



competition commission
south africa

ANNUAL REPORT

2018 - 19

A large, stylized number '20' in a light blue color, serving as a background for the 'YEARS' text.

YEARS

*Celebrating 20 years of
regulating for inclusive
growth*



Competition Commission of South Africa

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LIST OF **ACRONYMS/ABBREVIATIONS**

| | | | |
|-------------------------|---|----------------|---|
| AVE | Advertising Value Equivalent | HMI | Health Care Market Inquiry |
| ACF | African Competition Forum | HR | Human resources |
| AG | Auditor General | IRC | Information Resource Centre |
| CD | Cartels Division | ICASA | Independent Communications Authority of South Africa |
| CRESSE | The Competition and Regulation Summer School and Conference | IT | Information Technology |
| The Act | Competition Act No. 89 of 1998, as amended | ICN | International Competition Network |
| Competition Bill | Competition Amendment Bill 2017 | LSD | Legal Services Division |
| CAC | Competition Appeal Court | MCD | Market Conduct Division |
| Commission | Competition Commission of South Africa | M&A | Mergers and Acquisitions Division |
| Tribunal | Competition Tribunal | NDP | National Development Plan |
| Concourt | Constitutional Court of South Africa | NEDLAC | National Economic Development and Labour Council |
| CLP | Corporate Leniency Policy | OTC | Office of The Commissioner |
| CSD | Corporate Services Division | PFMA | Public Finance Management Act No. 1 Of 1999, as amended |
| Data Inquiry | Data Services Market Inquiry | PPTMI | Public Passenger Transport Market Inquiry |
| DAFF | Department of Agriculture Forestry and Fisheries | SME's | Small and Medium Sized Enterprises |
| DMR | Department of Mineral Resources | SARS | South African Revenue Service |
| DTI | Department of Trade and Industry | SADC | Southern African Development Community |
| ERB | Economic Research Bureau | SCA | Supreme Court of Appeal |
| EDD | Economic Development Department | ToR's | Terms of Reference |
| EAP | Economically active population | EEA | The Employment Equity Act |
| GRMI | Grocery Retail Sector Market Inquiry | | |
| GDP | Gross domestic product | | |

GLOSSARY OF **TERMS**

For the purposes of this report, the meaning of the following terminology is explained below:

“Abuse of dominance” means engaging in prohibited practices as provided in sections 8 and 9 of the Act.

“Advisory Opinion” refers to a non-binding written opinion provided by the Commission to a requester, who may be an individual or a firm, setting out the Commission’s likely view on the subject matter of the opinion.

“Advocacy” refers to activities aimed at the promotion of voluntary compliance to the Act, through non-enforcement mechanisms.

“Consent Agreement” refers to an agreement concluded between the Commission and a respondent, and which is confirmed as an order of the Competition Tribunal in terms of section 49D of the Act, setting out: (i) the alleged contravention, (ii) where appropriate, an admission by the respondent, (iii) a penalty where applicable and (iv) where applicable, a remedy addressing the harm occasioned by the alleged contravention of the Act.

“Enforcement” refers to the investigation and/or prosecution of anti-competitive conduct.

“Exemptions” refers to the granting of exemption from prosecution to firms for engaging in anti-competitive conduct for a specific period of time, through the process and criteria prescribed in Section 10 of the Competition Act.

“Non-referral” means that, after conducting an investigation, the Commission has decided not to refer a particular case to the Competition Tribunal for prosecution.

“Public interest” refers to the consideration of socio-political and economic issues, as prescribed in Section 12A of the Act, in the evaluation of mergers and acquisition applications.

“Referral” refers to the submission by the Commission of a complaint to the Tribunal for prosecution, upon completion of its investigation.

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PART A

GENERAL OVERVIEW



ABOUT THE ANNUAL REPORT

This document constitutes the Annual Report of the Competition Commission of South Africa (Commission) for the 2018/19 financial year. It is premised on the Commission's strategic plan for 2015 - 2020.

This Annual Report has been prepared in line with the Annual Report Guide for Schedule 3A and 3C Public Entities, which is published by the National Treasury. It captures the key performance outputs, outcomes and impact of the Competition Commission during the reporting period. It also articulates how the Commission fared in the management of its resources, and in complying with corporate governance principles; as captured in parts D and E of this report.

This report is organised as follows:

- Part A: General overview
- Part B: Economic impact
- Part C: Performance information
- Part D: Corporate governance
- Part E: Annual financial statements
- Part F: Appendices

OUR FUNCTIONS

The Commission is a statutory body constituted in terms of the Act. It is one of three independent competition regulatory authorities, the other two being the Competition Tribunal (Tribunal) and the Competition Appeal Court (CAC).

While the Commission is the investigative and prosecutorial agency, the Tribunal is the adjudicative body and the CAC considers appeals against decisions of the Tribunal. The three bodies are functionally independent institutions and together make up South Africa's competition authority. The Commission and the Tribunal are administratively accountable to the EDD.

In terms of the Act, the Commission is empowered to investigate, control and evaluate restrictive business practices, abuse of dominant positions and mergers to achieve equity and efficiency in the South African economy. Its mandate is to promote and maintain competition in South Africa in order to:

- promote the efficiency, adaptability and development of the economy;
- provide consumers with competitive prices and product choices;
- promote employment and advance the social and economic welfare of South Africans;
- expand opportunities for South African participation in world markets and recognise the role of foreign competition in the country;
- ensure that small and medium-sized enterprises have an equal opportunity to participate in the economy; and

- promote a greater spread of ownership, specifically increasing the ownership stakes of historically disadvantaged persons.

To achieve its purpose, the Commission's core functions, as set out in Section 21 of the Act, are to:

- investigate and prosecute restrictive horizontal and vertical practices;
- investigate and prosecute the abuse of dominant positions;
- decide on merger and acquisition applications;
- conduct formal inquiries in respect of the general state of competition in a particular market;
- grant or refuse applications for exemption from the application of the Act;
- conduct legislative reviews; and
- develop and communicate advocacy positions on specific competition issues.

In addition, the Commission promotes voluntary compliance with the Act by providing education and advice on the application of the Act. The Commission can negotiate agreements with any regulatory authority to coordinate and harmonise the exercise of jurisdiction over competition matters within the relevant industry or sector, and ensures the consistent application of the principles of the Act. It can also participate in the proceedings of any regulatory authority and advise, or receive advice, from them.

THE EXECUTIVE



Tembinkosi Bonakele
Commissioner



Hardin Ratshisusu
Deputy Commissioner



Makgale Mohlala
Manager:
Cartels Division



Nompucuko Nontombana
Manager:
Enforcement and Exemptions
Division



Molatlhegi Kgauwe
Chief Financial Officer



Mduduzi Msibi
Company Secretary



Lebo Mabidikane
Manager:
Mergers and
Acquisitions Division



Bukhosibakhe Majenge
Chief Legal Counsel
and Manager: Legal
Services Division



Liberty Mncube
Chief Economist and
Manager: Policy and
Research Division



Khanyisa Qobo
Manager:
Advocacy Division



Andile Gwabeni
Manager:
Corporate Services
Division

MINISTER'S **FOREWORD**



Ebrahim Patel

Minister: Economic Development Department

The fifth administration has recently concluded, thus marking the end of first quarter of a century of democratic rule in South Africa. Many institutions have been established by the previous democratic administrations in this period, none more important than the competition authorities. The political gains of the first 25 years of democratic South Africa would have been meaningless, had there not been the corollary of looking to find similar gains in commerce and industry – for effecting the broader socio-economic objectives that are imbedded in our constitution and sacred for the protection of the democracy itself. Competition law and policy regulation is thus an integral feature of, and foundational to, our democracy.

This importance was identified in President Mandela's administration with the promulgation of the Competition Act in 1998, for implementation and effect from 1999. This instrument remains the most significant economic legislation that has been impressively regulated by the competition authorities to date.

Most recently, in February this year, President Ramaphosa signed into law the Competition Amendment Bill. The Bill represents the most substantial series of amendments in the past 20 years, where the

focus was on revamping and strengthening the Competition Act so as to place greater focus on economic transformation and inclusivity. The main objective of these amendments is to open up the economy to small and medium enterprises and to Black South Africans. The bill addresses two persistent structural constraints on dynamic and inclusive growth in South Africa: (1) The high levels of economic concentration; and (2) the skewed ownership profile of the economy.

The signing of the Competition Amendment Bill marks the culmination of 20 years of regulation, where we find ourselves closest to meeting the objectives that were identified in the RDP of 1994: *“[T]o remove or reduce the distorting effects of excessive economic concentration, collusive practices, and the abuse of economic power by enterprises in a dominant position. In addition, the policy will ensure that participation of efficient small and medium-sized enterprises in the economy is not jeopardised by anti-competitive structures and conduct”*.

In light of the above, it is most appropriate that the sixth administration, coinciding with the third decade of competition law and policy regulation, will commence in a regulatory environment that has never been better suited to addressing the shrinking economy and continued high levels of economic concentration (both factors that see consumers seriously squeezed), all in an attempt to meet the objectives highlighted above and in section 2 of the Competition Act. This will, indeed, do much to help deliver President Ramaphosa’s “New Dawn”.

The year under review has been a particularly busy one for the Competition Commission. With regard to cartels; 142 cases were handled this year covering a range of sectors, including automotive parts, furniture removal, construction, advertising, maize milling and tourism. It is telling that nearly R1 billion (R980 million) in penalties has been levied for cartel conduct in this financial year, up from R570 million in the previous year. These are staggering figures. What this strongly signals is that there is still much work ahead, for the competition and criminal authorities, in arresting this anti-competitive conduct in business. The success of these investigations confirms the hard work that is conducted by the Commission.

With reference to mergers, the Commission was required to consider 348 merger notifications, the bulk of which were intermediate (235). Of these, 333 were finalised and some 286 were approved without conditions. A mere 40 were approved with competition or public interest conditions. A critical feature of merger regulation, especially in these tough economic times, is job preservation. To the extent allowable, the Commission has been able to save as many as 136 000 jobs over the last five years. Another essential feature of the public interest conditions is that small businesses, and/or those owned by historically disadvantaged persons, are protected enough to be competitive. This is an essential feature for job creation and preservation, especially when seen in light of the fact that the impact on employment is another serious factor that is considered in merger regulation.

On the matter of complaints as a result of alleged cases of abuse of dominance, the Commission has been – thankfully – less busy than last year, with 256 complaints received versus 313 in the previous year. Of all these cases, only one case was referred to the Competition Tribunal for consideration, where a further two were exempted (settled) with the Commission.

The work however does not stop there. As policy makers, the department has to continue to find ways of engaging all stakeholders (especially business) to try and make for a conducive commercial environment, such that the competition authorities and business can find each other quicker, and in a manner continuously less adversarial. It is this that has led, in part, to the merging of the Economic Development Department and the Department of Trade and Industry. This merger will be completed within the ensuing financial year, and shall (1) bring together 17 agencies with the capacity to provide targeted industrial and transformation funding; (2) regulate the consumer and corporate environments to foster a vibrant business ecosystem; and (3) open up the economy for real and inclusive growth. The opportunities that come with the pooling of government resources to form the Department of Trade, Industry and Competition must be seized, and indeed maximised in order to deliver the much-needed alignment in government policy and programmes.

Finally, the opportunity to celebrate cannot, and must not, be lost. In 1999, as mentioned earlier, the Competition Act came into force. This Act, singularly, has done much to advance the socio-economic transformation that is demanded by the Act itself. The Commission (and the Tribunal) has grown into an effective institution, developing a sterling track record in competition law and policy regulation that commands the world's respect. The stability in leadership over the last two decades has also allowed for the Commission to earn the public trust. And because of this earned trust, more and more people look to it for protection, especially small and medium businesses.

The Commissioner, Tembinkosi Bonakele, assisted by the Deputy Commissioner, Hardin Ratshisusu, and the entire staff of the Commission (past and present) continue to deliver despite ever-changing conditions. I wish to thank them for another wonderful year. We look forward to celebrating 20 years of competition law and policy regulation this year, as we enter the third decade determined to making optimal use of the Commission's unique contributions to protecting our nation's democracy and development.

A handwritten signature in black ink, appearing to read 'Ebrahim Patel', with a long horizontal stroke extending to the right.

Ebrahim Patel

Minister: Economic Development Department

THE COMMISSIONER'S **OVERVIEW**



Tembinkosi Bonakele
Commissioner

It is my pleasure to be writing this review for the 20th edition of the Competition Commission's (Commission) Annual Report. In the 20 years of the Commission's existence, there is indeed much to celebrate and to be proud of. In reviewing the last year, one will have to do so in the broader context of how far the Commission has come in its 20 years of existence as an institution. Further, the review of the last 20 years must offer inspiration and forecast what the next 20 years might hold for the continued work of this institution.

When the Competition Act was promulgated in 1998, few might have predicted the kind of impact it would have on the economic environment of South Africa. Always operating towards the lodestar set in the Constitution's preamble, the Commission has always had a responsibility to address – primarily – the question of fair and equal opportunity to participate in the national economy. From the onset, the South African competition regime distinguished itself with a focus on addressing both efficiency and public interest concerns. Without the slightest hint of reservation, I can confidently say that the Commission has been able to respond to this mountainous charge.

The South African economy is highly concentrated and exclusionary; a legacy of our past. The Competition Act was part of a package of legislations introduced to transform the economy to serve all the people of South Africa, while equally injecting some dynamism

essential for the functioning of a modern industrial economy. Twenty years on - it is time to reflect.

This annual report is written at the time of great difficulty for the South African economy, and I am aware that as one of the instruments of economic policy, we have so much more to do. Our economy is stagnant, unemployment stubbornly high, while poverty indicators show an increase. This calls for a relook at our approaches, even as we celebrate the achievements of the past twenty years.

The legacy of the past twenty years has been the establishment of the institutions. They are world renowned for their professionalism, independence and responsiveness to their policy context. The painstaking work of building institutions is ongoing, but we are proud of what has been achieved.

While the first five years could be categorised as the establishment phase, the following five years saw a greater focus on enforcement, especially against cartels, aided by the whistle-blower policy, the Corporate Leniency Policy that encouraged firms to come forward and disclose what they were doing, cooperate with the authorities in the investigation and prosecution of other transgressors in exchange for immunity. In addition, we developed a list of priority sectors and a screening policy for new cases. This was a tremendous success. Cartels uncovered during this phase include the bread price fixing case, the maize meal and flour milling cartels, as well as the construction cartel that affected almost all public sector projects in the build up towards the hosting of the Fifa World Cup Tournament. Through these cases, the Commission was widely recognised, and many young people wanted to join and swell its ranks.

These years also saw a ground settlement of the excessive pricing and exclusionary conduct case against the pharmaceutical multinationals that supplied HIV/Aids drugs in South Africa. The case was eventually settled with a commitment to license local firms to manufacture these drugs locally, with dramatic price decreases, allowing expansion of access to treatment to millions of people and the development of a local pharmaceutical industry. The testimonials of those affected are forever etched in our memory as an example of how modest enforcement of a competition statute can literally save

lives. It is on this basis that the Competition Act, itself, has had to follow such evolution through amendments.

In February 2019 President Cyril Ramaphosa signed the Competition Amendment Bill into law; this is after the Bill was approved by the National Assembly on 23 October 2018 and endorsed by the National Council of Provinces in December 2018. The amendments are a major boost for the pursuit of a growing and inclusive economy, particularly with regards to SMEs and economic inclusion and it opens the economy to fresh investment and innovation. The amendments provide greater clarity to firms and investors on prohibited practices and what constitutes abuse of dominance. This phase was characterised by a rapid increase in cases successfully handled and fines levied. This phase can be rightly referred to as the coming of age of competition policy in South Africa.

From 2009 there was yet a noticeable change in approach. There was increased participation of stakeholders in merger proceedings, with interventions from government and unions seeking to protect public interest within the legal framework. The effect was much more focus on public interest issues by the authorities, leading to imposition of a record number of employment and other public interest conditions. Examples of these conditions were the establishments of funds in the Walmart, SAB Inbev and Coca-cola mergers to promote local suppliers who could participate in affected value chains.

The Commission has now entered yet another phase, which I call the opening up of markets for broader participation phase. It reflects the maturity of the system, is outward looking, focusing on real and tangible economic outcomes. This follows the amendments of the Competition Act to empower authorities to deal with concentration in the economy and promote participation of SMMEs and HDIs. This phase holds much promise for the contribution of the competition authorities to expand participation and unleash the potential of the economy.

During the past financial year, the authorities continued to build on its enforcement agenda with targeted abuse of dominance cases, as well as continued prioritisation of enforcement against cartels. Our key highlight in this regard is the school uniform case. The investigation

into anti-competitive behaviour at schools was concluded early last year. The probe established that a number of schools still had exclusive contracts with one supplier. These contracts didn't go through a competitive and transparent bidding process. Despite finding the anti-competitive behaviour that was rampant, the Commission was reluctant to drag these schools through protracted litigation process and distract them from their main function – to educate. We engaged all stakeholders including private schools, suppliers, governing bodies, and the government. We agreed on the implementation of school uniform guidelines which would lead to competition in the supply of school uniform and lead to lower prices. This work will continue to be the focus of the Commission until there is full compliance. The Commission subsequently signed an MOU with FEDSAS, a federation of school governing bodies, which is aimed at educating and encouraging schools to comply with the guidelines.

In the last financial year, a combined total of in excess of R1 billion was collected and remitted to the NRF and EDF following the successful prosecutions and impositions of fines mainly against cartels.

Our advocacy work focused on opening up the auto value chain to SMME and HDI participation. Initiated discussions include discussions with OEMs to develop a Code that would allow independence to participate in the after sales market for repairs and maintenance of vehicles, including supplying spare parts. While the matter remains unfinished, the Commission is determined to proceed with implementation of the code and is receiving cooperation from some of the OEMs, as well as Naamsa.

The Mergers and Acquisitions Division continues to do great work and a merger involving a consolidation of private hospitals was successfully blocked. We have continued to alleviate pressure for workers by imposing employment remedies that seek to preserve jobs even if for a limited time after the merger.

The panel of the Private Health Inquiry released a provisional report with ground breaking findings and recommendations, and is expected to release a final report in September 2019.

In November 2018, we hosted the International Competition Network (ICN) Conference in Stellenbosch. The event drew many scholars, commentators and practitioners in competition law and policy regulation.

South Africa, through the Commission, also chairs the Africa Competition Forum (ACF). The 41-member forum continues to lobby for the effective (1) advocacy and awareness; (2) fundraising; (3) capacity building (4) resource mobilization and (5) creating awareness in Africa. That South Africa is the chair of this growing forum is testament to its strength in the outlined areas of focus.

In this light, one must mention one of the great accolades two of our senior members of staff received: Ms Nompucuko Nontombana (Divisional Manager at Market Conduct) and Ms Nelly Sakata (Principal at Legal Services Division) were recognised as “40 in their 40s Notable Women in Competition Professionals” in the “Enforcement, Judiciary and Policy category” in Europe, Americas and Africa. This is a tremendous endorsement of the work they have done as enforcement, private practise and in-house practitioners around the world (Europe, Americas and Africa regions).

I wish to thank successive generations of leaders and staff of the Commission over the past 20 years for a job well-done. I also wish to thank the Economic Development Department staff as well as Minister Patel for all the support and leadership.



