattoirs and cold chain logistics.
  - Evaluate the impact of large integrated producers as gatekeepers of key inputs, particularly feed and day-old chicks, on the production of small and medium-size enterprises ("SMEs") and/or businesses owned by historically disadvantaged persons ("HDPs"), but also genetic stock and parent stock for both broiler and egg production.
  - Evaluate whether the commercial relationship between contract growers and integrated producers at all levels of the value chain is characterised by imbalances in bargaining power and information asymmetry and understand the impact of such imbalances on competitive outcomes affecting the growth and sustainability of small-scale producers in the industry, including the emergence of independent competitors with access to markets.
  - Evaluate the role of retailers, quick-service restaurants and processed food companies in facilitating new entry and access to markets by independent producers, including SMEs and HDPs, along with the availability and pricing of cold chain storage and logistics, whether private or communal.
  - Determine appropriate remedies where an adverse effect on competition or the purposes of the Act are found as set out in section 43C (3) of the Act.

Litigation Highlights

- **COMPETITION APPEAL COURT (CAC) UPHELD A R3.5 MILLION PENALTY AGAINST TSUTSUMANI BUSINESS ENTERPRISES (TSUTSUMANI):** The Commission welcomed the decision by the Competition Appeal Court (CAC) on October 13, 2023. The ruling upholds a prior decision by the Tribunal in April 2020, finding Tsutsumani Business Enterprises CC ("Tsutsumani") guilty of engaging in excessive pricing of face masks supplied to the South African Police Service (SAPS). In April 2020, the Tribunal found Tsutsumani in violation of section 8(1)(a) of the Competition Act for excessive pricing of face masks to SAPS. A penalty of R3.5 million was imposed on Tsutsumani. Tsutsumani initiated a review application challenging the Tribunal's decision. The CAC's recent ruling confirms the Tribunal's decision and dismisses Tsutsumani's review application. Commissioner, Doris Tshepe emphasized the significance of the CAC judgment in sending a clear message that excessive pricing of essential goods and services, especially within the context of public procurement during a pandemic or national disaster, will not be tolerated by competition authorities.
- **THE COMMISSION vs STANDARD CHARTERED BANK:** On the 15th of November 2023, the Tribunal confirmed as an order the settlement agreement between the Commission and Standard Chartered Bank (“SCB”) for alleged contravention of Section 4(1)(b)(i) and (ii) of the Competition Act. The Commission’s investigation found that between 2007 and 2013, SCB and its competitors engaged in currency manipulation by agreeing to fix prices of bids, offers and bid-offer spreads in relation to spot trades of USD/ZAR currency pairs through bilateral and multilateral communications using instant messaging platforms and other means of communication. The investigation found that SCB and its competitors assisted each other through allowing their traders where they had large open risk positions to complete their trade first before trading and through holding and/or pulling their trades to reverse liquidity for each other instead of trading normally in the market. This conduct amounts to price fixing and market allocation in contravention of Section 4(1)(b)(i) and (ii) of the Competition Act.

Litigation Highlights (Cont.)

- **THE COMMISSION vs UNILEVER:** The Commission welcomed the decision of the Tribunal confirming the consent agreement with Unilever South Africa (Pty) Ltd. This significant development, outlined in the Tribunal's order on October 9, 2023, underscores Unilever's commitment to fostering positive change in the South African business landscape. Unilever has agreed to pay an administrative penalty of R16 million, signaling a commitment to accountability without admission of liability. In addition to the penalty:
  - Unilever will establish an Enterprise and Supplier Development Fund amounting to R40 million. This fund is dedicated to providing interest-free business loans to qualifying black-owned entities in the manufacturing, logistics, and wholesale sectors. It includes support for black-owned manufacturing startups entering the logistics, wholesale, and distribution domains.
  - Unilever commits to a substantial increase, a minimum of R340 million annually over four years, in the aggregate value of its procurement of products and services from local entities. This initiative is poised to inject economic stimulus into local businesses.
  - In alignment with broader societal impact, Unilever will donate hygiene, disinfectant, and oral care products valued at R3 million to no fewer than 18,780 public schools over a five-year period. This showcases Unilever's commitment to corporate social responsibility.