Tembinkosi Bonakele
Commissioner

OUR STRATEGIC **OVERVIEW**



OUR VISION

The Commission's "Vision 2030" aims to attain a growing and inclusive economy that serves all South Africans, which includes the eradication of poverty and unemployment – in line with the National Development Plan (NDP). This vision emphasises the transformative role played by the Commission in the economy.



OUR MISSION

In fulfilling its mandate, the Commission's mission is to undertake, "competition regulation for a growing and inclusive economy". This entails, amongst other things, balancing the efficiency objectives of the Competition Act with its public interest objectives.



OUR VALUES

The Commission's ongoing management of its operations is guided by a set of core values that define the organisational culture. These are:

C.O.M.P.E.T.E

COMMUNICATION

To effectively convey information and express thoughts and facts. This value demonstrates effective use of listening skills and displays an openness to other people's ideas and thoughts.

OWNERSHIP

To commit one's self to the task at hand. The Commission encourages staff to accept responsibility for their actions and decisions and to accomplishing their work in an ethical and cost-effective manner.

MAKING A DIFFERENCE

To consistently deliver the required business results, to set and achieve aggressive yet realistic goals, to consistently comply with quality, service and productivity standards, to meet deadlines and to maintain a clear focus on the Commission's goals.

PROFESSIONALISM

To demonstrate a good work ethic. To show respect, display integrity and to have empathy with other stakeholder's needs.

EMPLOYEE WELFARE

For employees to achieve their full potential while maintaining a healthy work-life balance.

TEAM WORK

To work cooperatively and effectively with others in order to achieve common goals. The ability to participate in building a group identity characterised by pride, trust and commitment.

EFFICIENCY

To measure how well resources are utilised in pursuit of quality results.

ESTABLISHMENT AND MANDATE OF THE COMPETITION COMMISSION

ESTABLISHMENT OF THE COMMISSION AUTHORITIES

With the advent of democracy in 1994, the new South African government initiated a process of reviewing South Africa's competition laws. The purpose of this process was to address the historical economic imbalances resulting from excessive economic concentration and ownership, collusive practices, and the abuse of economic power by firms in dominant positions. The 1994 White Paper on Reconstruction and Development¹ sought to establish a series of immediate measures to address the structural deficiencies in the South African economy. This included the development of a competition regime aimed at reforming markets with anti-competitive practices, and ensuring an inclusive and transformative economy.

Policy-makers recognised early on that competition policy would be one of several economic tools which would be used to achieve transformation. It was thus considered important that the new competition policy framework be flexible enough to accommodate other economic instruments of the state, even where there were perceived or inherent conflicts, including trade and industrial policy².

From 1995 the DTI embarked on a consultative process to develop a new policy, which culminated in a National Economic Development and Labour Council (NEDLAC)³ agreement on the competition policy principles. The result of this process was the Competition Act no. 89, which was adopted in 1998 and became effective as of

1 Notice 1954 Gazette 16085 of 23 November 1994

2 Guidelines for Competition Policy, 1997

3 NEDLAC comprises government, business and labour.

1 September 1999 (hereafter “Competition Act” or “Act”). The Act established the Competition Commission, the Competition Tribunal and the Competition Appeal Court. The Competition Commission is an investigative and prosecutorial authority, the Tribunal is an adjudicative authority and the Competition Appeal Court is an appeal body over competition matters.

OUR MANDATE

In terms of the Act, the Commission is empowered to investigate, control and evaluate restrictive business practices and abuse of dominant positions and mergers – to achieve equity and efficiency in the South African economy. Its mandate is to promote and maintain competition in South Africa in order to:

- promote the efficiency, adaptability and development of the economy;
- provide consumers with competitive prices and product choices;
- promote employment and advance the social and economic welfare of South Africans;
- expand opportunities for South African participation in world markets, and recognise the role of foreign competition in the country;
- ensure that small and medium-sized enterprises have an equal opportunity to participate in the economy; and
- promote a greater spread of ownership, specifically increasing the ownership stakes of historically disadvantaged persons.

To achieve its purpose, the Commission’s core functions, as set out in Section 21 of the Act, are to:

- investigate and prosecute restrictive horizontal and vertical practices;
- investigate and prosecute abuse of dominant positions;
- decide on merger and acquisition applications;
- conduct formal inquiries in respect of the general state of competition in a particular market;
- grant or refuse applications for exemption from the application of the Act;

- conduct legislative reviews; and
- develop and communicate advocacy positions on specific competition issues.

In addition, the Commission promotes voluntary compliance with the Act by providing education and advice on the application of the Act. The Commission can negotiate agreements with any regulatory authority, coordinate and harmonise the exercise of jurisdiction over competition matters within the relevant industry or sector, and ensure the consistent application of the principles of the Act. The Commission can also participate in the proceedings of any regulatory authority, and advise or receive advice from them.

OUR STRATEGIC GOALS

The Commission has identified three strategic goals, namely:

STRATEGIC GOAL 1:

Effective competition enforcement and merger regulation

In pursuing this goal the Commission effectively uses the instruments available to it in the Act. This includes the regulation of mergers and acquisitions, the investigation and prosecution of instances of abuse of dominance and restrictive conduct as well as the unmasking and dismantling of cartels. The primary tools utilised here are investigation, prosecution and remedies. Within the South African context, effective competition regulation also entails balancing market efficiencies with the public interest leading directly into the Commission’s overall objective to attain a growing yet inclusive economy.

The specific outcomes intended to lead to the achievement of this strategic goal are:

- efficient and effective merger regulation;
- competitive markets;
- improved public interest outcomes in markets;
- increased competition compliance; and
- improved understanding of market dynamics in priority sectors.

STRATEGIC GOAL 2:

Strategic collaboration and advocacy

The Commission develops strategic partnerships with complementary stakeholders to attain inclusive growth. This goal entails promoting the Commission's work and activities to the public; conducting market inquiries; building strategic partnerships with government, business and labour; and promoting competitive markets. The primary tools used are market inquiries, advocacy programmes and relationships with stakeholders.

The outcomes pertaining to the achievement of this goal are:

- improved co-ordination in the application of economic policy and competition policy;
- increased importance of developmental perspectives in domestic and international competition law discourse; and
- improved compliance and awareness.

STRATEGIC GOAL 3:

A high-performance agency

The Commission successfully delivers on its objectives through a cohesive and well-structured organisation in which people, processes and systems perform optimally. In achieving this goal, the Commission optimises its human capital, resources, systems and processes to become an effective agency. The Commission aims to become a knowledge-intensive organisation with strong, reliable and integrated information management systems, underpinned by the best-in-range information technology (IT) platform.

The outcomes pertaining to the achievement of this goal are:

- improved organisational efficiency;
- accountably managed resources; and
- highly motivated and productive people.

PART B

ECONOMIC IMPACT



ASSESSING THE COMMISSION'S IMPACT

The Commission measures the impact of its work through various tools, including impact assessment studies, review of Commission's work in priority sectors, and in some instances positive outcomes through non-enforcement interventions such as advocacy.

Impact assessments are the economic studies the Commission undertakes in order to evaluate its work in specific markets. The purpose is to demonstrate to stakeholders the harm of anti-competitive conduct, and the public benefit of the Commission's interventions. Impact assessment studies are carried out under three main categories:

- evaluating the impact of anti-competitive conduct;
- ex-post evaluation of specific enforcement interventions; and
- evaluation of the broader impact..

The Commission conducted one impact assessment in the period under review. The Commission sought to enhance its knowledge of the effects of its competition enforcement interventions – by undertaking impact assessment to ascertain the impact of the consent agreement, as well as the deviation therefrom, on the phosphoric acid industry.

The Commission also focuses its work in the priority sectors and has had impact in several markets, in particular the private medical healthcare market. The Commission's impact is discussed in detail below:

EVALUATING THE FOSKOR/OMNIA DECISION

In 2007, animal feed manufactures filed a complaint with the Commission, alleging among other things, that Foskor's pricing of phosphoric acid to domestic customers amounted to excessive pricing; in contravention of section 8(a) of the Act. Upon learning about the Commission's concern, Foskor approached the Commission for a settlement agreement. Foskor admitted to contravening the Act and explained that the 75% freight rate component charged to all customers was not related to the supply of phosphoric acid to local customers. Foskor agreed to remove the notional (unrelated) costs and undertook only to charge domestic customers a price based on Free On Board (FOB) Richard's Bay.

On 1 August 2008, Foskor revised its pricing policy and removed the export freight cost charged to international customers, which significantly reduced domestic prices of phosphoric acid. Foskor complied with the Tribunal's consent order until approximately August 2014, when it started deviating from it. Foskor then started charging a price higher than the price that would have applied had it complied with the consent order.

In an attempt to get Foskor to comply with the Order of the Tribunal, a customer of Foskor, Omnia, referred the matter to the High Court on two occasions. On both occasions, the Courts ruled in favour of the applicant (Omnia) and found Foskor to have breached the agreement. On 19 February 2016, Foskor applied for a variation of the Tribunal's order. Thereafter, the Commission entered into a variation agreement with Foskor on 25 April 2017.

The rationale for the impact assessment was to ascertain the impact of the consent agreement with Foskor, as well as the deviation therefrom, on the phosphoric acid industry and on industries in the downstream. The food and agro-processing sector is one of the Commission's priority sectors. Phosphoric acid is a major input in the production of fertiliser, which in turn is critical for the production of agricultural products. The study was conducted using both qualitative and quantitative analysis.

IMPACT ON PHOSPHORIC ACID MARKET

Given that domestic customers were charged at the same rate that Foskor charged international customers prior to August 2008, the prices it charged domestic customers closely tracked the CFR (India) price. Between August 2008 and August 2014, domestic prices were generally below the CFR (India) price given that domestic customers were no longer being charged the cost of freight. After Foskor deviated from the COB price around August 2014, prices charged to domestic customers initially tracked the CFR (India) price but then later exceeded it (along with the FOB price it would have charged under the consent order). In real terms, prices charged to domestic customers in the deviation period reached levels similar to those that had applied during the consent order period.

The voluntary removal of the freight rate did not appear to impact on the volumes of phosphoric acid produced and sold by Foskor. There was a reduction in volumes produced and sold after the consent order was formalised, and again when Foskor deviated from the consent agreement. These were attributed to other causes, such as inefficiencies at the plant at the Acid Division, in Foskor's financial reports.

Foskor experienced consistent profit losses after the consent order was formally signed in February 2011. Although it provided some relief, Foskor continued to experience profit losses after it deviated from the consent order. In fact, its losses increased soon after it deviated. There are a number of other factors that may have also contributed to the losses experienced by Foskor's Acid business, including the international price of Sulphuric Acid (which increased after the consent order was signed), plant issues which raised production costs, the change in the international prices of phosphoric acid, and exchange rate movements. Nonetheless, the Commission believes that losses would have been worse had Foskor continued to comply with the consent order after August 2014.

The Commission also examined whether the consent order impacted on the amount of phosphoric acid that Foskor sold to domestic customers, as opposed to exporting it. One would expect that domestic sales would worsen with the removal of the freight charge to domestic customers, given that Foskor would no longer be earning the margins it previously did on sales to those customers. This was not the case; phosphoric acid sales to domestic customers increased when Foskor voluntarily dropped its freight rate from the price it charged local customers. Sales to domestic customers relative to international customers increased when Foskor deviated from the consent arrangement, potentially partly because it could get better prices on the domestic market than it could get internationally (CFR (India)).

IMPACT ON PHOSPHATE ROCK MARKET

The Commission found that Foskor's phosphate rock business has been profitable, with sales and profits both increasing from FY 2011 - FY 2016. The Commission also found evidence to suggest that Foskor responded to the formalisation of the consent order by increasing its sales of phosphate rock to external customers, and decreasing transfers to its Acid Division for conversion into phosphoric acid.

This ex-post analysis has shown that even if the customers of Foskor have become less competitive than their competitors internationally after deviating from the consent agreement, exports of phosphoric acid are similar to before the deviation. This analysis further shows that import volumes declined, Omnia's profits continued to increase, and price increases of Profert and Yara appeared to have been passed on to their customers. In contrast, the consent order resulted in losses to Foskor's phosphoric acid business, which has continued to deteriorate. This lends credence to Foskor's assertion that the consent order threatened the sustainability of Foskor.

NHN EXEMPTION RESULTS IN COMPETITIVE PRIVATE MEDICAL HEALTHCARE MARKET

The Commission has also had a positive impact on the private medical healthcare market, through the NHN exemption. In November 2018, the Commission conditionally approved an exemption allowing the National Hospital Network (NHN) to negotiate prices with medical schemes on

behalf of its members; to negotiate global fees with medical schemes, administrators, the state and healthcare providers (professional associations); and to undertake collective or centralised procurement.

The Commission has granted several exemptions to the NHN since 2006, based on the premise that the conduct will promote the ability of small businesses, or firms owned or controlled by historically disadvantaged persons to become competitive in the private medical healthcare market.

The NHN Exemption had a profound impact on the market for private medical healthcare in South Africa, which has traditionally been dominated by the so called ‘Big Three’ hospital groups – Mediclinic, Netcare, and Life hospitals. The exemption introduced a competitive constraint on the Hospital Groups, by allowing NHN members to overcome the administrative burden of each individual member negotiating an annual tariff with each medical aid scheme, thus enabling

them to negotiate competitive tariffs that have made NHN members more competitive with the Mediclinic, Netcare, and Life hospitals. The NHN, through its collective bargaining exemption, has been able to negotiate competitive tariffs on behalf of its members. This is of the utmost importance to hospitals, as these tariffs set the amounts the hospitals can charge medical aid schemes for the services they render.

The Commission saw the NHN’s membership growing by 76 facilities, from 143 in 2013 to 211 in 2017; adding 2487 beds to the group during this period. The centralised procurement with manufacturers and suppliers, of surgical consumables and medical devices used by its members in their facilities, levels the playing field with major hospital groups who are able to purchase centrally across their groups and obtain volume discounts from suppliers and manufacturers. In a nutshell, allowing the NHN’s members to centrally procure products enables them to negotiate best prices from manufacturers and suppliers, and makes them more competitive.

COMMISSION’S INTERVENTIONS IN PRIORITY SECTORS

Table 1: Noteworthy Commission work in priority sectors

| PRIORITY SECTOR | TYPE OF INTERVENTION |
|--|---|
| Food and agro-processing | The Commission is conducting a market inquiry in the grocery retail sector. |
| Construction and infrastructure | The Commission concluded several settlement agreements in the construction sector. The Commission is also investigating major “abuse of dominance” cases in the sector. |
| Healthcare | The Commission is conducting a market inquiry in the private healthcare sector. The Commission reviewed mergers and an exemption in the sector, |
| Information and communication technology | The Commission is conducting a market inquiry into data prices. The Commission also has several ongoing “abuse of dominance” investigations in the sector. The Commission also referred a “bid rigging” and an “abuse of dominance” matter in the sector. |
| Intermediate and Industrial inputs | The Commission has reviewed and conditionally approved a merger in the sector. |
| Banking and Financial Services | The Commission reviewed and conditionally approved mergers in the sector. |
| Energy | The Commission reviewed and conditionally approved mergers in the sector. |

Although the Commission identified its areas of focus, it receives complaints from many sectors in the economy. Figure one below illustrates the top nine (9) sectors where the Commission received the most complaints. From the figure it can be observed that healthcare,

information and communication technology, banking and financial services, and construction are identifiable as the Commission’s priority sectors; continuing to receive many complaints.

Diagram 1: Sectors with the most complaints

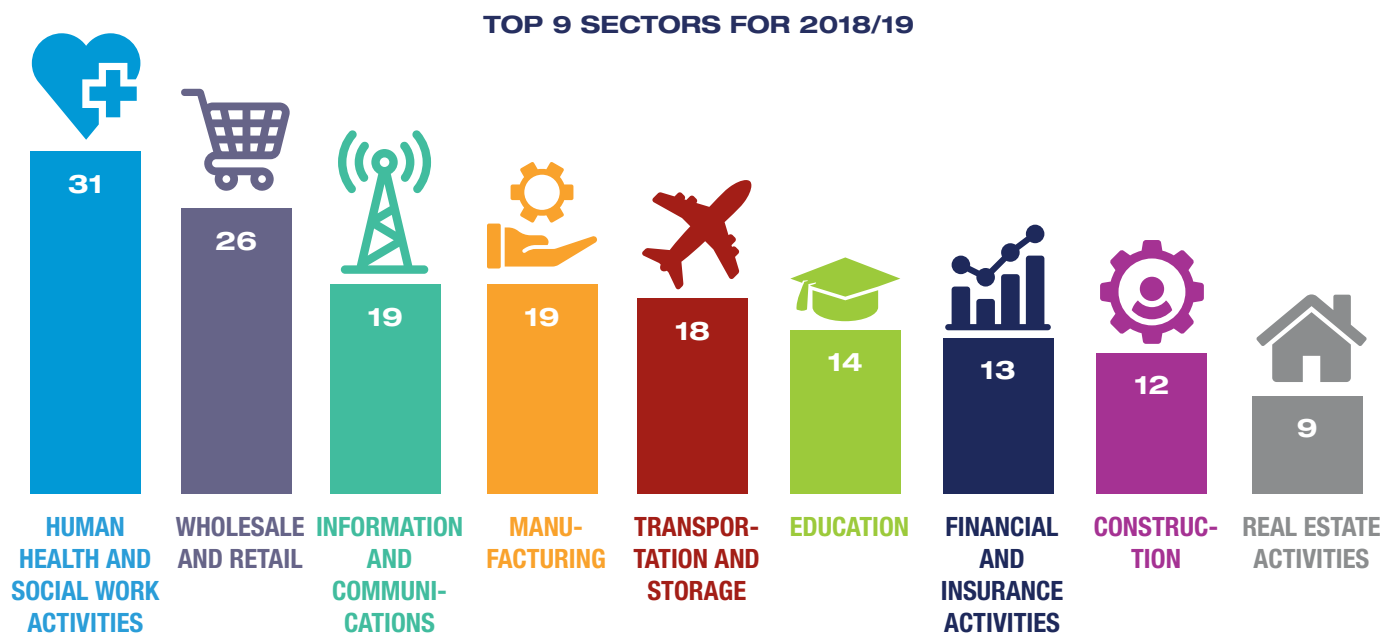


Table 2: Commission's litigation load at the end of 2018/19

| CATEGORY | NUMBER OF CASES |
|--|-----------------|
| Cartel cases in litigation | 127 |
| Abuse of dominance cases in litigation | 10 |
| Minimum resale price maintenance cases in litigation | 2 |
| Contested large mergers in the Tribunal | 4 |
| Merger reconsiderations in litigation | 2 |
| Prior implementation cases in litigation | 4 |
| Number of appeals, review and variation application | 9 |
| Total cases | 158 |

THE COMMISSION WELCOMES THE AMENDMENTS TO THE COMPETITION ACT

The Competition Act was amended to, amongst other things, introduce provisions that clarify and improve the determination of prohibited practices relating to (1) restrictive horizontal and vertical practices, (2) abuse of dominance and price discrimination, (3) strengthening the penalty regime, (4) introducing greater flexibility in the granting of exemptions that promote transformation and growth, strengthening the role of market inquiries and merger processes in the promotion of competition and economic transformation – through addressing the structures and de-concentration of markets, (5) protecting and stimulating the growth of small and medium-sized businesses and firms owned and controlled by historically disadvantaged persons, while at the same time protecting and promoting employment and employment security. Below is a summary of some of the key provisions in the amendments:

PRICE DISCRIMINATION

The new provision in section 9(3) states: “When determining whether the dominant firm’s action is prohibited price discrimination, the dominant firm must show that its action does not impede the ability of small and medium enterprises and firms controlled or owned by historically disadvantaged persons to participate effectively”.

EXCESSIVE PRICING

The new provision in section 8(1)(d)(vii) states: “It is prohibited for a dominant firm to engage in any of the following exclusionary acts, unless the firm concerned can show technological efficiency or other pro-competitive gains which outweigh the anti-competitive effect of requiring a supplier which is not a dominant firm, particularly a small and medium business or a firm controlled or owned by a historically disadvantaged person, to sell its product to the dominant firm at a price which impedes the ability of the supplier to participate effectively”.

REFUSAL TO DEAL

The amendment in section 8(1)(d)(ii) states: “It is prohibited for a dominant firm to engage in any of the following exclusionary acts, unless the firm concerned can show technological efficiency or other pro-competitive gains which outweigh the anti-competitive effect of refusing to supply scarce goods or services to a competitor or customer when supplying those goods or services is economically feasible”.

PREDATORY PRICING

The amendment in section 8(1)(d)(vi) states: “It is prohibited for a dominant firm to engage in any of the following exclusionary acts, unless the firm concerned can show technological efficiency or other pro-competitive gains which outweigh the anti-competitive effect of selling goods or services at predatory prices.

- a. predatory prices means prices for goods or services below the firm’s average avoidable cost or average variable cost;
- b. average avoidable cost means the sum of all costs, including variable costs and product-specific fixed costs, that could have been avoided if the firm had not produced an identified amount of additional output; and
- c. average variable cost means the sum of all the costs that vary with an identified quantity of a particular product, divided by the total produced quantity of that product”.

EXEMPTION PROVISIONS

The amendment in section 10(3)(b)(ii) states: “The Competition Commission may grant an exemption only if the agreement or practice concerned, or category of agreements or practices concerned, contributes to the promotion of the effective entry into, participation in and expansion within a market by small and medium business, or firms controlled or owned by historically disadvantaged persons”.

The amendment in section 10(10) states: “The Minister may, after consultation with the Competition Commission, and in order to

give effect to the purposes of this Act as set out in section 2, issue regulations in terms of section 78 exempting an agreement or practice or category of agreements or practices from the application of this Chapter”.

MERGER PROVISIONS

The amendments to section 12A(1) and 12A(1A) state: “When required to consider a merger, the Competition Commission or Competition Tribunal must initially determine whether or not the merger is likely to substantially prevent or lessen competition. Despite its determination, the Competition Commission or Competition Tribunal must also determine whether the merger can or cannot be justified on substantial public interest grounds”.

The amendment to section 12A(3) states: “When determining whether a merger can or cannot be justified on public interest grounds, the Competition Commission or the Competition Tribunal must consider the effect that the merger will have on the ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to effectively enter into, participate in and expand within the market”.

The amendment to section 17(1)(c) states: “Within 20 business days after notice of a decision by the Competition Tribunal in terms of [a merger], an appeal from that decision may be made to the Competition Appeal Court, subject to its rules, by the Minister on matters raised in terms of [public interest], where the Minister participated in the Competition Commission’s or Tribunal’s proceedings in terms of section 18 or on application for leave to appeal to the Competition Appeal Court”.

MARKET INQUIRIES

The amendments to 43A(3) read together with 43B(1), 43C(1) and (2) and with the powers in 43D(1) state: “The Competition Commission may conduct a market inquiry at any time, subject to [certain procedural rules], if it has reason to believe that any feature or combination of features of a market for any goods or services impedes, distorts or restricts competition within that market; or to

achieve the purposes of this Act. Any reference to a feature of a market for goods or services includes:

- a. The structure of the market, including levels of concentration and barriers to entry in a market;
- b. The outcomes observed in the market, such as ownership, prices, innovation, employment, and the ability of national industries to compete in international markets; and
- c. The conduct in that or any related market.

In a market inquiry, the Competition Commission must decide whether any feature, including structure and levels of concentration, of each relevant market for any goods or services impedes, restricts or distorts competition within that market. In making its decision in terms of subsection (1)(a), the Competition Commission must have regard to the impact of the adverse effect on competition on small and medium businesses, or firms controlled or owned by historically disadvantaged persons.

Subject to the provisions of any law, the Competition Commission may, in relation to each adverse effect on competition, take action to remedy, mitigate or prevent the adverse effect on competition”.

ADMINISTRATIVE PENALTIES

The amendment to section 59(1) states: “The Competition Tribunal may impose an administrative penalty for a prohibited practice, [including all types of restricted horizontal practices, restricted vertical practices, abuse of dominance and price discrimination. The amendments to sections 59(2A), 59(3)(d) and 3A state:

An administrative penalty imposed in terms of subsection (1) may not exceed 25 per cent of the firm’s annual turnover in the Republic and its exports from the Republic during the firm’s preceding financial year if the conduct is substantially a repeat by the same firm of conduct previously found by the Competition Tribunal to be a prohibited practice.

When determining an appropriate penalty, the Competition Tribunal must consider the market circumstances in which the contravention

took place, including whether, and to what extent, the contravention had an impact upon small and medium businesses and firms owned or controlled by historically disadvantaged persons. In determining the extent of the administrative penalty to be imposed, the Competition Tribunal may increase the administrative penalty to include the turnover of any firm or firms that control the respondent, where the controlling firm or firms knew or should reasonably have known that the respondent was engaging in the prohibited conduct”.

BENCHMARKS

The amendment to section 8(4) states: “The Competition Commission must publish guidelines in terms of section 79 setting out the relevant factors and benchmarks for determining whether the practice set out in subsection (1)(d) (vii) impedes the ability of a firm which is not a dominant firm, particularly a small and medium business or a firm owned or controlled by a historically disadvantaged person, to participate effectively”.

The new definitions say: “Small business means a small firm determined by the Minister by notice in the Gazette, or if no determination has been made, as set out in the National Small Business Act, 1996 (Act No. 102 of 1996). Medium-sized business means a medium-sized firm as determined by the Minister by notice in the Gazette. Small and medium business means either a small business or a medium-sized business.

THE COMMISSION PUBLISHES GUIDELINES FOR DETERMINATION OF ADMINISTRATIVE PENALTIES

On 29 March 2019, the Commission published in the Government Gazette its guidelines for the determination of administrative penalties in cases of failure to notify and prior implementation.

As part of its mandate, the Commission is empowered in terms of section 79(1) of the Act, to prepare and publish guidelines to indicate and clarify the Commission’s policy approach on any matter within its jurisdiction.

The guidelines set out the Commission’s approach in determining administrative penalties in cases of failure to notify and prior implementation, and its methodology are determined in five steps.

The Commission has used a filing fee-based methodology in these guidelines which is different from the guidelines for determining administrative penalties for prohibited practices cases, which uses a turnover-based methodology. This is because the Tribunal has advised, in its consideration of cases of failure to notify and prior implementation, that a turnover-based methodology for calculating penalties in failure to notify and/or prior implementation cases may be inappropriate.

These guidelines are aimed at conduct which amounts to run-of-the-mill contraventions of the provisions of Chapter 3 of the Competition Act and will not apply to conduct which is wilful or deliberate. The Commission will seek the maximum allowable penalty as stipulated in section 59(2) of the Act as well as a divestiture, where appropriate.

These guidelines are not binding on the Commission, the Competition Tribunal or the Competition Appeal Court in the exercise of their respective powers in terms of the Competition Act. In addition, the guidelines do not fetter the discretion of the competition authorities to consider administrative penalties on a case-by-case basis.

PART C

PERFORMANCE INFORMATION



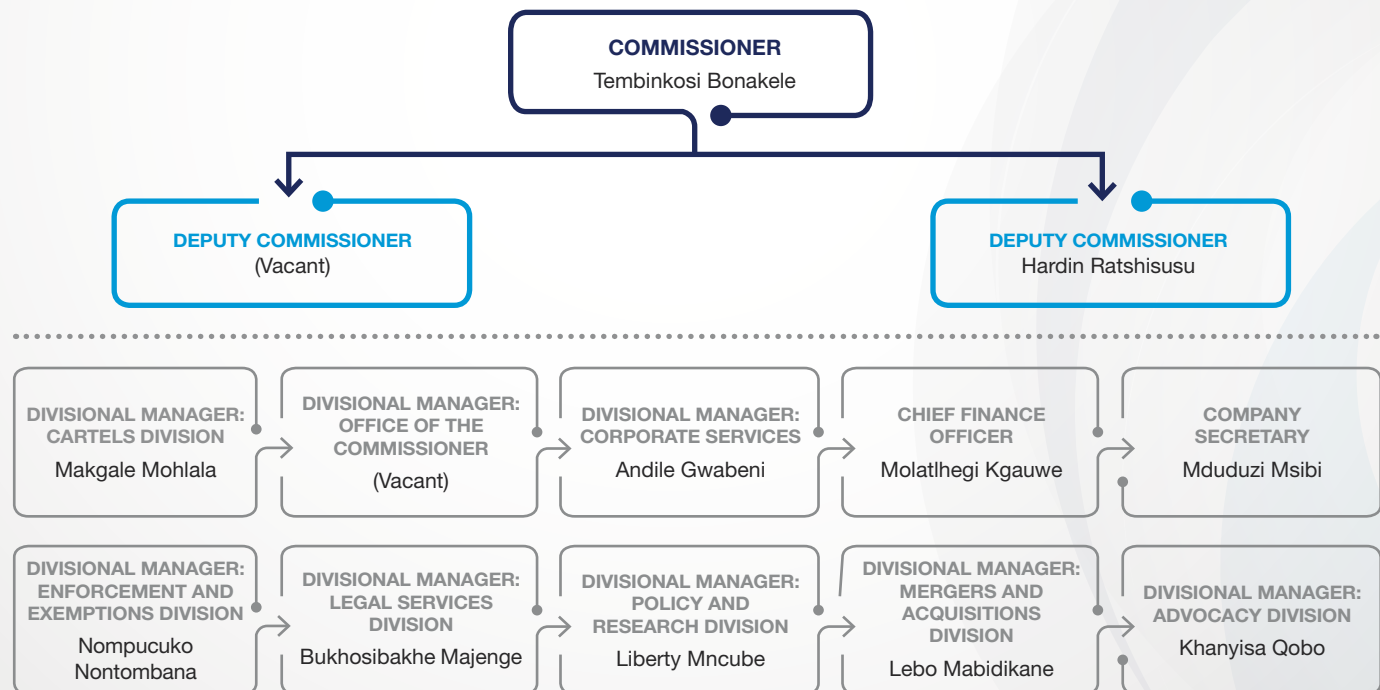
ORGANISATIONAL STRUCTURE

The Commission has four main functions underpinning its mandate, namely enforcement, advocacy, market inquiries and the regulation of mergers and acquisitions.

The Commission's enforcement function can be defined as the investigation of vertical restrictive practices, horizontal restrictive

practices – including cartels – and the investigation of abuse of dominance by firms. Advocacy refers to the Commission's authority to promote voluntary compliance with the Act. A market inquiry is a broad investigation into the cause of market failure in an identified market, without focusing on the conduct of any particular firm in that market. Finally, the regulation of mergers and acquisitions entails the assessment of corporate consolidations in order to determine their likely impact on competition and the public interest.

Diagram 2: Organisational structure during 2018/19



DIVISIONAL REPORTS

This section sets out the performance results achieved by the various divisions in pursuit of the Commission's strategic goals for the year.

The six core divisions that carried out the Commission's main functions during the reporting period were:

- **Market Conduct Division (MCD):** investigating abuse of dominance, vertical restrictive practices, assessing exemption applications and conducting market inquiries;
- **Cartels Division (CD):** investigating collusive practices;
- **Mergers and Acquisitions Division (M&A):** analysing and evaluating corporate consolidations;
- **Legal Services Division (LSD):** providing litigation services and legal expertise to the Commission and advisory opinions to the public; and
- **Economic Research Bureau (ERB):** providing economic

expertise to the organisation and enhancing the Commission's knowledge and understanding of market dynamics.

- **Advocacy:** conduct preliminary investigation of complaints received, provide policy responses and advocacy to encourage voluntary compliance with the Act, and strategic planning and monitoring. The function is also responsible for managing the Commission's relations with international stakeholders.

Corporate support services are the responsibility of the Corporate Services Division (CSD). These comprise human resource management, registry, security and facilities management, as well as the management of information technology. The Finance Division is tasked with the responsibility for finance management. Finally, the Office of the Commissioner (OTC) carries out communication and corporate governance.

Table 3 shows each of the Commission's strategic goals and the Commission's division responsible for achieving them.

Table 3: Strategic goals, outcomes and responsible divisions

| STRATEGIC GOAL | INTENDED OUTCOMES | RESPONSIBLE DIVISIONS |
|---|---|--|
| Effective competition enforcement and merger regulation | <ul style="list-style-type: none"> • Efficient and effective merger regulation • Competitive markets; • Improved public interest outcomes in markets; • Increased competition compliance; and • Improved understanding of market dynamics in priority sectors. | <ul style="list-style-type: none"> • MCD • CD • M&A Division • LSD • ERB Division |
| Strategic collaboration and advocacy | <ul style="list-style-type: none"> • Improved co-ordination in the application of economic policy and competition policy; • Increased importance of developmental perspectives in domestic and international competition law discourse; and • Improved compliance and awareness. | <ul style="list-style-type: none"> • Office of the Commissioner • Advocacy Division |
| A high performance agency | <ul style="list-style-type: none"> • Improved organisational efficiency; • Accountably managed resources; and • Highly motivated and productive people. | <ul style="list-style-type: none"> • CSD • All other divisions |

1 MARKET CONDUCT DIVISION

The Market Conduct Division investigates and, together with LSD, prosecutes restrictive vertical practices and abuse of dominance. The Market Conduct Division also evaluates exemption applications when these are brought to the Commission; and conducts market inquiries. The investigative work of the Market Conduct Division comes from two main sources – complaints and exemption applications filed by the public, and investigations and market inquiries that are proactively initiated by the Commissioner.

Restrictive vertical practices are agreements involving firms at different levels of the value chain (such as a supplier and its customers). Certain of these agreements require the Commission to conduct the substantial lessening of competition (SLC) test, which assesses possible justifications for such agreements. However, a category of these agreements that are outright prohibited (per se prohibition) exists: those involving the practice of minimum resale price maintenance.

Abuse of a dominant position by a firm may include excessive pricing of goods or services, denying competitors access to an essential facility, price discrimination (unjustifiably charging customers different prices for the same goods or services) and other exclusionary acts (such as refusal to supply scarce goods to a competitor, inducing suppliers or customers not to deal with a competitor, charging prices that are below cost so as to exclude rivals, bundling goods or services, and buying up a scarce input required by a competitor).

The Act prohibits the abuse of a dominant position by firms in a market but does not prohibit firms from holding a dominant position. Proving abuse of dominance requires extensive evidence and analysis. Firstly, it must be proven that the respondent is dominant in a specific market. The Act uses both market share and market power to define dominance. Secondly, there must be evidence that the respondent is abusing their dominance. This evidence relates to substantial foreclosure or consumer welfare (harm).

Exemption applications are granted to firms that wish to engage in anti-competitive conduct if the conduct and their motivation meet the requirements set out in the Act. The Market Conduct Division also conducts market inquiries, which are formal inquiries into the general state of competition in a market for particular goods or services, without necessarily referring to the conduct or activities of any particular firm.

SUMMARY OF PERFORMANCE AGAINST TARGETS

The Market Conduct Division was responsible for five (5) performance targets in the 2018/19 financial year. Of the five targets, only one efficiency target was met. Targets that were not met related to initiation of new market inquiries and an abuse of dominance complaint. These targets were not met because of budgetary constraints.

PERFORMANCE HIGHLIGHTS

In this financial year the Market Conduct Division received a total of 252 complaints from the public, and initiated 1 complaint as a result of internal research and market intelligence. Table 2 sets out the total number of complaints the Market Conduct Division handled during the financial year.

Table 4: Market Conduct cases received and finalised in 2018/19

| MARKET CONDUCT CASES | 2018/19 |
|--|---------|
| COMPLAINTS RECEIVED FROM THE PUBLIC | 256 |
| COMPLAINTS INITIATED BY THE COMMISSION | 1 |
| COMPLAINTS WITHDRAWN | 6 |
| COMPLAINTS CLOSED (NON-REFERRED) AT SCREENING STAGE | 193 |
| COMPLAINTS THAT BECAME FULL INVESTIGATIONS IN MARKET CONDUCT | 10 |
| COMPLAINTS CLOSED (NON-REFERRED) AFTER FULL INVESTIGATIONS | 14 |
| COMPLAINTS REFERRED TO THE TRIBUNAL FOR ADJUDICATION AFTER FULL INVESTIGATION | 1 |

During this period the Commission received one (1) exemption application and finalised two (2) applications. The number of exemption applications received and assessed is set out in Table 5. The more significant cases finalised by the Commission in this financial year are discussed below.

Table 5: Exemption applications received and finalised in 2018/19

| APPLICANT | CONDUCT SOUGHT TO BE EXEMPTED | STATUS OF THE APPLICATION AT YEAR END |
|--|--|---|
| Air Mauritius Limited (“AM”) and South African Airways SOC Limited (“SAA”) | Joint venture agreement between AM and SAA. The agreement is expected to introduce synergies and improve efficiencies primarily through a code-share arrangement. The applicants seek to align their economic incentives by pooling the revenue and costs associated with their integrated routes. AM and SAA submit that the above conduct is necessary to attain the objectives stipulated under sections 10(3)(i), (ii) and (iii) of the Act. | The review of the exemption application is still ongoing. |

Below we discuss some of the key cases completed by the Market Conduct division during the 2018/19 financial year:

SCHOOL UNIFORM INVESTIGATION

The Commission has concluded consent order agreements with Inspired Schools (Pty) Limited trading as Reddam House schools and Reddford House schools, ADvTECH Ltd, St. Andrews School for Girls NPC and Curro Holdings Ltd.

The conclusion of these consent order agreements is a significant milestone since the commencement of the school uniform investigation. The investigation was initiated by the Commissioner on 27 January 2017, after receiving submissions and several complaints from the public. In the complaint, the Commissioner alleges that certain manufacturers or suppliers of school uniforms as well as certain schools have concluded exclusive supply agreements and that the price of school uniform items is excessive, and potentially contravenes sections 5(1), 8(a) and 8(c) of the Act.

During the investigation, the Commission engaged some of the schools implicated in the alleged conduct, and these engagements culminated in the conclusion of consent order agreements with the schools.

On 27 February 2019, the Tribunal confirmed each of the consent agreements between the Commission and Inspired Schools (Pty) Limited trading as Reddam House schools and Reddford House schools, ADvTECH Ltd, St. Andrews School for Girls NPC and Curro Holdings Ltd. This marks the conclusion of the first phase of the school uniform investigation, initiated following complaints about the high cost of uniforms due to many schools being supplied by a single supplier.