This agreement has a potential to foster healthy competition and instigate positive change within South Africa's business ecosystem. The Commission looks forward to the enduring impact of this landmark agreement.

Litigation Highlights (Cont.)

- **CC v ALLBRO:** On 14 July 2023 the Commission referred a complaint against Allbro, the largest manufacturer of transformer bushings in South Africa, including Class 0 distribution transformer bushings. The Commission’s referral followed a complaint that was lodged by a competitor of Allbro in the market for the market for the manufacture and supply of Class 0 distribution transformer bushings. The gist of the complaint is that Allbro has engaged in exclusionary conduct of requiring or inducing customers to not deal with its competitors in that Allbro has:
    - entered into an almost exclusive supply arrangement with Revive Electrical Transformers (Pty) Ltd (“Revive”), the largest manufacturer of transformers, in contravention of section 5(1) of the Act; and
    - embarked on a strategy of inducing downstream customers not to deal with Allbro's competitors.
- Allbro's inducement strategy involves initiating legal proceedings against its competitors and threatening to initiate criminal and civil proceedings against its competitors.

Litigation Highlights (Cont.)

- **Intermediate Merger Consideration – Draslovka Holdings A.S, Sasol South Africa Limited And The Competition Commission:** On 26 November 2021, the Commission prohibited the proposed acquisition of the assets and liabilities of the sodium cyanide business of Sasol South Africa by Draslovka Holdings. Draslovka, a global company based in the Czech Republic with its subsidiary SA OpCo in South Africa, sought to acquire the assets and liabilities of Sasol's sodium cyanide business. Sasol is the primary supplier of sodium cyanide in liquid form to the South African gold mining industry, a crucial component with no practical alternatives. The Tribunal prohibited the proposed merger on 11 October 2023. The main concern raised was the permanent structural change in the market resulting from the merger and the substantial negative effect on the gold mining industry. This structural change could not be adequately addressed by the remedies proposed by Draslovka and Sasol. Sasol's sodium cyanide business operates as a vertically integrated entity, self-supplying all key inputs from its integrated operations. In contrast, Draslovka would supply liquid sodium cyanide downstream without a similar integrated self-supply of crucial key inputs, effectively splitting the market into two independent entities in the liquid sodium cyanide value chain.

Advocacy

Policy Responses

- The Commission submitted a policy response on the Draft South African SMMEs and Co-Operatives Funding Policy ("Policy" hereafter) for South Africa to the Department of Small Business Development ("DSBD"). The Commission supported the Policy because there is a need for a unifying developmental mandate that can leverage off existing government funding and programmes and incorporate them into one national developmental funding framework. The Commission focused its submission on key policy proposals identified including (i) improved co-ordination for access to finance by SMMEs and Co-operatives, (ii) easing small business cash flow through timely payments, (iii) establishing a database of small businesses, (iv) promoting business development support (v) affordable and appropriate insurance for SMMEs and Co-Operatives, and (vi) creating an accessible funding environment for targeted groups (youth, women, persons with disabilities).

- The Commission submitted a policy response on the draft Directive issued by the South African Reserve Bank (SARB). The draft Directive is part of the SARB's policy interventions to address the risks that can arise from screen scraping within the National Payment System (NPS). It introduces a registration system managed by the SARB for financial service providers to conduct screen scraping.

Advocacy (Cont.)

Studies

- The Commission launched a study on challenges that women entrepreneurs encounter in their quest to enter and effectively participate in markets. The study titled “Promoting Effective Entry and Participation of Women Entrepreneurs in the South African Economy” extends the Commission's efforts to enhance historically disadvantaged individuals' meaningful participation in South Africa's economy as required by the Competition Act of 1998. It also investigated the strategies that women entrepreneurs are adopting to overcome these gender specific barriers to entry and participation.
- The study identified five thematic areas in which women entrepreneurs face key barriers - access to business knowledge, education and training programmes; access to finance for new business start-ups or expansion, access to (profitable) markets; compliance requirements, bureaucracy and administration; and access to women networks or support structures.
- Outside of these key themes, the study also revealed that social factors such as safety, societal norms, customary practices, and domestic responsibilities impact the ability of women to move freely and dedicate time and energy to perform their entrepreneurial activities thereby further affecting the ability of women entrepreneurs to enter and effectively participate in markets.
- The research report can be accessed at: https://www.compcom.co.za/wp-content/uploads/2023/08/CC_Women-in-Business-Study.pd.