The Commission has been engaged in extensive awareness-raising and education on this matter, given its interest in changing behaviour – rather than costly and lengthy litigation that may undermine the core mandate of schools – that of educating learners. In view of this, the Commission has developed the School Uniform Guidelines aimed at raising awareness on anti-competitive behaviour at schools. In addition,



the Commission entered into a Memorandum of Agreement with the federation of school governing bodies, FEDSAS, aimed at educating and encouraging schools to comply with the guidelines. Advocacy work in this area is further reported under the Advocacy division.

COMPETITION COMMISSION REFERS ANOTHER CASE AGAINST COMPUTICKET (PTY) LTD AND SHOPRITE CHECKERS (PTY) LTD

The Commission has referred to the Tribunal for prosecution ticket distributors, Computicket (Pty) Ltd (Computicket) and Shoprite Checkers (Pty) Ltd (Shoprite Checkers), alleging that they engaged in anti-competitive practices by concluding exclusive agreements with inventory providers for the provision of outsourced ticket distribution services for the entertainment industry. This covers events such as sports, cinemas, theatres, festivals and live events.

This complaint is similar to the case against Computicket which the Commission referred to the Tribunal in 2010. The first Computicket matter was heard by the Tribunal in October 2017, where the Tribunal found in favour of the Commission and fined Computicket an administrative penalty of Twenty Million Rands (R20 000 000). The allegations in the current Computicket matter are of a similar nature to the ones in the first Computicket matter, however, the prosecution is for the contravention of section 8(d) and alternatively 8(c) of the Act, for the period from January 2013 to date, and Shoprite Checkers has been added as a second respondent.

The Commission has asked the Tribunal to impose an administrative penalty of 10% of the annual turnovers of both Computicket and Shoprite Checkers.

NHN EXEMPTION GRANTED

Last year, the Commission granted the National Hospital Network (NHN), a co-operative venture of medical enterprises, a new five-year exemption commencing from 01 November 2018 to 31 October 2023. The exemption covers collective bargaining, global fee negotiations and centralised procurement. An exemption effectively gives permission for applicants to contravene specific sections of the Competition Act 89 of 1998 as amended (the Competition Act). The NHN is a non-profit company, a co-operative venture that is controlled by its members, a group of independent private hospitals who run medical establishments such as day clinics, sub-acute facilities and psychiatric facilities. These members are broadly competitors in the provision of private healthcare services. For the last 12 years and 10 months, the Commission had granted the NHN exemptions which allowed the network to engage in collective bargaining with medical schemes and medical scheme administrators on behalf of its members. In August 2017 the NHN, in addition to the collective bargaining exemption, applied for another exemption to also engage in global fee negotiations with medical schemes, administrators, the state and healthcare providers (professional associations) and to undertake collective or centralised procurement on behalf of its members.

Ordinarily, this conduct constitutes price fixing prohibited under section 4 of the Competition Act. However, the Commission may grant an exemption in terms of subsection 10(3)(b) only if the agreement or practice concerned, or category of agreements or practices concerned, amongst others, contributes to the following objective: “(ii) promotion of the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive”.

On 17 September 2017 the Commission, through a notice in the Government Gazette, invited relevant stakeholders to make



submissions in relation to the application. In granting the exemption, the Commission considered the fact that the market dynamics in the healthcare industry are characterised by high levels of concentration and high barriers to entry.

Overall, the Commission found that the pro-competitive gains that would arise from the exemption will enable NHN members to compete effectively in the market. The Commission granted the exemption subject to the following conditions:

- The NHN, when entering into global fee arrangements, shall limit the use of carve-outs or exclusions from these agreements, and that global fees be negotiated on the premise of full risk sharing between the medical aid schemes and administrators and the providers of healthcare services. Moreover, the negotiation of global fees agreements must also include transparent performance measures; and
- The NHN is required to submit information to the Commission on an annual basis as would be required to monitor the impact of the measures taken to meet the objective relied upon, and to assess whether the NHN is meeting the objective on an on-going basis.

In addition to the above conditions, the Commission has imposed another condition requiring NHN members who do not meet the legislative criteria to be classified as either small businesses (SMME) or firms owned by historically disadvantaged persons (HDP) to transform their ownership structures within a period of 24 months in order to meet the legislative criteria as stipulated for firms owned or controlled by historically disadvantaged persons.

The conditions imposed are intended to enable the NHN to fully achieve the objectives in the exemption application, and for the Commission to effectively monitor implementation.

ABALONE EXEMPTION APPLICATION

On 13 June 2016, the Abalone Farmers Association of South Africa

and its members (AFASA), filed an application for exemption in terms of section 10(1)(b) of the Act for a period of ten (10) years. AFASA is an independent non-profit organisation that promotes the interests and image of its members in the abalone industry. It is comprised of various abalone farmers who are active in the business of farming, processing and marketing of abalone for both local and international markets.

The exemption application covers a range of practices and agreements which are in contravention of sections 4(1)(a) and 4(1)(b) (i) of the Act.

The applicants relied on the objectives set out in section 10(3)(b) (i) of the Act and submit that the exemption sought is required to achieve price stability in the affected markets, which will enable them to meet the objective of maintenance and promotion of exports. The applicants further submit that the stabilisation of price and market conditions will require, firstly, the sharing of market intelligence to enable each applicant to engage more capably and effectively in the affected markets and, secondly, requires information sharing for the purpose of achieving price stabilisation between the applicants within the affected markets.

The Commission is of the view that the sought exemption will enable the applicants to overcome the problem of information asymmetries that exists in the abalone market, thereby enabling the industry to achieve favourable and stable prices, leading to the promotion and maintenance of exports. However, the investigation also revealed that there is no meaningful transformation in the abalone industry. Furthermore, industry participants, especially those who are historically disadvantaged, have indicated they do not have access to information in relation to pricing and marketing/trading of abalone, which makes it challenging for them to actively participate in the industry. To address the transformation concerns, the applicants have committed to develop an industry plan that will facilitate transformation in the industry; by partnering with government and other relevant stakeholders. This industry plan will be developed within a period of six months. Accordingly, AFASA has been granted a short-term conditional exemption for a period of six months ending 30 June 2019.

2 CARTELS DIVISION

The Cartels Division (CD) is responsible for investigating and prosecuting cartel conduct. This comprises price fixing, market allocation and collusive tendering, all of which are prohibited by section 4(1)(b) of the Act. The CD is also responsible for administering the Commission's CLP, through which a self-confessing cartel member may report a cartel in exchange for immunity from prosecution.

One of the investigation tools available to the Commission is the use of dawn raids. A dawn raid, which the Act refers to as a "search and seizure" operation, takes place when the Commission suspects that information that may be useful for its investigation is in the possession of a party on the premises it seeks to raid. The Act authorises the Commission to enter and search with or without a warrant under specified circumstances.

SUMMARY OF PERFORMANCE AGAINST TARGETS

The Cartels Division was responsible for three (3) performance targets in 2018/19 financial year; including one (1) target jointly shared with the Legal Services Division (LSD). The Cartels Division met two (2) of the three (3) targets, the one (1) target was not met due to resource constraints – in particular, resources for investigation were moved to litigation.

PERFORMANCE HIGHLIGHTS

During the 2018/19 financial year, the Commission initiated 22 cartel investigations. A total of 30 cartel investigations were completed during financial year 2018/19. Of these, 18 were referred to the Tribunal for prosecution, while 12 were non-referred. The Cartels Division received 7 CLP applications in 2018/19 financial year. The Cartels Division did not conduct any dawn raids in the 2018/19 financial year due to limited financial resources.

Table 6: Cartels case statistics

| CARTEL CASES RECEIVED, INVESTIGATED AND FINALISED | 2018/19 | 2017/18 | 2016/17 |
|---|---------|---------|---------|
| TOTAL CASES HANDLED IN THE YEAR | 142 | 146 | 86 |
| COMPLETED INVESTIGATIONS | 30 | 63 | 33 |
| REFERRALS TO THE TRIBUNAL | 18 | 52 | 27 |
| CASES NON-REFERRED | 12 | 11 | 6 |
| CASES INITIATED BY THE COMMISSION | 22 | 28 | 26 |
| CASES RECEIVED FROM THIRD PARTIES | 13 | 35 | 17 |
| CASES TAKEN OVER FROM PREVIOUS YEAR | 91 | 83 | 74 |

Key cartel investigations are discussed below:

STATE INFORMATION TECHNOLOGY AGENCY (SITA) VS K.F COMPUTERS CC & SAAB GRINTEK DEFENCE (PTY) LTD

On 4 March 2016, the Commission received a complaint from the State Information Technology Agency (SITA). SITA alleged that K.F Computers CC (K.F Computers) & SAAB Grintek Defence (Pty) Ltd (SAAB) have entered into an agreement and or engaged in a concerted practice to tender collusively in contravention of section 4(1)(b)(iii) of the Act. The two firms have been charged with collusive tendering in respect of the tender issued by SITA for the provision of network maintenance and systems support services to the South African Air Force's (SAAF) Ground Command and Control Systems (GCCS) and Current Intelligence System (CURIS).

The Commission concluded its investigation and found that between December 2015 and January 2016, K.F Computers and SAAB discussed and agreed on how to respond to the invitation to tender, and also agreed on a scheme to ensure that K.F Computers remained an incumbent service provider of network maintenance and system support services to the SAAF's GSSC and the CURIS systems. Furthermore, K.F Computers and SAAB agreed that if the tender is awarded to SAAB, a portion of the tender would be subcontracted to K.F Computers. This subcontract work represented the total amount of K.F Computers' tender price. As a result of this arrangement, K.F Computers would have retained its incumbency of providing these services to the South African Air Force at Waterkloof Air Force base. SAAB would have earned a commission of 15% for assisting K.F Computers to win the tender.

The Commission found that K.F Computers and SAAB had tendered collusively when bidding for the above-mentioned tender in contravention of section 4(1)(b)(iii) of the Act and referred the case to the Tribunal for prosecution.

On 26 March 2019, the Commission decided to refer a complaint against K.F Computers and SAAB to the Competition Tribunal for prosecution.

COMPETITION COMMISSION V MPACT LTD AND NEW ERA (PTY) LTD

On 16 May 2016, the Commission initiated a complaint against Mpack Ltd (Mpack) and New Era Packaging (Pty) Ltd (New Era). In terms of the complaint, it is alleged that Mpack and New Era have entered into an agreement and/or engaged in a concerted practice to fix prices, divide the market by allocating customers, and tendering collusively in the market for the manufacture and supply of corrugated packaging paper products in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act. The two firms are competitors in the market for the manufacture and supply of container boards and carton boards. These products are used to produce the final packaging paper product; being the finished boxes. The finished boxes include fruit boxes, and boxes for secondary packaging of wholesale goods, cereal boxes, detergent boxes and paper plates.

Pursuant to the initiation of the complaint, the Commission conducted dawn raids and subsequently received a leniency application from Mpack.

The Commission concluded its investigation and found that Mpack and New Era agreed not to compete with each other for certain customers in the market for the supply of packaging paper products. Furthermore, the Commission found that these firms had achieved this by agreeing to allocate customers and ensuring that they did not bid in competition with each other in respect of the allocated customers. Mpack Ltd and New Era also rigged the bids that they submitted to customers in order to prevent other market players from competing with them for the business of their allocated customers.

On 26 March 2019, the Commission decided to refer a complaint against Mpack and New Era to the Competition Tribunal for prosecution. Furthermore, the Commission also granted Mpack leniency in terms of the Commission's CLP policy).

THE COMMISSION REFERS A CASE AGAINST AUTOMATIC SPRINKLER INSPECTION BUREAU AND ALL ITS LISTED COMPANIES

On 05 July 2017, the Commission initiated a complaint against Automatic Sprinkler Inspection Bureau (ASIB) and its listed automatic fire sprinkler installers (Listed Installers), for their agreement to divide markets by allocating specific services to each other. This agreement entailed that ASIB would provide inspection services whilst the Listed Installers would provide automatic sprinkler installation services in contravention of section 4(1)(b)(ii) of the Act.

The Commission found that on becoming a Listed Installer of ASIB, each of the Listed Installers agreed to adhere to ASIB rules which entailed that inspection services would be performed by ASIB only, whilst installation services would be provided by the Listed Installers only. Further to this, the Commission also found that the ASIB rules enabled Listed Installers to divide markets by allocating territories, in that they agreed that a Listed Installer registered in a particular area was prohibited from providing installation services in another area in competition with other Listed Installers who were registered in those areas.

It was during the investigation that the Commission initiated another complaint on 21 February 2018 against the ASIB listed fire sprinkler components suppliers (Listed Suppliers) for their agreement to fix trading conditions. The Listed Suppliers' agreement entailed that they would only deal with sprinkler installers who were listed with ASIB. This agreement was in contravention of section 4(1)(b)(i) of the Act.

The Commission found that ASIB provides Listed Installers with a list of suppliers from whom they can procure sprinkler components. The Commission also found that ASIB and the Listed Suppliers held a meeting wherein they agreed that the Listed Suppliers would only deal with sprinkler installers who were listed with ASIB, thereby limiting the supply of ASIB-accredited components to the Listed Installers.

In light of the above, ASIB, the Listed Installers and the Listed Suppliers were found to have contravened sections 4(1)(b)(i) and (ii)



of the Act, respectively. On 26 March 2019, the Commission took a decision to refer the two complaints to the Competition Tribunal for prosecution.

KARAN BEEF FINED AFTER CARTEL CONDUCT ADMISSION

On 12 September 2017, the Commissioner initiated a complaint against Karan Beef (Pty) Ltd (Karan Beef) and Irvin & Johnson (I&J) for division of the market by allocation of specific types of goods and

customers in the supply of processed beef products in contravention of section 4(1)(b)(ii) of the Act.

On 26 June 2000, these firms concluded a Manufacturing Agreement in terms of which Karan Beef undertook to cease the manufacture of processed beef products for its own account and instead utilises its skills to produce such products on behalf of I&J. In 2002, Karan Beef and I&J agreed to entrench their agreement through an Amending Agreement that introduced further restriction on Karan Beef.

In terms of the Amended Manufacturing Agreement, Karan Beef will not manufacture, market or produce any products that are the same or like any other processed beef products that it manufactures for I&J.

The Commission concluded that this conduct amounts to market division in contravention of section 4(1)(b)(ii) of the Act. On 13 February 2018 the Commission decided to refer the matter to the Tribunal for prosecution.

Karan Beef approached the Commission to settle the matter with admission of liability and paid a penalty amount of Two Million Seven and Hundred Thousand Rand (R2 700 000.00). On 26 September 2018 the Tribunal confirmed a consent agreement between the Commission and Karan Beef.

OMNIA SETTLEMENT AGREEMENT CONFIRMED

On 6 September 2018 the Tribunal confirmed the settlement agreement between Omnia Fertilizer Limited (Omnia) and the Commission. In terms of this agreement, Omnia admits that Nitrochem (Pty) Ltd (Nitrochem) fixed prices and allocated markets in contravention of the Act between 1998 and 2005.

In 2003 Nutri-Flo CC and Nutri-Fertilizer CC lodged a complaint with the Commission alleging that Sasol Chemical Industries Limited (Sasol) was harming it by acting anti-competitively. Omnia and its Nitrochem business were also mentioned in this complaint in relation to collusive conduct. The Commission investigated the matter and

decided to refer the matter to the Tribunal for adjudication.

On 4 May 2005 the Commission referred to the Tribunal its findings of anti-competitive conduct by Sasol, together with allegations that Omnia was involved in price fixing and market allocation. The Commission alleged in its referral that Sasol and certain competitors, including Omnia, had contravened section 4 of the Act by engaging in the following conduct:

- Dividing the market so that Sasol became the exclusive supplier of limestone ammonia nitrate (LAN) to the wholesale market; and
- Arrangements to fix the prices of LAN and other fertilizers as well as allocating customers, suppliers and volumes. These collusive arrangements were facilitated through meeting platforms such as Nitrogen Balance Committee, Import Planning Committee and the Export Club. Such collusion related to ammonia, potash, urea, mono-ammonium phosphate (MAP), di-ammonium phosphate (DAP) and LAN.

Sasol subsequently settled the allegations against it with the Commission and the matter was litigated through multiple forums, including the Supreme Court of Appeal. The matter is currently before the Competition Appeal Court for a review hearing. The Commission and Omnia agreed to settle this matter, with Omnia paying a settlement amount of R30 million to the Commission. In terms of the settlement, Omnia admits that its Nitrochem business engaged in price-fixing and market allocation in relation to ammonia, potash, urea, MAP, DAP and LAN between 1998 and 2005. The Commission welcomes the Tribunal's order confirming the settlement agreement between the Commission and Omnia, as it ends this long-running matter involving fertilizer, regarded as a primary agricultural input.

3 MERGERS AND ACQUISITIONS DIVISION

The Mergers and Acquisitions (M&A) Division assesses mergers filed with the Commission to determine whether the merger is likely to substantially prevent or lessen competition in a market, and whether the merger can or cannot be justified on public interest grounds. Not all mergers that have an effect within South Africa have to be notified to the Commission, only those that meet the thresholds set out in the Act. Mergers are classified as either small, intermediate or large, depending on the turnover or asset values of the merging firms. The Commission receives a filing fee for every intermediate or large merger filed.

According to the Act, it is not compulsory for small mergers to be notified and no filing fee is prescribed. However, the Commission may call for the notification of a small merger within six months of implementation, if it believes the merger is likely to substantially prevent or lessen competition, or if the merger cannot be justified on public interest grounds. In terms of the guidelines on small merger notifications, which it issued in April 2009, the Commission requires any party to a small merger to inform it of that merger if either party is under investigation by the Commission for a contravention of the Act, or if there is an ongoing investigation in the relevant market. The merger thresholds were last revised in October 2017 and are set out in Table 7 below.

Table 7: Mergers and acquisitions thresholds applicable in the 2018/19 financial year

| THRESHOLD | COMBINED TURNOVER OR ASSET VALUE | TARGET TURNOVER OR ASSET VALUE | SIZE OF THE MERGER | FILING FEE |
|------------------|----------------------------------|--------------------------------|--------------------|------------|
| Lower threshold | R 600 000 000 | R 100 000 000 | Intermediate | R 165 000 |
| Higher threshold | R 6 600 000 000 | R 190 000 000 | Large | R 550 000 |

SUMMARY OF PERFORMANCE AGAINST TARGETS

The Mergers and Acquisitions (M&A) Division was responsible for five (5) performance targets in 2018/19 financial year and met all the targets.

PERFORMANCE HIGHLIGHTS

For operational efficiency, the Commission classifies notified mergers as either phase 1 (non-complex), phase 2 (complex) or phase 3 (very complex) mergers, depending on the complexity of

the competition or public interest issues it raises. The Commission has published service standards for merger investigations, particularly the time periods it takes to complete an investigation. These service standards are necessary as the Act has set out timeframes for merger investigations, regardless of their level of complexity. Therefore, the service standards assist in managing internal deadlines and stakeholders’ expectations when notifying mergers with varying levels of complexity. Table 8 gives a complete picture of the timeframes set out in the Commission’s service standards and the maximum allowable timeframes set for merger assessments in the Act.

Table 8: Time frames set for assessing mergers of varying complexities

| | SMALL | | INTERMEDIATE | | LARGE | |
|---|------------------|-----------------|------------------|-----------------|------------------|--|
| | Service standard | Competition Act | Service standard | Competition Act | Service standard | Competition Act |
| PHASE 1 (non-complex); | 20 days | 60 days | 20 days | 60 days | 20 days | 40 days with ability to extend period by 15 days at a time |
| PHASE 2 (complex) | 45 days | 60 days | 45 days | 60 days | 45 days | 40 days with ability to extend period by 15 days at a time |
| PHASE 3 (very complex) | 60 days | 60 days | 60 days | 60 days | 120 days | 40 days with ability to extend period by 15 days at a time |

Table 9: Average turn-around times in 2018/19 against service standards

| PHASE | SERVICE STANDARD | TOTAL NUMBER OF TRANSACTIONS (excluding withdrawn and no jurisdiction cases) | AVERAGE TURNAROUND TIME |
|----------------------------------|------------------|---|-------------------------|
| Phase 1 | 20 | 151 | 17 |
| Phase 2 | 45 | 133 | 41 |
| Phase 3 (small and intermediate) | 60 | 24 | 57 |
| Phase 3 (large) | 120 | 25 | 122 |

Table 10: Mergers notified and reviewed over five years

L: Large | I: Intermediate | S: Small

| | 2014/15 | | | 2015/16 | | | 2016/17 | | | 2017/18 | | | 2018/19 | | |
|-----------------------------|---------|-----|----|---------|-----|----|---------|-----|---|---------|-----|---|---------|-----|----|
| | L | I | S | L | I | S | L | I | S | L | I | S | L | I | S |
| | | | | | | | | | | | | | | | |
| Notified | 395 | | | 391 | | | 418 | | | 377 | | | 348 | | |
| | 119 | 260 | 16 | 116 | 262 | 13 | 93 | 319 | 6 | 119 | 249 | 9 | 104 | 235 | 9 |
| | | | | | | | | | | | | | | | |
| Finalised | 375 | | | 413 | | | 385 | | | 388 | | | 336 | | |
| | 108 | 251 | 16 | 129 | 270 | 14 | 109 | 270 | 6 | 120 | 261 | 7 | 106 | 221 | 9 |
| | | | | | | | | | | | | | | | |
| Approved without conditions | 321 | | | 367 | | | 349 | | | 325 | | | 287 | | |
| | 86 | 221 | 14 | 108 | 249 | 10 | 91 | 252 | 6 | 94 | 226 | 5 | 85 | 196 | 06 |
| | | | | | | | | | | | | | | | |
| Approved with conditions | 43 | | | 37 | | | 31 | | | 52 | | | 41 | | |
| | 18 | 23 | 2 | 15 | 21 | 1 | 13 | 18 | 0 | 23 | 27 | 2 | 18 | 21 | 2 |
| | | | | | | | | | | | | | | | |
| Prohibited | 5 | | | 7 | | | 5 | | | 12 | | | 4 | | |
| | 2 | 3 | 0 | 2 | 2 | 3 | 1 | 4 | 0 | 4 | 7 | 1 | 1 | 2 | 1 |
| | | | | | | | | | | | | | | | |
| Withdrawn / No jurisdiction | 6 | | | 5 | | | 3 | | | 9 | | | 2 | | |
| | 2 | 4 | 0 | 4 | 1 | 0 | 1 | 2 | 0 | 4 | 5 | 0 | 1 | 1 | 0 |

The more significant M&A matters finalised by the Commission in this financial year are discussed below:

SIBANYE/LONMIN MERGER

The Commission recommended the approval, subject to conditions, of a merger whereby Sibanye Gold Limited t/a Sibanye-Stillwater (Sibanye) intended to acquire sole control of Lonmin Plc (Lonmin). Upon implementation of the proposed transaction, the existing Lonmin shareholders will hold approximately 11.3% in the enlarged Sibanye Group, and Sibanye's current shareholders will hold the remaining 88.7% of the total issued share capital in the enlarged Sibanye Group. Sibanye is a public company listed on the Johannesburg Stock Exchange Limited (JSE) and is not controlled by any firm. Lonmin is also a public company listed on the London Stock Exchange and the JSE. Sibanye is a holder of mineral reserves and assets allowing it to produce gold and uranium, as well as small amounts of silver as a by-product from its gold production. Sibanye also holds reserves and assets allowing it to produce concentrate containing certain Platinum Group Metals (PGMs). Sibanye's main operative PGM mining operations comprise of the Kroondal Mine, the Rustenburg Mines, the Stillwater Mining located in the United States of America, and a 50% joint venture indirect interest in the Mimosa Mine located in Zimbabwe. Lonmin also owns various PGM mines/shafts and PGM reserves, various PGM exploration projects, tailings dams, concentrators, a smelting complex and PGM refining facilities, the majority of which are located in South Africa.

The proposed transaction presents both a horizontal (competitors) and vertical (supplier-customer relationship) overlap. In relation to the horizontal overlap, both Sibanye and Lonmin mine and produce PGM concentrate, which is further refined at refineries by companies such as Anglo American, Implats and Lonmin. PGMs are ultimately sold in international markets.

The Commission found that the merged entity is unlikely to exercise market power in any of the PGM markets affected by the merger, as both merging parties have relatively low market shares in these international markets. In relation to vertical overlaps wherein



Lonmin currently refines PGM concentrate for other upstream PGM concentrate producers, there were no foreclosure concerns arising since the merged entity is unlikely to have incentives to foreclose other upstream PGM concentrate producers.

The Commission also considered whether downstream refiners of Sibanye's PGM concentrate would have alternative suppliers of PGM concentrate in the upstream, in the event that they are no longer able to purchase the Sibanye PGM concentrate. The Commission found that this input foreclosure is unlikely to arise as other downstream refineries have other upstream PGM concentrate suppliers.

All in all, the Commission's investigation found that the proposed merger is unlikely to result in a substantial lessening or prevention of competition in any of the PGM markets affected by the proposed merger. However, there were numerous public interest concerns arising from the proposed merger. Some of the public interest concerns were raised by other third parties such as the Association of Mineworkers

and Construction Union (AMCU), Solidarity, United Association of South Africa (UASA), Mining Forum of South Africa (MFSA) and the Bapo ba Mogale Community, among others.

The concerns arising were varied and included concerns about the negative impact of the merger on employment, concerns relating to procurement from historically disadvantaged persons (HDPs), honouring existing arrangements with the Bapo ba Mogale Community and honouring of Social and Labour Plans (SLPs). These concerns are discussed in more detail below:

IMPACT OF THE MERGER ON EMPLOYMENT

Lonmin submitted to the Commission that it has been operating under severe financial pressure for a number of years due to, inter alia, weak PGM prices and cost increases, and that Lonmin continued to be hamstrung by its capital structure and liquidity constraints. Despite some action taken by Lonmin to improve its precarious position, none of the measures it had implemented had yielded the desired outcome of ensuring the long-term sustainability of its business as a standalone entity.

As a result, in terms of Lonmin's 'standalone business plan', mining operations at Lonmin were marked to be significantly scaled back and a number of its depleting shafts would be placed on Care and Maintenance – resulting in the retrenchment of 12 460 employees (including contractors) from 2018 through to 2020. Sibanye, in its own independent analysis of Lonmin's business, investigated the number of employees it believed Lonmin's operations could sustain by having regard to its views and assumptions on the potential efficiency of Lonmin's operations, if optimised and restructured in accordance with Sibanye's operating model. In this process, Sibanye determined that a further 885 positions to what was already contemplated by Lonmin's standalone business plan would need to be retrenched across the integrated business over a period from 2018 to 2020. Therefore, in total, Sibanye submitted that 13 344 employees would be retrenched post the merger.

The Commission carried out its own investigation on the impact of the proposed merger on employment, and found that there are 10 156 retrenchments which were independently determined by Lonmin

and which the Commission found to be unrelated to the proposed merger, and would likely have taken place whether the merger had been proposed or not. These retrenchments were driven by operational requirements as alluded to above.

The Commission's own assessment therefore found that 3 189 of the proposed total of 13 344 retrenchments as submitted by Sibanye are arise directly as a result of this merger. As such, the proposed merger resulted in a substantial negative impact on employment. In an endeavour to address the merger specific retrenchments identified by the Commission to, Sibanye made commitments to implement some short-term projects (the K3, 4B and MK2 Rowland shafts) in order to save some jobs totalling 3 714 over the corresponding three year period spanning 2018 to 2020. Such job savings are anticipated to be brought about through a combination of avoiding or delaying the closure of shafts/mines Lonmin had earmarked for closure, and/or the development of new projects. A significant amount of these job savings are, however, subject to PGM prices increasing in future and reaching certain thresholds, as well costs of mining at the 4B and MK2 Rowland shafts being maintained at certain levels. In the event that PGM prices and mining costs for these 2 (two) projects do not reach the prescribed thresholds, the merged entity may not be in a position to save all the jobs contemplated to be saved by the year 2020.

In an effort to further mitigate the negative impact of potential retrenchments on employees, especially if PGM prices do not rise in future, Sibanye has undertaken to embark on an Agri-Industrial Community Development Programme in the Rustenburg area, in order to maintain and sustain the livelihoods of any retrenched employees and the communities in which they reside.

Sibanye is finalising a Memorandum of Understanding with a multi-stakeholder group, for an Agri-Industrial Community Development Programme in the West Rand area. The long term-objective of this programme is to build and support a portfolio of large, medium and small-scale, transformed and financially sustainable agricultural enterprises – capable of operating effectively across the entire agricultural value chain. This initiative is intended to develop alternative sources of economic activity in parallel with mining and mitigate prospects that mining communities may become distressed

as mining activities inevitably wind down. Once the implementation schedule for the greater West Rand district is finalised, Sibanye is committing to investigating the opportunity to expand this initiative to the Rustenburg area.

This initiative involves a variety of stakeholders (e.g. banks, the Public Investment Corporation and relevant municipalities), each of which has a different role to play in respect of the initiative, and the decision on whether or not to proceed with the initiative does not lie with Sibanye alone. In the event that the feasibility study supports the extension and replication of such a programme in the greater Rustenburg area, Sibanye is undertaking to extend the West Rand project into the Rustenburg area.

OTHER PUBLIC INTEREST CONCERNS

There were concerns raised by third parties regarding Lonmin's failure to comply with obligations that have been set out in its SLP. In its SLP 2, which was due to expire in September 2018, Lonmin committed to various plans and initiatives aimed at promoting employment and advancing social and economic welfare objectives – in respect of its own employees and in relation to the broader communities in which its mines are located. A new SLP (SLP 3) was due to be agreed with the Department of Mineral Resources (DMR) to be applicable at the time the SLP 2 expired. Sibanye committed that it will honour Lonmin's SLP 3 once it is agreed with DMR.

The Bapo ba Mogale Community

Lonmin leases certain land from the Bapo Traditional Community. In consideration for the aforementioned lease, the Bapo ba Mogale Investments (BBMI) holds shares in Lonmin on behalf of the Bapo Traditional Community. In this relationship between Lonmin and the community, the Bapo Traditional Community has an opportunity to participate in Lonmin's procurement and business value chain.

Bapo ba Mogale Community has contracts with Lonmin in terms of which it provides stockpile and waste rock management services, buses for the transportation of Lonmin workers, ore transportation services, and supplies personal protective equipment to Lonmin. Sibanye has committed that it will continue to honour the various existing agreements as they existed before the proposed merger.

Lonmin's procurement

Lonmin has an extensive list of suppliers supplying a variety of goods and services; some of which are HDP entities. The Commission sought to protect HDP entities that currently supply Lonmin by ensuring that the proposed merger will not have any adverse impact on these entities.

Sibanye has committed to continue to honour the existing contracted HDP suppliers' contracts with Lonmin on their terms as they existed before the merger. Sibanye will also endeavour to continue to procure from non-contracted HDP suppliers on reasonable commercial terms, and endeavour that any contract pertaining to Lonmin's operations that may be concluded in the future are concluded in a manner that is consistent with Sibanye's existing HDP procurement policy and, at a minimum, comply with applicable requirements set out in the Mining Charter, as may be determined from time to time..

Other concerns

There were also concerns raised by third parties relating to the operations of Lonmin; that Sibanye does not seem to have an interest in investing in the Lonmin operations that have the potential to be mined and thereby preserve employment, i.e. investment done in the K4 shaft and also other shafts that could be mined further (Hossy).

The Commission reviewed both the Sibanye and Lonmin business plans submitted, and factored those concerns into its overall findings. Some of the shafts such as K4 are already included in Sibanye's future plans in the event that PGM prices improve in future. There were also concerns raised in relation to the payment of dividends to employees. However, the Commission was of the view that the payment of dividends is a commercial issue which the Commission does not have jurisdiction over. Other concerns raised related to Lonmin transfer pricing policies which are designed to evade and/or avoid taxes.

There were also concerns raised that Lonmin is manipulating its enterprise value to suit easy purchase by Sibanye, whilst other issues relate to Lonmin unduly declining a viable potential acquisition, by Bapo Ba Mogale, of the K4 and Rowland assets. Again, all these issues fall outside the Commission's jurisdiction. When all the above factors are taken into account, the Commission recommended that the proposed transaction be approved subject to the conditions discussed above.

The Tribunal conducted a hearing in November 2018 and approved the merger subject to conditions largely similar to those recommended by the Commission, except that there was an additional moratorium period of 6 months imposed on any retrenchments at Lonmin. AMCU appealed the decision of the Tribunal, citing positive changes to Lonmin's operational circumstances since the time the merger had been recommended for approval. The Competition Appeal Court also approved the merger in May 2019, subject to the same conditions as those imposed by the Tribunal, subject to minor changes.

PROPOSED MERGER BETWEEN BAT HOLDINGS SA AND TWISP (PTY) LTD

On 25 July 2018, the Competition Commission (Commission) recommended a prohibition to the Competition Tribunal (Tribunal) of the proposed large merger in terms of which BAT Holdings SA intends to acquire Twisp. BAT Holdings SA is a leading cigarette manufacturer and supplier globally. It supplies over 200 cigarette brands worldwide. In addition to traditional cigarettes, BAT also produces and supplies other tobacco products including fine cut (a roll-your-own tobacco product), snus (snuff?) and cigars. Internationally, BAT is also a leading supplier of e-cigarettes, including in Europe and the United States.

Twisp is a South African-based supplier of bespoke vaping products (e-cigarettes). The company was established in 2008 and is known as the leading e-cigarette brand in South Africa. Twisp's products are distributed through its branded kiosks, retail outlets and online channels. Twisp's suite of vaping products comprises of various bespoke e-cigarette devices, flavours and accessories. The hardware for the devices is procured by Twisp from international manufacturers, who work with Twisp's design team to tailor the devices to Twisp's specifications. The flavours are created by Twisp's in-house flavour specialist and produced by a third party on behalf of Twisp. The Commission found that there are separate markets for the supply of cigarettes and e-cigarettes. The Commission therefore assessed the effects of this transaction in the (i) national market for the supply of cigarettes and (ii) national market for the supply of e-cigarettes including devices, e-liquids and accessories. The Commission found that the proposed transaction results in the removal of a

potential competitor. Given BAT's presence in the e-cigarette market internationally, the Commission found that BAT could have potentially entered the South African e-cigarette market absent this transaction, and it would have been in a position to compete effectively against Twisp, the largest and dominant e-cigarette supplier in the country. Therefore, the merger is likely to result in unilateral effects which may manifest in the form of an increase in prices of e-cigarettes in future (or a reduction in the rate of price reductions that could potentially occur with BAT's entry) and/or a reduction in the quality or rate of innovation of e-cigarette products offered post-merger.

The Commission also considered the extent to which the instant transaction is likely to lead to exclusionary portfolio effects post-merger. In particular, the Commission found concerns relating to exclusionary practices relating to shelf space by BATSA that may be perpetuated as a result of the proposed merger. The Commission received a number of concerns from third parties regarding the proposed transaction.

Following its initial investigation, the Commission found that the proposed merger results in a substantial prevention of competition and recommended that the merger be prohibited. However, subsequent to the referral and prior to the matter being heard in the Tribunal, the Commission re-evaluated the state of the e-cigarettes market and found that there has been significant changes and that Twisp no longer held a dominant position. Based on this, the Commission recommended that the merger be approved with conditions. As at the end of the financial year, the matter was still under consideration by the Competition Tribunal.

OSTRICH SKINS (PTY) LTD, MOSSTRICH (PTY) LTD AND KLEIN KAROO INTERNATIONAL (PTY) LTD

On 19 December 2018, the Commission prohibited the intermediate merger between Ostrich Skins (Pty) Ltd (Ostrich Skins), Mosstrich (Pty) Ltd (Mosstrich) and Klein Karoo International (Pty) Ltd (KKI).

KKI and Mosstrich are both active in the production of ostrich meat, leather and feathers. KKI and Mosstrich have two abattoirs each at which they slaughter ostriches and obtain ostrich meat, raw feathers and skin. Both merging parties have meat processing facilities and tanneries.

The Commission found that the production and supply of ostrich meat constitutes a separate market from other types of red meat such as beef and lamb. The Commission found that ostrich meat is considered to be a healthier alternative to red meat, as it is leaner compared to other types of red meat. The Commission also found that there is a separate market for the production and supply of ostrich leather. With regards to ostrich feathers, the Commission identified an upstream market for the production and supply of unprocessed feathers, and a downstream market for the production and supply of processed feathers.

The Commission found that the merger is likely to result in unilateral effects in the market for the production and supply of ostrich meat. The Commission found that the merged entity will have market share in excess of 90%, post-merger. In effect, the proposed merger is a merger-to-monopoly in the ostrich meat market and the Commission found that the merged entity will likely have significant market power post-merger. The remaining players in this market are relatively small. The Commission found that prices for ostrich meat are likely to increase post-merger, as the merger will effectively eliminate competition from Mosstrich. Further, post-merger customers will have limited bargaining power due to the loss of competitive rivalry between the merging parties. In addition, the barriers to entry in this market are high. The Commission received a number of concerns from third parties in this market. All in all, the Commission found that the proposed merger is likely to result in a substantial lessening of competition in the ostrich meat market in South Africa.

Furthermore, the Commission found that for the market for the production and supply of ostrich leather, the merging parties are likely to have market power post-merger. However, as ostrich leather is mainly exported, it is unlikely that there will be significant competition harm to customers in South Africa.

With regards to ostrich feathers, the Commission found that the merging parties are likely to foreclose downstream processors of feathers, post-merger. There were several concerns received from third parties in this regard.

The Commission also found that the proposed transaction may lead to a softening of competition, through coordination in the markets for the production and supply of ostrich meat as well as ostrich feathers.

Following the investigation, the Commission found that the proposed merger results in a substantial lessening of competition. There were no efficiency justifications or remedies submitted that alleviate the concerns arising. For this reason, the Commission prohibited the proposed transaction.

REBEL PACKAGING (PTY) LTD (REBEL) V SEYFERT CORRUGATED WESTERN CAPE (PTY) LTD (SEYFERT)

The Commission has prohibited, the acquisition of 49% share by Rebel in Seyfert. The parties to this transaction implemented this merger in 2011 without obtaining approval from the competition authorities.

The Commission investigation of this merger found that the merger facilitated collusion between Mpact and Seyfert. The Commission notes that Mpact did not acquire sole control of Seyfert and as such Mpact and Seyfert did not constitute a single economic entity. Therefore the collusion between Mpact and Seyfert violated section 4(1)(b) of the Competition Act. The prior implemented merger between Mpact and Seyfert had therefore substantially prevented and lessened competition.