Advocacy

Workshops

- On the 14th and 15th of June 2023, the Commission hosted two workshops under the theme of Unpacking the Buyer Provisions - A Talk with the Competition Commission. The purpose of the workshops was to raise awareness about the Buyer Power provisions in the Competition Amendment Act to small suppliers and dominant buyers in the affected (designated) sectors. The workshops covered the objectives of the buyer power provision, the Commission’s approach to assessing complaints under the Buyer Power provisions, and its application of the Buyer Power Guidelines.

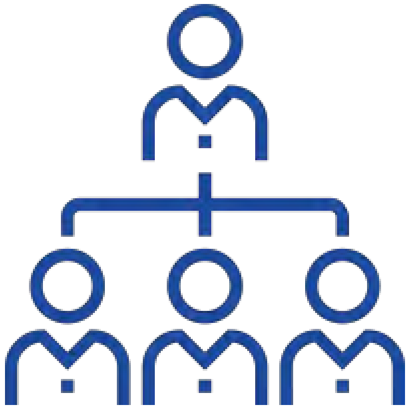
International Engagements

- The Commission would like to highlight the following key issues in its international engagements:
  - Celebrate the finalisation of the Competition Protocol of the AfCFTA, the Commission is honoured to be have been part of this historic process and is committed to contributing to the realisation of its intentions.
  - The Commission is one of the countries that are leading a special project by the International Competition Network (ICN) on Food and Agricultural Markets.
  - The Commission will host the BRICS Conference of Competition Authorities in 2025, with work on the preparations currently underway.

Optimal Human Capital for effective Regulation

- The Commission continues to ensure appropriate investment in its capacity to deliver on its mandate. The following are highlights are worth mentioning:

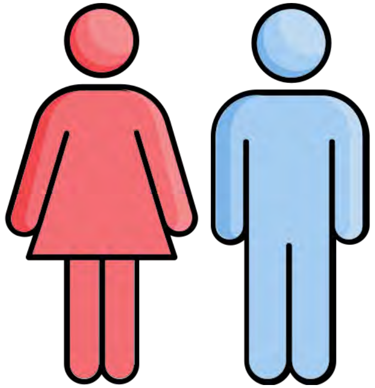
Staff Complement



Number of employees:

Q1	Q2	Q3
228	225	228

Gender Profile



% of female employees:

Q1	Q2	Q3
58%	58%	57%

People with disabilities

% of employees with disabilities:

Q1	Q2	Q3
2,2%	2,29%	2,31%

Vacancy Rate

Vacancy Rate at the Commission:

Q1	Q3
18,42%	11.4%

- The Commission continues to work on filling of vacancies as efficiently as possible. The vacancy level is relatively high, even though there has been a lot of progress has been achieved on recruitment, due to most positions being filled with internal candidates; resulting in slow net movement of vacancies.

Improvement of Efficiencies through Systems Improvement

- During this financial year, the Commission is implementing a new Enterprise Resource Planning System (ERP) to support its work. The progress made in implementing this project means that the Commission will be able to go live on the system on 1 April 2024:

Objectives of the Project

- Integration of business processes (HR, Finance, Payroll).
- Real-time data access and process optimization.
- Enhanced regulatory compliance and reporting.

Expected Efficiencies

- Improved operational efficiency and productivity.
- Reduced operational costs through streamlined processes.
- Better strategic planning with real-time data insight

- This project has been on our APP for a number of years and will finally be achieved in this financial year. The Commission will take this process a step further and implement a new Management Information System in the next financial year.