Given the nature of the anti-competitive concerns this merger raise, namely collusion which is a prohibition in terms of section 4(1)(b) of the Act, there is no efficiencies that can justify it and remedy that could alleviate it.

In order to address this concern, the Commission prohibited the merger. Further, the Commission ordered divestiture of Mpact 49% share in Seyfert since the merger had already been implemented.

Mpact is a paper and plastics packaging manufacturer with operations in South Africa, Mozambique, Namibia and Botswana. The business involves the production of paper and plastic packaging products, and recycling (of both paper and plastic). Mpact's paper business comprises of three parts, each of which operates at a different level of the paper and paper packaging value chain. Mpact Recycling is active in the collection and purchase of pre- and post-consumer recyclable paper through various paper pickup programmes including commercial, kerbside, school, church, community, housing complex and office programmes. Mpact Recycling also purchases recyclable paper from recyclable material traders.

Mpact's paper manufacturing operations produce a range of intermediate paper products such as cartonboard and containerboard. In addition, it holds distribution rights to sell Baywhite, a premium quality white top kraftliner produced by Mondi Limited. Mpact manufactures paper from a combination of recyclable paper and relatively smaller amount of virgin material.

Seyfert operates as a sheet plant and is based in Atlantis near Cape Town in the Western Cape. Prior to Mpact acquiring its shareholding in Seyfert, Seyfert was located in premises in Epping near Cape Town. Sheet plants purchase corrugated sheet board from corrugating facilities and convert this board into boxes and other finished products.

The merging parties submit that the 2011 transaction did not have a negative impact on employment at Seyfert or Mpact. The Commission is satisfied that the merger did not result in any overall negative impact on employment as the same number of employees at the time of the merger are currently employed by the target firm. The prior implemented transaction did not raise any other public interest concerns.

WORKING IN THE PUBLIC INTEREST

When assessing a merger, the Act requires the Commission to consider both the impact that the merger will have on competition, and whether the merger can or cannot be justified on public interest grounds. What this means is that a pro-competitive merger and a merger without any competition implications can be prohibited by the Commission solely on the basis of its negative effect on the public interest.

Similarly, an anti-competitive merger can be approved if it is in the public interest to do so. As such, the public interest provisions in the Act have far-reaching implications. However, the concept is limited to the four public interest grounds set out in the Act, namely employment; impact on a particular sector or region; the ability of small businesses, or firms controlled by historically disadvantaged persons (HDPs) to become competitive; and the ability of national industries to compete in international markets.

The Commission has the authority to approve or prohibit a merger solely on the basis of its effect on public interest. This has only happened once since the Commission's inception, where a merger was approved on the basis of the significant public interest it generated. In general, where public interest concerns have been raised, the Commission and/or Tribunal have imposed conditions on the merger which aim to mitigate or eliminate the public interest concern, thus allowing the merger but minimising its negative effect on public interest.

During the financial year 2018/19, the Commission recommended and/or imposed public interest conditions on forty-five (45) merger cases. Most of these merger cases raised a combination of public interest issues including employment, impact on HDIs, maintenance of local production, SME development, and BEE ownership levels. The Commission's intervention in mergers resulted in a net saving of 7 092 jobs. The table below set out mergers with public interest issues:

Table 11: Mergers approved with public interest conditions

| CASE NUMBER | PRIMARY ACQUIRING FIRM | PRIMARY TARGET FIRM | MARKET | CONDITIONS |
|-------------|------------------------|---------------------------------|---|--|
| 2018Jan0023 | Boardriders Inc | Billabong International Limited | Retail Clothing. | Public Interest: Employment-Retrenchment moratorium for a period of two (2) years from the implementation date. |
| 2018Mar0043 | Rhône Capital L.L.C | Fluidra, S.A | Manufacture of general-purpose machinery. | <p>Public Interest: SME and BEE – Merged Entity obligated to establish a fund into which they will contribute funds for investment towards the establishment of a BBBEE Entrant to manufacture and supply suction cleaners in South Africa.</p> <p>Public Interest – Investment: The Merged Entity shall invest a certain amount to improving moulds on suction cleaners.</p> <p>Behavioural- supply conditions: Merged Entity shall make reasonable commercial efforts to have stock available, continue to supply suction cleaners to all existing wholesalers and distributors to professional pool trade customers (subject to availability) for a specified period from approval date.</p> <p>Merged Entity obligated to make reasonable commercial efforts to continue to supply electric cleaners, pool pumps, pool lighting and chemicals to all existing wholesalers and distributors to the professional pool trade customers in the regions in which they are active for at least a specified period of time from the approval date.</p> <p>Public Interest – industrial sector or region: Maintenance of local production Merging Parties obligated to maintain the current aggregate level of operations and production facilities of Fluidra Waterlinx in South Africa.</p> |

| CASE NUMBER | PRIMARY ACQUIRING FIRM | PRIMARY TARGET FIRM | MARKET | CONDITIONS |
|-------------|---|---|---|--|
| 2018Mar0043 | Rhône Capital L.L.C | Fluidra, S.A | Manufacture of general-purpose machinery. | <p>Local Manufacturing (Third Party Suppliers) The Merged Entity obligated to maintain the status quo with regard to third-party manufacturing arrangements with local manufacturers for a specified period after the implementation date.</p> <p>Local Procurement Merging Parties obligated to continue to procure from SMEs or firms controlled by HDIs or alternative local SMEs or HDI- for a specified period of time after the implementation date.</p> |
| 2018May0063 | ASOC Fund I Partnership (Pty) Ltd | Skynet South Africa Ltd (Pty) Ltd | Distribution and delivery of mail and parcels (firms not operating under a universal service obligation). | <p>Public Interest: – Employment: For a period of 2 (two) years from the Implementation date, the Acquiring Firm shall invite the Affected Employees to apply for vacant positions that become available in the Target Firm.</p> |
| 2017Nov0058 | Robertsons Holdings Proprietary Limited | Silver 2017 Proprietary Limited (Pty) Ltd | Manufacture of vegetable and animal oils and fats. | <p>Public Interest – Employment: Merging Parties shall ensure that offers of employment are made to between 25 and 35 qualified employees who could potentially be retrenched as a result of the merger.</p> |
| 2017Dec0007 | Pioneer Foods (Pty) Ltd | Heinz Foods South Africa (Pty) Ltd | Manufacture of spices, condiments, vinegar, yeast, egg products, soups and other food product. | <p>Public Interest - Employment: Merging Parties obligated not to retrench any other employees as a result of the Merger for a period of 2 years from implementation date.</p> |
| 2018Mar0001 | Hudaco Trading (Pty) Ltd | The Boltworld Business | Distribution of industrial fasteners. | <p>Public Interest - Employment: Retrenchment moratorium on merging parties for a period of 2 years from implementation date.</p> |
| 2017Nov0015 | Off The Shelf Investments 56 (RF) (Pty) Ltd | Chevron South Africa (Pty) Ltd | Petrol, fuel oils, lubricating oils and greases | <p>Public Interest: Industrial Sector or region – maintaining headquarters in South Africa. Acquiring firm obligated to maintain its headquarters in South Africa.</p> |

| CASE NUMBER | PRIMARY ACQUIRING FIRM | PRIMARY TARGET FIRM | MARKET | CONDITIONS |
|-------------|---|--------------------------------|---|---|
| 2017Nov0015 | Off The Shelf Investments 56 (RF) (Pty) Ltd | Chevron South Africa (Pty) Ltd | Petrol, fuel oils, lubricating oils and greases | <p>Public Interest: Employment – CSA obligated not to retrench any employees. In addition, CSA is also obligated to maintain at least the number of employees as are employed in aggregate by CSA as at the implementation date.</p> <p>Public Interest: Industrial Sector or Region – Local Production Commitments: OTS undertakes to invest R6 billion in the refinery infrastructure of CSA by investing in various projects 5 years from implementation.</p> <p>Public Interest: Wholesale and retail chains: OTS obligated to maintain at least the baseline number of independently owned service stations. OTS obligated to fully rebrand the network of CSA's services stations by at least 2024</p> <p>Public Interest: SMMEs and BEE – Commitments In respect Of The Development Fund CSA obligated to establish a development fund within 2 years from implementation in order to support small business and Black owned business involved in CSA's value chain. CSA also obligated to increase its level of supplies of LPG to Black owned business.</p> <p>Public Interest: Industrial Sector or Region – Local Procurement commitments: OTS will ensure that CSA shall maintain or increase the current level (as a proportion) of expenditure on local procurement of goods and services. OTS will ensure that CSA shall not substitute current, local, South African owned suppliers with offshore suppliers of goods or services.</p> <p>Public Interest: BEE – BEE ownership levels: OTS will remain at least 90% Black-owned Business.</p> |

| CASE NUMBER | PRIMARY ACQUIRING FIRM | PRIMARY TARGET FIRM | MARKET | CONDITIONS |
|-------------|---|--|------------------------------------|--|
| 2018Jun0036 | Melrose Industrial PLC | GKN PLC | Engineering design and consulting. | Public Interest: Employment- Retrenchment moratorium for a period of two (2) years from the implementation date. |
| 2018Jun0008 | Procter & Gamble Company | The Consumer Healthcare Business of Merck KGaA | Health Activities | Public Interest: Employment (Third Party Supplier) – Obligation on merging parties to continue sourcing products from one of their suppliers under the terms of their current supplier agreement for a period of 5 years from implementation of the merger in order to preserve jobs within the supplier. |
| 2018Mar0022 | Sibanye Gold Limited t/a Sibanye-Stillwater | Lonmin PLC | Mining | <p>Public Interest: Employment – The merging parties commit to satisfy certain variables in order to save 3714 jobs in the period between 2018 and 2020.</p> <p>The Merging parties shall donate approximately 500ha of land in the event that a feasibility study supports the establishment of an agri-processing industrial cluster.</p> <p>Public Interest: Impact on HDI's – Merging parties shall continue to honour the contracts entered into with their BBBEE Partner (Bapo Traditional Community) on their terms as they existed on the merger announcement date. In addition, the merging parties are obligated to honour the existing procurement contracts with previously disadvantaged persons.</p> <p>The merging parties are also obligated to honour the existing social and labour plan (SLP) submitted to the Department of Mineral Resources as at the merger announcement date. The aforementioned also includes any commitments made by the target firm in terms of their 2019 SLP.</p> |

| CASE NUMBER | PRIMARY ACQUIRING FIRM | PRIMARY TARGET FIRM | MARKET | CONDITIONS |
|-------------|--------------------------------|-------------------------------|---------------|--|
| 2018Jul0017 | Pure Pharmacy Retail (Pty) Ltd | LJ Farrell and Sons (Pty) Ltd | Human Health | <p>Public Interest: Employment – The merging parties obligated not to retrench any employees as a result of the merger save for 17 employees, which include 10 unskilled and 7 skilled.</p> <p>In addition, the merging parties are prohibited from retrenching the unskilled employees within 5 months of the implementation date.</p> <p>The Merging parties are also obligated to set up a training fund to assist in reskilling the unskilled employees. In addition, the merging parties are also obligated to consider the affected employees for any suitable vacancies arising (the aforementioned is applicable for a period of three years after employment termination of any of the Unskilled employees).</p> |
| 2018Jul0052 | Ekapa Mining (Pty) Ltd | Crown Resources (Pty) Ltd | Mining | <p>Public Interest: Employment – Restriction on the number of retrenchments to 10 employees for a period of 2 years.</p> <p>The merging parties are required to re-instate 7 employees that were retrenched pre-merger approval.</p> <p>The Merging parties are also required to provide in-house portable skills to the retrenched 10 employees.</p> |
| 2018Jul0035 | Neopak (Pty) Ltd | APL Cartons (Pty) Ltd | Manufacturing | <p>Public Interest: Employment – Restriction on the number of retrenchments to 29 employees for a period of 2 years. The merging parties are also obligated to set up a development fund to either re-skill the retrenched employees or provide them with seed capital to set up a small business.</p> |
| 2018Aug0051 | Eurolux (Pty) Ltd | Radiant Group (Pty) Ltd | Wholesale | <p>Public Interest: Employment – Restriction on the number of retrenchments to 25 employees for a period of 2 years.</p> |

| CASE NUMBER | PRIMARY ACQUIRING FIRM | PRIMARY TARGET FIRM | MARKET | CONDITIONS |
|-------------|---|---|---------------|--|
| 2018Jul0024 | K2018239983 (SA) (Pty) Ltd | The business of Hermic Ferrochrome | Mining | Public Interest: Employment – Moratorium on retrenchments for a period of 1 year. |
| 2018Sep0029 | Canyon Resources (Pty) Ltd | Union Fenose South Africa Coal (Pty) Ltd | Mining | Public Interest: Employment – Restriction on the number of retrenchments to 8 management employees. |
| 2018Sep0037 | Tourvest Financial Services (Pty) Ltd | Travelex Africa Foreign Exchange (Pty) Ltd | Finance | Public Interest: Employment – Restriction on the number of retrenchments to 14 employees for a period of 2 years. The merging parties are also obligated to set up a training fund to re-skill any unskilled retrenched employees. |
| 2018Jul0020 | Country Bird Holdings (Pty) Ltd | Opti Agri (Pty) Ltd | Manufacturing | Public Interest: Employment – The target firm will use reasonable endeavours to conclude a Recognition Agreement with NUFBWSAW within 90 (ninety) Days of the approval date, granting NUFBWSAW organisational rights at the Target Firm based on the same thresholds and related rights which apply to the main agreement of the grain industry bargaining council. Within 30 (thirty) Days of the implementation date, the acquiring firm shall initiate the transfer of the Affected Employees to the Alexander Forbes Retirement Fund. |
| 2018Aug0020 | Westinghouse Air Brake Technologies Corporation | The transportation unit of General Electric Company | Manufacturing | Public Interest: Employment – Moratorium on retrenchments for a period of 2 years. Public Interest: Effect on Industrial Sector or Region – The merged entity is required to provide any support or maintenance on its radio distributed power systems that have been supplied by Wabtec to Transnet Freight Rail on its locomotives for the lifespan of those locomotives (15 years). |

| CASE NUMBER | PRIMARY ACQUIRING FIRM | PRIMARY TARGET FIRM | MARKET | CONDITIONS |
|-------------|--|--|---------------|---|
| 2018Sep0051 | Independent Institute of Education (Pty) Ltd | Monash South Africa | Education | <p>Public Interest: Employment – Restriction on the number of retrenchments to 50 employees for a period of 2 years.</p> <p>The merging parties shall provide the retrenched employees the right of first refusal should there be any employment opportunities within the merged entity.</p> |
| 2018Jun0035 | Robor (Pty) Ltd and Masteel Service Centres South Africa (Pty) Ltd | Macsteel in respect of its tubes and pipes business (being acquired by Robor) and Robor (being acquired by Macsteel) | Manufacturing | <p>Public Interest: Employment – Restriction on the number of retrenchments to 311 employees.</p> <p>The merging parties are required to fill any vacancies within the merged entity with the retrenched employees who have the required qualifications, skills, know-how and experience.</p> <p>The merging parties shall offer the retrenched employees re-employment commensurate with their qualifications, skills, know-how and experience, in the event that employment opportunities avail themselves for a period of 3 (three) years from the implementation date.</p> <p>The merging parties are required to comply with the provisions of the New Consolidated MEIBC Main Agreement in as far it is applicable to the Merging Parties and remains in force and effect.</p> |
| 2018Sep0060 | Glencore South Africa Oil Investments (Pty) Ltd | Chevron South Africa (Pty) Ltd (Now known as Astron Energy (Pty) Ltd) | Mining | <p>Public Interest: Head Office – Glencore shall ensure that Astron's head office remains in South Africa, to coordinate and oversee Astron's midstream and downstream operations. Glencore shall ensure that Astron is operated substantially on a stand-alone basis and Astron's decisions will be taken in South Africa and, where practicable, be implemented utilizing local skills and expertise.</p> |

| CASE NUMBER | PRIMARY ACQUIRING FIRM | PRIMARY TARGET FIRM | MARKET | CONDITIONS |
|-------------|---|---|--------|---|
| 2018Sep0060 | Glencore South Africa Oil Investments (Pty) Ltd | Chevron South Africa (Pty) Ltd (Now known as Astron Energy (Pty) Ltd) | Mining | <p>Public Interest: Employment – Astron shall not retrench any employees as a result of the merger. Further, Astron commits that, for a period of no less than 5 years from the implementation date, Astron will maintain at least the number of employees as are employed in aggregate by Astron as at the implementation date.</p> <p>Public Interest: Investment – Glencore shall procure that Astron invests a total of R6 billion over and above Astron's current investment plans (as recorded in its most recent business plans as at 27 September 2018), within a period of 5 years from 27 September 2018. In addition, Glencore shall ensure that, within 2 years of the implementation date, Astron will establish the Development Fund (R220 000 000 over a period of 5 years from the implementation date) in order to support those Small Business and Black-owned businesses which are involved in Astron's value chain.</p> <p>Public Interest: Local Procurement – Glencore shall ensure that Astron maintain or increase the current level (as a proportion) of expenditure on local procurement of goods and service.</p> <p>Public Interest: SMMEs or BEE – Astron shall use all reasonable endeavours to increase its current B-BBEE scorecard rating by two levels, from level 4 to level 2 within 2 years of the implementation date. Astron shall increase the number of service stations operated by Black-owned businesses in the large metropolitan areas by at least 20 within 5 years from the implementation date.</p> <p>Public Interest: Export of SA products – Glencore shall use reasonable endeavours to promote the export and sale of South African manufactured products through the service station network being built up by the Glencore group in Brazil, Mexico and Zimbabwe.</p> |

| CASE NUMBER | PRIMARY ACQUIRING FIRM | PRIMARY TARGET FIRM | MARKET | CONDITIONS |
|-------------|------------------------------------|-----------------------------------|-----------|---|
| 2018Dec0033 | MMC Treasury Holdings (UK) Limited | Jardine LLOYD Thompson Group Inc. | Finance | <p>Public Interest: Employment – Restriction on the number of retrenchments to 36 for a period of 2 years.</p> <p>Behavioural: Cross-directorship – Obligation not to appoint common directors for competing firms.</p> |
| 2018Dec0038 | Subtropico Limited | KLK Landbou Limited | Wholesale | <p>Public Interest: Employment – Moratorium on retrenchments for a period of 2 years.</p> |

4 LEGAL SERVICES DIVISION

The Legal Services Division (LSD) is responsible for managing the Commission's litigation before the Tribunal, CAC, High Court, Supreme Court of Appeal (SCA) and Constitutional Court. The Commission appears before the Tribunal and, in other cases, instructs attorneys and briefs counsel. LSD directs and manages the Commission's strategy in litigation. Legal support is also provided to cartel, abuse of dominance, exemptions and merger investigations. LSD is also responsible for the prosecution of firms who fail to notify mergers and implement them without approval of the Commission and Tribunal, as the case may be.

Furthermore, LSD negotiates and concludes settlement agreements, with the input of other divisions. A settlement takes place when the respondent undertakes to remedy their wrongdoing without going through a hearing. The Commission and the respondent negotiate the terms of the settlement agreement, after which the agreement is referred to the Tribunal for confirmation. The settlement process enables the Commission to conclude cases speedily and cost-effectively.

SUMMARY OF PERFORMANCE AGAINST TARGETS

The Legal Services Division had four (4) performance targets applicable for the 2018/19 financial year. Three (3) performance targets were met, and only one was not met. The one target that was not met related to a percentage of merger decisions upheld by the Tribunal and other courts – some of the Commission's recommendations in mergers were not upheld.

PERFORMANCE HIGHLIGHTS

During this financial year the Commission imposed two (2) administrative penalties and concluded forty-one settlement agreements. The Commission also continued to collect administrative penalties – in 2018/19, the Commission levied a total of R333 million, largely from settlement agreements.

Table 12: Total administrative penalties levied over the last ten years

| YEAR | ADMINISTRATIVE PENALTY |
|---------|------------------------|
| 2018/19 | R333 million |
| 2017/18 | R354 billion |
| 2016/17 | R1.628 billion |
| 2015/16 | R338 million |
| 2014/15 | R191 million |
| 2013/14 | R1.7 billion |
| 2012/13 | R225 million |
| 2011/12 | R584 million |
| 2010/11 | R794 million |
| 2009/10 | R487 million |
| 2008/09 | R331 million |

Table 13: Settlement and consent agreements confirmed in 2018/19

| COMPLAINANT | RESPONDENT | CASE TYPE | PENALTY IMPOSED |
|------------------------|--|------------------------------------|-----------------|
| Competition Commission | Wasteman Holdings (Pty) Ltd | Complaint Referral from Commission | R 10 209 519,00 |
| Competition Commission | Computicket (Pty) Ltd | Complaint Referral from Commission | R 20 000 000,00 |
| Competition Commission | Woman on Board CC | Consent Order | R 23 496,08 |
| Competition Commission | Motseng Trading (Pty) Ltd | Consent Order | R 200 000,00 |
| Competition Commission | Karab Beef (Pty) Ltd | Consent Order | R 2 700 000,00 |
| Competition Commission | Toyoda Gosei CO Ltd | Consent Order | R 6 162 958,34 |
| Competition Commission | NCS Resins (Pty) Ltd | Consent Order | R 29 701 689,76 |
| Competition Commission | RTT Group (Pty) Ltd | Interlocutory Application | R 75 000,00 |
| Competition Commission | Trade Call Investments Apparel (Pty) Ltd | Procedural Matter | R 1 000 000,00 |
| Competition Commission | Carpe Diem Media (Pty) Ltd | Settlement Agreement | R 4 808,95 |
| Competition Commission | Association of Electric Cable Manufacturers South Africa | Settlement Agreement | R 14 853,67 |
| Competition Commission | Baxter International Movers CC | Settlement Agreement | R 24 506,64 |
| Competition Commission | Bidvest Media (Pty) Ltd | Settlement Agreement | R 90 013,17 |
| Competition Commission | Quality Talent Sports (Pty) Ltd | Settlement Agreement | R 114 168,84 |
| Competition Commission | Eye Way Trading (Pty) Ltd | Settlement Agreement | R 115 000,00 |
| Competition Commission | A and B Movers CC | Settlement Agreement | R 208 121,90 |
| Competition Commission | Casalinga Investments CC t/a Wastrite | Settlement Agreement | R 225 690,00 |
| Competition Commission | Silverbuckle Trade 21 CC t/a Yacoob Yatchs | Settlement Agreement | R 249 171,72 |
| Competition Commission | Natal Witness Publishing and Printing Company (Pty) Ltd | Settlement Agreement | R 255 528,00 |
| Competition Commission | Thembekile Maritime Services (Pty) Ltd | Settlement Agreement | R 350 000,00 |
| Competition Commission | Nauticat Charters (Pty) Ltd | Settlement Agreement | R 422 083,87 |
| Competition Commission | United Stations (Pty) Ltd | Settlement Agreement | R 423 920,73 |
| Competition Commission | Ster-Kinekor Theatres (Pty) Ltd | Settlement Agreement | R 436 999,90 |

| COMPLAINANT | RESPONDENT | CASE TYPE | PENALTY IMPOSED |
|----------------------------|---|----------------------|-------------------------|
| Competition Commission | Key Moves CC | Settlement Agreement | R 438 312,08 |
| Competition Commission | Fire Protection Systems (Pty) Ltd | Settlement Agreement | R 500 000,00 |
| Competition Commission | Elingo (Pty) Ltd | Settlement Agreement | R 512 400,00 |
| Competition Commission | Rodio Geotechnics (Pty) Ltd | Settlement Agreement | R 885 963,00 |
| Competition Commission | MTV Networks Africa (Pty) Ltd | Settlement Agreement | R 966 692,83 |
| Competition Commission | Mediamark (Pty) Ltd | Settlement Agreement | R 1 013 803,94 |
| Competition Commission | Paramount Mills (Pty) Ltd | Settlement Agreement | R 1 320 819,00 |
| Competition Commission | Trudon (Pty) Ltd | Settlement Agreement | R 1 324 496,00 |
| Competition Commission | NTK Limpopo Agri (Pty) Ltd | Settlement Agreement | R 1 364 360,00 |
| Competition Commission | Alcon Marepha (Pty) Ltd | Settlement Agreement | R 1 378 107,69 |
| Competition Commission | TWK Milling (Pty) Ltd | Settlement Agreement | R 1 845 863,75 |
| Competition Commission | Progress Milling (Pty) Ltd | Settlement Agreement | R 2 120 000,00 |
| The Competition Commission | Fireco (Pty) Ltd | Settlement Agreement | R 2 200 913,85 |
| Competition Commission | GD Irons Construction (Pty) Ltd | Settlement Agreement | R 4 000 000,00 |
| Competition Commission | Berg River Textiles, a Division of Sargas (Pty) Ltd | Settlement Agreement | R 6 170 045,00 |
| Competition Commission | Primedia (Pty) Ltd | Settlement Agreement | R 9 605 884,64 |
| Competition Commission | Edilcon Construction (Pty) Ltd | Settlement Agreement | R 10 510 680,00 |
| Competition Commission | Media24 Ltd | Settlement Agreement | R 13 828 892,26 |
| Competition Commission | Omnia Fertilizer Ltd | Settlement Agreement | R 30 000 000,00 |
| Competition Commission | South African Broadcasting Corporation (SABC) SOC Ltd | Settlement Agreement | R 31 845 795,33 |
| Competition Commission | Cape Gate (Pty) Ltd | Settlement Agreement | R 40 000 000,00 |
| Competition Commission | Kawasaki Kisen Kaisha Ltd | Settlement Agreement | R 98 928 170,05 |
| Total | | | R 333 768 729.94 |

Below we discuss significant legal matters in court during 2018/19:

SOS SUPPORT PUBLIC BROADCASTING COALITION & 2 OTHERS VS SABC & MULTICHOICE

On 28 September 2018 the Constitutional Court (Concourt) handed down a decision upholding an appeal that had been brought by SOS Support Public Broadcasting Coalition & 2 others, and supported by the Competition Commission.

The main issue to be decided in the appeal before the Concourt was whether the Competition Appeal Court's order of 24 June 2016, which had directed the Commission to consider whether the Commercial and Master Channel Distribution Agreement concluded between the SABC and MultiChoice resulted in a merger and to file its report, setting out its findings, with the Competition Tribunal – precluded the Commission from exercising its investigative powers in terms of Part B, Chapter 5 of the Competition Act – or whether the Commission's consideration of the matter is simply confined to documents submitted to the Commission by the SABC and MultiChoice (which the Commission contended do not contain certain crucial documents or information). The Commission sought in this matter to protect and safeguard its investigative powers to investigate whether any transaction constitutes a notifiable merger.

The Competition Appeal Court had found on 28 April 2017, that its order of 24 June 2016 did not contemplate the Commission exercising its investigative powers. The Constitutional Court set aside the Competition Appeal Court order of 28 April 2017, and found that the Competition Appeal Court's order does not preclude the Commission from exercising its non-coercive and coercive investigative powers in terms of Part B of Chapter 5 of the Competition Act – for purposes of discharging its obligations under the Competition Appeal Court's order of 24 June 2016, (i.e. making a determination whether the Commercial and Master Channel Distribution Agreement results in a merger or otherwise).

The importance of the Constitutional Court's judgement is that it

vindicates and reasserts the Commission's investigative powers to determine whether transactions constitute or give rise to a notifiable merger as defined in the Act. In essence, the judgement addressed a potential lacuna in the Competition Act, because the Act in its current form does not contain an express provision authorising the Commission to initiate a complaint relating to whether a transaction constitutes a notifiable merger.

COMPUTICKET FINED FOR INDUCEMENT

On 21 January 2019, the Competition Tribunal found in favour of the Commission that Computicket (Pty) Ltd had abused its dominance in contravention of section 8(d)(i) of the Act for the period 2005 - 2010. Computicket was ordered to pay an administrative penalty in the amount of R20 000 000 (Twenty Million Rand).

The Tribunal found that Computicket's exclusive agreements with inventory providers (such as, for example, theatres) had resulted in anti-competitive effects during the period 2005 to 2010. The Commission was able to show that the agreements resulted in foreclosure of the market to effective competition. The Tribunal accepted evidence concerning supra competitive pricing effects, a decrease in supply by inventory providers, a reluctance by Computicket to make use of available advances in technology and innovation timeously, and a lack of choices for end consumers, all of which cumulatively established the anti-competitive effects of the agreements.

Furthermore, the Tribunal found that Computicket was unable to demonstrate that its exclusive agreements were justified based on efficiency grounds.

The matter was referred to the Competition Tribunal in 2010, although the hearing of this matter only commenced in October 2017. The long delay is attributable to a lengthy and litigious history between the parties, over discovery documents, followed by an unsuccessful administrative law challenge to the Commissioner's decision to refer the complaint to the Tribunal. On 8 February 2019, Computicket appealed the Tribunal decision to the Constitutional Court.

TAKATA VS THE COMPETITION COMMISSION

On 19 December 2018, the Tribunal heard an application filed by Joyson KSS Holdings No. 2 SARL, Joyson KSS Auto Safety SA and Takata Corporation (Takata) to consider the conditions that the Commission had imposed on their proposed merger.

In particular, the merging parties sought an amendment to the conditions relating to the establishment and maintenance of an Escrow Fund. The escrow fund condition was imposed in order to ensure that any administrative penalty imposed on Takata, following the Commission's complaint referral against it, is preserved. Such condition stems from the Commission's complaint referral against Takata for alleged contravention of section 4(1)(b) of the Act in respect of tenders issued by various original equipment manufacturers (OEMs) of motor vehicles for the manufacture and supply of occupational safety systems component parts (OSS parts including airbags, seatbelts and steering wheels that contain driver's airbags).

Given this pre-existing cartel prosecution, the Commission was concerned that the proposed merger transaction could be used to shield Takata from an administrative penalty that might be levied on Takata should it be found guilty of contravening the Act, pursuant to the prosecution. The Commission found that, given that Takata would be absorbed in Joyson's business, the proposed merger resulted in uncertainty as to which firm would be liable for the payment of any fine flowing from the cartel prosecution, to the extent that a fine is imposed. The Commission found that it could not approve a transaction which is likely to extinguish its claim against Takata for a fine arising from the cartel prosecution. The Commission also viewed the proposed transaction as potentially resulting in a situation in which the exercise of a regulatory function under the merger regime may well undermine another regulatory function under the cartel regime.

Considering the above, the Commission decided to impose a condition on the approval of the proposed merger. The condition requires Takata to establish an Escrow Fund to cover any fine which may be imposed on Takata or Takata SA as a result of the cartel

prosecution in South Africa. This was in order to ensure that the merger does not result in Takata failing to pay any imposed fine/penalty in the current prosecution.

The merging parties argued that the competition authorities can only prohibit a merger or impose conditions on a merger if they find that a merger gives rise to anti-competitive effects or is not in the public interest. They argued that the public interest grounds are those limited in section 12A(3) of the Act, and that the Commission's ability to pursue an administrative penalty is not a public interest ground. They submitted that the Tribunal does not have the power to grant conditions outside of the sphere of section 12A(3). They further argued that the Commission could not impose a condition that the merging parties could not comply with.

The Tribunal had yet to issue its decision on this matter at the end of the reporting period.

COMPETITION COMMISSION VS MEDIA 24

On 22 November 2018, the Constitutional Court heard the appeal brought by the Commission against an order of the Competition Appeal Court, which found that Media24 (Pty) Ltd (Media24) had not engaged in predatory pricing in contravention of section 8(d)(iv) and 8(c) of the Act.

The case was about predatory pricing in the community newspaper market in the Goldfields region in the Free State. Media24 owned two community newspaper titles namely Forum (a low-level community newspaper) and Vista (Media24's premium and more profitable newspaper). Berkina Twintig (Pty) Ltd (Berkina) owned Gold Net News. The Commission alleged that between 2004 and 2009 Media24 deliberately drove a competitor, Gold-Net News, out of the market for advertising in community newspapers. According to the Commission, Media24 did this by positioning a competing community newspaper, Forum, as a "fighting brand" against Gold-Net News and running the brand at a loss until Gold-Net News eventually closed down in 2009. Having succeeded with this strategy, the Commission alleged that Media24 closed Goudveld Forum in January 2010. Media24 denied the Commission's allegations.

The Tribunal found Media24 guilty of predatory pricing in contravention of section 8(c) of the Act. In this regard the Tribunal considered that Media24 charged prices in respect of Forum that were below its average total costs, together with direct and indirect intent as well as evidence of recoupment. The Tribunal concluded that Media24 drove a competitor out of the market as alleged by the Commission. On 15 March 2018, the CAC overturned the decision of the Tribunal and concluded that Media24 had not engaged in predatory pricing in contravention of sections 8(d)(iv) and 8(c) of the Act. The Commission appealed to the Constitutional Court against the decision of the CAC and the matter was heard on 22 November 2018.

The Commission's case, which had been dismissed by the CAC, was also based on the fact that Media24 priced its advertisements below their total costs, and had the intention to predate against Gold-Net News as well as evidence of recoupment ("total costs plus intent") which was brought under section 8(c) of the Competition Act. The CAC dismissed the Commission's case solely on the basis that the "total cost-plus intent" standard could not be accommodated within section 8(c) of the Act. The Commission appealed that particular aspect of the CAC's decision to the Constitutional Court.

The Commission contended before the Constitutional Court that section 8(c) of the Competition Act is a "catch-all" provision for exclusionary abuses, and that the CAC adopted an unduly narrow interpretation of section 8(c) of the Competition Act. It was based purely on this interpretation that the CAC upheld Media24's appeal and overturned the Tribunal's finding that the conduct of a dominant firm, which (i) forms part of a plan to eliminate a rival and thus reduces competition in a market; and (ii) is effected through pricing a product (in this case, advertising in a community newspaper) below the average total costs of producing that product, constitutes an exclusionary act within the meaning of section 8(c).

The Commission argued that the approach adopted by the CAC is wholly inconsistent with the objectives and purposes of the Act, which seek to, inter alia, "achieve a more effective and efficient economy in South Africa" in order to reduce the historical, "excessive concentrations of ownership and control within the national economy". The Commission submitted that the CAC's approach,



if permitted to stand, will mean that the larger the dominant firm is, the more difficult it will be for the Commission ever to successfully prosecute that firm for predatory pricing. The opposite should, however, be true, the Commission contended. It is these very large firms that are the primary beneficiaries of the "excessive concentrations of ownership" that the Competition Act serves to combat.

The decision of the Constitutional Court was reserved at the time of reporting.

COMPETITION COMMISSION AND PRIMEDIA (PTY) LTD

On 12 December 2018, the Competition Appeal Court heard the Commission's appeal against a judgement by the Tribunal which had been handed down on 5 February 2018. The Tribunal handed down a decision dismissing the Commission's complaint referral against Primedia (Pty) Ltd, trading as Ster-Kinekor Theatres (Ster-Kinekor), and Avusa Limited, trading as Nu Metro Cinemas (Nu Metro), alleging that the respondents agreed to divide markets in contravention of section 4(1)(b)(iii) of the Act.

The alleged division of markets involved a written agreement concluded between Ster-Kinekor and Nu Metro, in terms of which Ster-Kinekor agreed and undertook not to exhibit at the V&A Waterfront situated in Cape Town any films identified in the industry as commercial films. In turn, Nu Metro agreed and undertook not to exhibit any art films at its V&A Waterfront cinemas in Cape Town. Nu Metro applied for immunity from prosecution and a fine in terms of the Commission's Corporate Leniency Policy in 2009, and was granted conditional immunity by the Commission.

At the appeal hearing, the Commission's central argument was that the Tribunal fundamentally erred in its interpretation and application of section 4(1)(b) of the Act. The Tribunal found that the settlement agreement between Nu Metro and Ster-Kinekor was concluded before the Act came into operation. The Tribunal erroneously found that there can only be a contravention of section 4(1)(b)(ii) of the Act if there were actions or discussions between the parties directed at implementing the settlement agreement after the Act came into force. The Commission argued that the Tribunal ought to have found that a contravention of section 4(1)(b) requires an 'agreement' as defined in the Act and that an act of implementation is not an essential element of section 4(1)(b) of the Act. The Tribunal's decision is fundamentally at odds with the definition of an agreement in section 1(ii) read with section 4(1)(b) of the Act and the Competition Appeal Court's interpretation of an agreement in recent cases.

The CAC is yet to hand down a decision as to whether the Commission's appeal was successful.

THE TRIBUNAL PROHIBITS THE MEDICLINIC SA MERGER WITH MATLOSANA MEDICAL HEALTH SERVICES

On 30 January 2019 the Competition Tribunal prohibited the merger between Mediclinic Southern Africa (Pty) Ltd (Mediclinic SA) and Matlosana Medical Health Services (Pty) Ltd (MMHS). The parties notified the large merger to the Commission on 29 September 2016. Mediclinic SA was the primary acquiring firm, which operates a private hospital group in South Africa. Included in its hospitals group is Mediclinic Potchefstroom which is located in the North West province.

The primary target firm was MMHS, which owns and operates two multi-disciplinary private hospitals in the North West province, namely Wilmed Park and Sunningdale hospitals.

Through the merger, Mediclinic SA would own and operate Mediclinic Potchefstroom together with Wilmed Park and Sunningdale hospitals in the area covering the Ditsobotla, City of Matlosana and JB Marks local municipalities. This area has five hospitals – Wilmed Park, Mediclinic Potchefstroom, MooiMed, Life Anncron and Sunningdale hospitals. Post-merger, Mediclinic SA would own and operate more than half of the multidisciplinary private hospitals located in these areas.

The Tribunal found that the transaction is likely to substantially prevent or lessen competition in the relevant market is based on, among others, the following reasons:

- i. The tariffs of the target hospitals would increase significantly as a result of the merger for both insured and uninsured patients.
- ii. Uninsured patients do not have the benefit of a medical aid scheme negotiating rates on their behalf. The merger was also likely to significantly affect the uninsured patients by limiting their ability to negotiate and switch to cheaper private hospitals, particularly the MMHS hospitals.