Revenue

- The revenue side of the Commission's budget can be illustrated as follows:

TOTAL REVENUE	ANNUAL BUDGET	YTD TOTAL	YTD BUDGET	YTD VARIANCE	YTD VARIANCE %	PROJECTIONS
Fee Income						
- Mergers & Acquisitions	71,027,456	47,874,888	53,270,592	(5,395,804)	-10%	63,833,051
- Exemptions	-	105,000	-	105,000	0%	-
Government Grant	407,895,000	305,906,213	305,906,213	-	0%	407,895,000
Interest Received	7,930,111	35,842,879	5,947,583	29,895,295	503%	47,790,505
Other Income	-	503,668	-	503,886	0%	503,688
TOTAL	**486,852,567**	**390,232,547**	**390,232,547**	**25,108,122**	**7%**	**520,002,233**

- The Commission had a base line reduction of 10% (R45,3 million) on the Government Grant. The Grant was reduced from R453.1 million to R407,8 million. The baseline reduction was also effected over the MTEF at 10%, 11%, and 12% respectively.

2. Expenditure

- The expenditure side of the Commission's budget can be illustrated as follows:

TOTAL PER MAIN ITEM	ANNUAL BUDGET	YTD ACTUAL	YTD BUDGET	YTD VARIANCE	YTD VARIANCE %	TOTAL AVAILABLE BUDGET
Total	**542,152,567**	**346,756,639**	**406,614,425**	**59,857,786**	**15%**	**195,395,928**
Human Resources	320,744,098	220,679,640	240,558,074	19,878,433	8%	100,064,458
Premises & Equipment	23,679,961	9,891,708	17,759,971	7,868,263	44%	13,788,253
Other Operational	16,432,997	10,441,544	12,324,748	1,883,203	15%	5,991,453
Research & Information	6,298,658	1,878,918	4,723,994	2,845,076	60%	4,419,740
IT and system Development	5,120,000	5,506,288	3,840,000	-1,666,288	-43%	-386,288
Educational Awareness	15,997,000	11,141,301	11,997,750	856,449	7%	4,855,699
Case Related Costs	93,239,000	67,639,281	69,929,250	2,289,969	3%	25,599,719
Capital Expenditure	14,700,000	1,769,096	11,025,000	9,255,904	84%	12,930,904
Depreciation	7,000,000	3,356,194	5,250,000	1,893,806	36%	3,643,806
Other Programme Costs	38,940,853	14,452,669	29,205,640	14,752,970	51%	24,488,184

The base line reduction will not affect the Commission in the current financial year however will have the impact over the MTEF.

Work Programme

- **Implementation of amendments to the Act**: The additional mandate from the 2019 Amendments continues to be central to the work of the Commission, in particular promoting the participation of SMEs/HDPs in the economy. This is essential to de-concentration, transformation and inclusive economic growth.
- **Developing Jurisprudence:** The Commission will continue for focus on a deliberate strategy to investigate and refer cases in areas of the amendments to develop the jurisprudence and provide greater legal certainty on the interpretation of the legislation.
- **Market Conduct**: The Commission is prioritising investigation and litigation of the market conduct issues, more especially the areas related to the amendments including Buyer Power provisions.
- **Prioritisation:** There is a deliberate prioritisation strategy to ensure that the work of the Commission has maximum impact in promoting competition and increasing participation in the economy as set out in the purpose of the Act. This includes sector and thematic prioritisation which is responsive to the changing economic environment and government priorities.
- **Market Inquiries**: There is a commitment to expand the number of market inquires in priority markets where the removal of features adversely affecting competition can unlock growth, achieve greater participation, and benefit consumers. At present, four market inquiries are currently underway.
- **Operational Effectiveness and Efficiency**: The Commission has prioritised organisational design (including adequate staffing for effectiveness), improvement of processes/systems and investment in creating a conducive environment for effective and efficient operations of the Commission.

In conclusion

- The Commission expects to meet more than 80% of its targets in the current financial year and will be looking at continuous improvement.
- The Commission is also focusing on responsible and efficient of its budget to reduce underspending evident in the previous financial years whilst ensuring sustainable spending that does not lead to overspending.
- Finally, the Commission remains seized with the execution of its mandate for a growing, deconcentrated and inclusive economy for all South Africans.

PART E:

FOREX Case Briefing

About the Case

- The Competition Commission (Commission) referred a complaint against 28 banks to the Competition Tribunal (Tribunal) for prosecution for being part of the cartel that coordinated on trading the South African Rand (ZAR) and United States of America Dollar (USD) currency pair.

The Investigation

- Following a leniency application from Barclays, the Commission initiated an investigation in April 2015 against: Barclays Bank, Barclays Africa, BNP, BNP SA (a subsidiary of BNP), Citigroup, Citigroup Global (a subsidiary of Citigroup), JP Morgan, JP Morgan SA (a subsidiary of JP Morgan), Investec, Standard NY, Standard Chartered Bank ("the initial complaint").
- On 23 August 2016, the Commissioner amended the initiation to include ABSA Bank Limited, Barclays Capital Inc, Standard Bank Limited, Credit Suisse Group; Commerzbank AG; Bank of America Merrill Lynch International Limited, HSBC Bank Plc; ANZ, Citibank N.A, JP Morgan, Nomura International Plc., Macquarie Group and JP Morgan Chase Bank N.A as additional respondents ("the amended complaint").
- The Commission later added other banks in the process while others were removed due to duplication.
- The other banks that were added later in the process include the following: Nedbank Group Limited, Nedbank Limited, FirstRand Limited, FirstRand Bank Limited and Standard Americas Inc.
- This has resulted in 28 banks, made up of local and international banks being prosecuted for colluding on ZAR/USD currency pair.

Commission Findings

- The Commission investigation found that:
    - The banks colluded on USD/ZAR currency pair by fixing bids; offers; bid-offer spreads; the spot exchange rate; and the exchange rate at the FIX.
    - The banks divided markets by allocating customers in terms of which one trader withholds or pulls his existing bid or offer from the market to allow the other trader to execute and complete his trade.
- This conduct contravenes section 4(1)(b)(i) & (ii) of the Competition Act, 89 of 1998, as amended.
- The investigation found that the 28 banks buy and sell money on behalf of their clients as well as on their own behalf. They are either buying or selling USD with ZAR or ZAR with USD.
- The cartel entailed:
- The fixing of buying and / or selling price of these currencies; The fixing of the spread (profit margin);
- Traders taking turns to buy or sell currencies or giving each other opportunity to buy or sell currencies without interference from each other.

Litigation

- On 15 February 2017, the Commission referred the matter against the banks to the Competition Tribunal (Tribunal) for prosecution.
- Instead of answering to the complaint referral, the banks challenge the referral at the Tribunal. On 12 June 2019, Tribunal dismissed the banks challenges to the complaint referral.
- The banks appealed the Tribunal Order dismissing their challenges to the Competition Appeal Court (CAC).
- On 28 February 2020, the CAC delivered a judgment dismissing the appeals of the banks and ordered the Commission to amend and file a new complaint referral with the Tribunal.

Litigation (Cont.)

- In June 2020, the Commission amended and filed a new complaint referral with the Tribunal in compliance with CAC order.
- The respondent banks, once again decided not to answer to the new complaint referral, instead challenged the new referral at the Tribunal.
- The Commission opposed these challenges.
- On 30 March 2023, the Tribunal issued an Order directing all the respondent banks to file their answers to the new complaint referral.

Litigation (Cont..)

- 23 banks challenged the Tribunal decision ordering them to file answers to the complaint referral at Competition Appeal Court (CAC).
- The Commission once again opposed these challenges.
- On 8 January 2024, CAC handed down a judgment on the appeals, reviews and dismissal applications filed by the 23 banks.
- The CAC dismissed appeals, reviews and dismissal applications by 4 respondent banks, viz. BNP Paribas, JP Morgan Chase Bank, Credit Suisse Securities and HSBC Bank Plc, and ordered them to file answering affidavits with the Tribunal within 40 days.

Litigation (Cont..)

- The CAC upheld appeals, reviews and dismissal applications by 18 respondent banks, namely:
  - In respect of the following 4 respondent banks, viz. Nedbank Group, FirstRand Limited, Credit Suisse Group and Bank of America, N.A, The CAC held that they cannot be joined in the complaint referral as they are holding companies which do not trade in forex.
  - In respect to the following 9 respondent banks, viz. Australia and New Zealand Banking Group Limited; Nomura International Plc, Commerz Bank AG, Macquarie Bank Limited, HSBC Bank USA, National Association Inc, Bank of America Merril Lynch International Designated Activity Company; JP Morgan Chase and Co.; Standard New York Securities Inc, Merril Lynch Pierce Fenner and Smith Inc; CAC further held that the Commission does not have jurisdiction to prosecute.
- In respect of Nedbank Group Limited; FirstRand Bank Limited and Standard Americas Inc, the CAC held that the Commission did not join them properly in the complaint referral.
- Fu[illegible]ommission has not made out a case against Standard Bank of South Africa

Leniency and settlements

- **28 banks that participated in the cartel**:
  - 3 out of the 28 banks, namely: Barclays Plc, Barclays Capital and ABSA Bank Limited were granted leniency from prosecution.
  - 2 banks, viz. Citibank N.A and Standard Chartered Bank settled their cases with admission of liability and payment of penalties as follows:
    - Citibank N.A admitted liability and paid R 69 500 860 in April 2017.
    - Standard Chartered Bank admitted liability and paid R42 715 880, heard on 15 November 2023.
  - The total penalty amount in this matter to date is **R112 216 740**
  - All the 5 banks are cooperating with the CCSA in the prosecution of this case.

Engagements with other Regulators

- During and upon conclusion of the investigation, the Commission engaged with the South African Reserve Bank, the Prudential Authority and the Financial Sector Conduct Authority (formerly the Financial Services Board)
- The regulators in the financial sector are fully briefed on the matter.
- It was however determined in these engagements that the Commission's investigation and prosecution should take its course and further collaborative steps will be taken upon a final determination by the Competition Tribunal.

The Commission's appeal to the Constitutional Court

- The Competition Commission (Commission) has approached the Constitutional Court of South Africa (ConCourt) for leave to appeal the Competition Appeal Court ("CAC") judgment handed down on 08 January 2024 in which it upheld the appeal by the majority of the respondent banks accused of price-fixing and division of markets in contravention of section 4(1)(b) of the Competition Act 89 of 1998 (as amended). The CAC order therefore released 17 respondent banks from the complaint referral before they answered the allegations against them and restricted the Commission's case to only four respondent banks.

- In its current application for leave to appeal, the Commission is appealing the CAC order to the ConCourt against 13 respondent banks. These banks are Bank of America Merrill Lynch International Designated Activity Company, JP Morgan Chase Bank N.A., Australia and New Zealand Banking Group Limited, Standard Bank of South Africa Limited, Nomura International PLC, Commerzbank AG, Macquarie Bank Limited, HSBC Bank, USA National Association, Merrill Lynch Pierce Fenner & Smith Inc, Bank of America, National Association, Nedbank Limited, FirstRand Bank Limited, and Standard Americas, Inc.

The Commission’s appeal to the Constitutional Court (Cont.)

- The Commission will not appeal the CAC order in respect of the Nedbank Group Limited, FirstRand Limited, Credit Suisse Group, and Standard New York Securities Inc. The Commission will also not appeal the CAC order that dismissed the appeals of these four respondent banks: BNP Paribas, JP Morgan Chase and Co, HSBC Bank plc, and Credit Suisse Securities (USA) LLC. ABSA Bank Limited, Barclays Capital Inc and Barclays Bank plc applied for leniency. Citibank N.A. and Standard Chartered Bank have settled with the Commission. Investec Limited and

- Investec Bank Limited remain respondent banks required to file answering affidavits.

Thank you.