- iii. The Tribunal indicated that the uninsured consumers are vulnerable considering consumer welfare and the importance of private healthcare in South Africa.
- iv. Furthermore, the merging parties would have been a dominant player in the Ditsobotla, City of Matlosana and JB Marks local municipalities area. As a result of this dominance, the merged firm would have the ability to offer lower or no discounts on Designated Service Providers in the area. This will affect medical aid members on low-cost options.
- v. From a non-price competition perspective, the Tribunal found that the proposed transaction would likely lead to a deterioration in patient experience at the MMHS hospitals.
- vi. The merging parties claimed that the merger would result in cost efficiencies for the MMHS hospitals as Mediclinic procures its pharmaceutical items collectively and in large quantities, thus reducing costs. However, Mediclinic's claimed procurement efficiencies would be offset by the conditional exemption granted by the Commission to the NHN, to procure collectively for its member hospitals, including the target hospitals.

The merging parties did not tender appropriate pricing remedies, nor did they provide appropriate remedies with regards to uninsured patients and the non-price factors such as quality and patient experience.

The merging parties filed a Notice to Appeal with the CAC on 26 February 2019 and the appeal will be heard in the next financial year.

5 ECONOMIC RESEARCH BUREAU DIVISION

The Economic Research Bureau Division (ERB) is headed by the chief economist. The ERB is the economic think tank within the Commission. The ERB is composed of economists and is closely involved with the day-to-day work of case teams, and providing economic guidance and methodological assistance in complex cases and competition policy issues. The ERB provides support to complex mergers, complex abuse of dominance investigations, and in some instances cartel investigations. It provides expert input into complex cases and is also tasked with leading the Commission's work on impact assessments and research. The ERB also provides economic expert testimony to the Tribunal on behalf of the Commission, on a case-by-case basis, and is involved some of the Commission's Market Inquiries.

SUMMARY OF PERFORMANCE AGAINST TARGETS

The ERB met two of the three performance targets it was responsible for in the 2018/19 financial year. The target that was not met was due to budgetary constraints.

PERFORMANCE HIGHLIGHTS

During the period under review, the key outputs of the ERB included:

- Data Services Market Inquiry
- Grocery Retail Sector Market Inquiry
- Economic expert testimony in three cases
- Completing one scoping study;
- Undertaking one impact assessment;
- Contributing two book chapters and journal articles; and
- Hosting workshops and seminars

Below we discuss some of the ERB highlights from the 2018/19 financial year.

PROVIDING EXPERT TESTIMONY IN TRIBUNAL HEARINGS

The Commission continues to develop economic expertise from within the organisation and is becoming less reliant on external service providers to provide such expertise. As part of its functions, ERB provides expert economic testimony in support of the Commission's findings in hearings before the Tribunal. Two highlights were in the proposed acquisitions of (i) Matlosana Medical Health Services (Pty) Ltd by Mediclinic Southern Africa (Pty) Ltd and (ii) Rheem South Africa (Pty) Ltd by Greif International Holding B.V. Economic expert testimony was also provided in one cement cartel case, NPC - CIMPOR (Pty) Ltd. The Tribunal has upheld the Commission's decisions in relation to the two mergers, whilst the decision on the cement cartel is still pending.

WORKSHOPS AND SEMINARS

The Commission had the honour of hosting and interacting with international thought leaders in the field of competition law and economics. The ERB in collaboration with other divisions facilitated some of these workshops, in pursuit of its goal of building capacity and expertise within the organisation.

Professor Motta, former Chief Economist of the Directorate General for Competition in the European Commission, visited the Commission for two days; on 29 to 30 October 2018. During his visit he facilitated lectures for economists within the Commission on (i) the role of economists and economic evidence in merger analysis; (ii) the economics of unilateral effects in horizontal mergers: theory and cases; and (iii) merger effects on investment and innovation: theory and cases.

In addition, on 05 - 07 September 2018 the Commission together with CRESSE and the University of the Witwatersrand jointly hosted the Competition Economics Workshop, which looked in depth at some fundamental economic topics and offered an opportunity for participants to engage and contribute to current debates on competition economics and policy. Facilitators of the CRESSE workshop were Professor Yannis Katsoulacos, Professor Patrick Rey, and Professor Tom Ross. Topics covered include: (i) Market definition; (ii) Economics of vertical foreclosure; (iii) Cartels – detection and damages; and (iv) Game theory for competition policy.

The Commission together with International Competition Network (ICN) and Stellenbosch University also jointly hosted the 2018 ICN Unilateral Conduct Working Group (UCWG) Workshop. The aim of the workshop was to provide a forum for the exchange of views regarding issues of common interest among the participants, representing competition agencies and non-governmental advisors (NGAs) from around the world, and to strengthen the links that lead to better international cooperation among ICN member agencies as well as with the consumer, academic, business, economic and legal communities. The UCWG workshop contained five plenary sessions with interactive panel presentations and four smaller breakaways. The focus of this year's workshop was on excessive pricing, predatory pricing, exclusive dealing and rebates.

Table 14: Journals and other publications compiled in 2018/19

| Contributors | Title | Publication |
|------------------------------------|---|---|
| Liberty Mncube and Mfundo Ngobese | Working Out the Standards for Excessive Pricing in South Africa | Excessive Pricing and Competition Law Enforcement |
| Liberty Mncube and Yongama Njisane | The Pioneer/Pannar merger, the maize seed value chain and globalisation | Global Food Value Chains and Competition Law |

MARKET INQUIRIES

The Commission is empowered to conduct market inquiries into the general state of competition in any industry. Market inquiries are different from investigations in that, while investigations target specified firms engaged in specified anti-competitive conduct, market inquiries look into any feature or combination of features in a market which may have the effect of distorting or restricting competition – without targeting any one firm. The Commission did not initiate any new market inquiry in the 2018/19 financial year. The Commission is currently conducting the following market inquiries:

- a. Public Passenger Transport Market Inquiry;
- b. Data Services Market Inquiry;
- c. Health Market Inquiry; and
- d. Grocery Retail Sector Market Inquiry

THE PUBLIC PASSENGER TRANSPORT MARKET INQUIRY

The Public Passenger Transport Market Inquiry (PPMTI) officially commenced on 7 June 2017, and the terms of reference cover broadly the following issues:

- price setting mechanisms;
- price regulation;
- route allocation, licensing and entry regulations;
- allocation of operational subsidies;
- transport planning; and
- transformation in the land based public passenger transport industry.

The market inquiry team conducted public hearings in Mpumalanga (Mbombela), Limpopo (Polokwane), Free State (Mangaung), North West (Mafikeng), Eastern Cape (Port Elizabeth and East London) and Northern Cape (Kimberley). The team received oral submissions from over 60 stakeholders during the public hearings in the 6 provinces. Additional public hearings were conducted at the Commission's offices, with key stakeholders such as National Treasury, Department of Rural Development, Department of Human Settlements, City of

Tshwane, City of Johannesburg and a number of Bus Operating Companies running the Bus Rapid Transit (BRT) system.

The public passenger transport inquiry is at final stages, where the team is finalising its report with various recommendations to be issued for public comment.

DATA SERVICES MARKET INQUIRY

The Commission's Data Services Market Inquiry (Data Inquiry) was initiated in the previous financial year and work continued throughout the current year. The purpose of the inquiry is to understand the factors or features of the market that may cause high prices for data services, and to make recommendations that would result in lower prices for data services.

The team continued to gather key evidence and engaged formally with a number of stakeholders, including the operators, in order to clarify aspects of the submissions to the Data Inquiry and request further evidence and information. The team also identified and consulted with stakeholders that had not yet engaged with the Commission, in order to request further information for the purposes of the assessment.

In addition to analysing the evidence gathered, a highlight of the year for the Data Market Inquiry was the public hearings held from 17 to 19 October 2019. The public hearings were held to draw in more public participation and, in addition to operators and market participants, important submissions were received from consumer rights and research organisations. Submissions focused four aspects identified by the Data Inquiry team: (i) whether data prices are higher than they ought to be, (ii) what factors result in prices being higher than they ought to be, (iii) how these factors can potentially be remedied, and (iv) the impact of data prices and access to data on lower-income customers, rural customers, small business and the unemployed.

Towards the end of the financial year, the team worked on finalising the provisional report, which was published on the 24 April 2019. The Commission awaits public comments, after which the inquiry is expected to be completed during the 2019/20 financial year.

GROCERY RETAIL SECTOR MARKET INQUIRY

The Retail Grocery Market Inquiry (GRMI) commenced in 2016, seeking to examine if there are any features or a combination of features in the sector that may prevent, distort or restrict competition in the grocery retail sector. The inquiry focused on the following areas:

- the impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers;
- the impact of long-term exclusive leases on competition in the sector;
- the dynamics of competition between local and foreign-owned small and independent retailers;
- the impact of regulations, including municipal town planning and by-laws, on small and independent retailers;
- the impact of buyer groups on small and independent retailers; and
- the impact of certain identified value chains on the operations of small and independent retailers.

The GRMI is at an advanced stage – a provisional report setting out the preliminary findings and recommendations will be published for public comment in the first quarter of the 2019/20 financial year. The retail sector inquiry is expected to be completed on the 30 September 2019.

HEALTH MARKET INQUIRY

The Health Market Inquiry (HMI) published its Provisional Findings and Recommendations Report on 5 July 2018, and received most stakeholder comments and responses. The Panel and technical team have made good progress in reading, reviewing and analysing stakeholder responses and submissions received.

On 23 January 2019, however, the Commission published a stakeholder notice in which it notified all stakeholders that the work of the HMI Panel and external consultants would be suspended due to the Commission's budgetary constraints. It was also announced that the HMI would resume in Quarter 1 of the 2019/20 financial year

(i.e. 1 April 2019). On 4 February 2019, the HMI Panel published a stakeholder notice in which they committed to finishing the HMI and working towards finalising the final findings and recommendations report.

The HMI published on 28 February 2019, an amended administrative timetable highlighting all the key HMI activities from 1 April 2019 up to the publishing of the final findings and recommendations report.

The HMI is at an advanced stage and expects to complete the inquiry during the 2019/20 financial year.

6 ADVOCACY DIVISION

The Advocacy Division comprises of six (6) functions, namely (1) stakeholder relations; (2) strategy; (3) policy; (4) international relations, communications and (5) screening.

Through the advocacy function the Commission engages with key stakeholders in order to promote voluntary compliance with the Act, both in the public and the private sector. It is a responsive function which determines its strategy based on the Commission's priorities in a given period. As such, the Advocacy function focuses on all eight (8) priority sectors of the Commission.

SUMMARY OF PERFORMANCE AGAINST TARGETS

The Advocacy Division was responsible for seven (7) performance targets in 2018/19 financial year, two of which are shared with the OTC. All seven targets were met.

PERFORMANCE HIGHLIGHTS

SCREENING

The Screening department is responsible for undertaking preliminary investigations on the complaints received. Based on this preliminary investigation, the Commission will make the decision to investigate any case further or decide not to investigate further (non-referral).

The Commission non-refers matters during the screening period if (i) the complaint does not raise competition concerns (ii) if the allegation does not amount to a contravention of the Act and (iii) if the parties resolve the complaint during the preliminary investigation phase. Where there are no competition concerns arising and complaints are non-referred, parties are advised of alternative routes to resolve the matters.

The Commission received two hundred and fifty-six (256) complaints from the public during the 2018/19 financial year, of which two hundred and twenty-two (222) were screened. Of the two hundred and twenty-two (222) preliminary investigations completed, one hundred and ninety three (193) were non-referred. The balance of complaints is being further investigated by the Commission's Cartels (10), Market Conduct (10), M&A (2), Advocacy (4) and three (3) complaints were withdrawn.

COMMUNICATING THE WORK OF THE COMMISSION

The Commission's communications approach is centred around effective, impactful and cost-effective messaging techniques that utilise dynamic information tools and platforms. Given the prevalent austerity measures, strategic communication is critical for the Commission as it must appropriately position its brand, and accurately and timeously disseminate its message to all its stakeholders.

Our corporate website, in this digital world, remains the most important link between the Commission and the broader society. It is not just the centre of our online presence; it is also the most economical advertising method and the most credible source of our information.

Critically, the communications function plays a central role in taking the events of the Commission to the public. This includes most of the logistical planning and execution, as well as media arrangements. Thus, from June to October there were two Market Inquiry public hearings involving the Land Based Public Transport Sector Inquiry, and one public hearing for the Data Market Inquiry, across 11 cities in nine provinces. The former were held for two days in each province, but the Data Market Inquiry was held only in Pretoria in October. In July the Healthcare Market Inquiry the Health Market Inquiry had a major press conference in Sandton, Johannesburg, where it released its provisional report which encompassed findings and recommendations.

Further, the Commission hosted the 12th Annual Competition Commission Law, Economic and Policy Conference at Wits University at the end of November. The event was attended by competition lawyers, economists, policymakers, academics, and local, continental and international Regulators. The conference was preceded by the ICN Unilateral Conduct Workshop, which took place at Stellenbosch University a few days earlier.

Further, the Commission participated, with 20 000 other people, in the 702 Walk The Talk initiative, as part of its health awareness programme.

The Commission continues to optimally utilise both traditional and new forms of media, particularly social media. There's a dual dependency between the Commission and the media, as they depend on us for fresh, important and accurate information. On the other hand, they play a significant role in disseminating our information, and remain the most effective tool for public education and awareness.

During the period under review, the Commission issued 96 media statements. These solicited countless interviews resulting in extensive media coverage. The coverage means a comparable commercial worth, called advertising value equivalent (AVE) amount of at least R450 252 974. This coverage comprises an AVE value of at least R90 521 432 for print media coverage; an AVE value of at least R56 153 648 for broadcast coverage; and at least R299 691 650 for online media coverage. This value is calculated by taking the inches, in the case of written word-based platforms, or seconds in the case of broadcast media, and multiplying these figures by the respective platform's advertising rates. The resulting number is the equivalent of what you would have paid if you placed an advertisement. This then becomes the equivalent value.

The Commission continues to make significant strides with regards to social or new media, which is still one of the fastest growing media platforms worldwide. This means that we are effectively penetrating the youth and we reach internet and social media users timeously. The Commission, for example, live streamed the Land Based Public Transport Sector Inquiry, which contributed enormously to us

widening our reach. More importantly, all this footage is recorded and available on our YouTube channel.

Below is a list of the Commission's social media platforms, and the number of followers or subscribers as at 31 March 2019. Non-subscribers frequently view and participate in the Commission's online events as well. Table 15: The Commission's social media footprint

Table 15: Commission mentions in online media for the 2018/19 year

| Type of media | Number of mentions |
|---------------|--------------------|
| Twitter | 12 480 |
| Facebook | 16 900 |
| LinkedIn | 12 303 |
| Instagram | 424 |
| Total | 42 107 |

POLICY RESPONSES

The Commission submitted six (6) policy responses in the 2018/19 financial year. The first was a submission to the Department of Transport – to give inputs to the Establishment of the Single Transport Economic Regulator (STER).

The rationale for the ERT Bill is to establish a single economic regulatory framework for the South African transport sector, covering four modes of transport – air, rail, road and ports. The Commission supported the transformation objectives of the ERT Bill, in particular the promotion and development of small and medium enterprises (SMEs) through measures designed to advance categories of historically disadvantaged individuals (HDIs) in the operation of transport facilities and services. Further, the Commission supported the ideal of a coordinated, efficient and viable transport industry in South Africa, but also acknowledged concerns with some provisions in the Bill. This was particularly in relation to some aspects of price control mechanisms, the scope of entities covered by the Bill, the application and procedural aspects of the Bill, and matters related to

concurrent jurisdiction between the Commission and the Regulator. In this regard, alternate proposals were suggested to the Department of Transport for the next iteration of the Bill.

The Commission also made a submission to the Department of Communications in response to the Revised Delivery Model for the Broadcasting Digital Migration Programme. The Commission acknowledged that the aim of the process is to reduce risks to government and to overcome the inefficiencies of the current delivery model. The Commission's submission sought to contribute to the strengthening of the model and enhancing competitive efficiencies, proposing alternative processes where applicable.

The third policy response was to the Department of Science and Technology, giving inputs to the National Scientific Professions Bill (NSP Bill) on 28 August 2018. The purpose of the NSP Bill was to repeal the Natural Scientific Professions Act of 2003 (NSP Act 2003); to provide for the establishment of the South African Council for Natural Scientific Professions; to determine its function; to provide for registration of natural scientists; to regulate the affairs of natural scientists and to set norms and standards; to regulate the professional conduct of natural scientists so as to ensure accountable conduct; and to ensure that the practice of natural science does not harm or potentially harm the interests of the public. The Commission recognised the intentions of the DST to improve the management and regulation of the natural sciences sector, and of its members. Further, to promote the professional development and ongoing transformation of the natural sciences sector in South Africa. It is also understood that this Bill is brought forward in light of the Science and Technology Law Amendment Bill, which sought to harmonise and standardise the provisions which regulate the operations and governance of the public entities reporting to the Minister of Science and Technology.

A submission was also made to the National Treasury on Government Fleet Tenders, on 26 October 2018. The purpose of the submission was to give input to the latest drafts of the RT57 2018 and RT46 2019 Special Conditions of Contract, and to advocate for the alignment of Government's fleet tenders with competition principles. More specifically, to ensure that the tender contracts cater for the principles

of allotment of work to small, micro and medium enterprises (SMMEs) and historically disadvantaged individuals (HDIs), and to ensure that the selection criteria to choose service providers is not exclusionary.

The fifth policy submission was made to NERSA on 5 December 2018, on the Discussion Document of the 2018 Determination of Inadequate Competition in the Piped-Gas Industry in terms of Section 21(1)(P) of the Gas Act No.48 of 2001. The Commission noted that the general objective of the document was to assess and determine the extent of competition in the piped gas industry in South Africa, within the regulatory framework of the Gas Act. All commentary and insights shared accounted for cases considered by the Commission in the piped gas sector, with key learnings incorporated.

The Commission also made input into the 2019 Industrial Policy Action Plan (IPAP) to the Department of Trade and Industry (DTI) on the 27 Feb 2019. The purpose of the Commission's submission is to highlight the role and application of competition policy towards business development and economic growth.

WORKSHOPS ON COMPETITION POLICY

The Commission hosted a workshop with development funding institutions (DFI's) on 5 September 2018. The purpose of the workshop was to discuss measures to promote entry and support growth through improved policy alignment between the Commission, DFI's and Government.

The seminar was attended by relevant government departments, other government agencies and entrepreneurs. The seminar was conducted by way of two panel discussions which were preceded by a keynote address by the Deputy Commissioner. Panellists included the Land and Agricultural Development Bank (Land Bank), the Industrial Development Corporation (IDC), the Department of Trade and Industry (DTI), the Centre for Competition, Regulation and Economic Development (CCRED), the Department of Small Business Development (DSBD), the Small Enterprise Finance Agency (SEFA), the Johannesburg Chamber of Commerce and Industry (JCCI) and the National Empowerment Fund (NEF). The panel discussions were each followed by some questions and inputs from delegates.

The Commission also hosted the South African Health Products Regulatory Authority (SAHPRA) for a Workshop on the 6 March 2019. The workshop tackled key issues such as (1) the licensing and registration processes, which may have the effect of prohibiting and delaying market entry and fostering anti-competitive relationships between market players in all levels of the value chain, and (2) exclusionary conduct by existing market players, which raises barriers to entry. The Commission intends to continue further engagements with SAPHRA, to facilitate better collaboration between the two regulators.

INTERNATIONAL RELATIONS

Most of the international events attended and hosted relate to BRICS and engagements with other African countries, with a high rate of engagements taking place in Africa. The bulk of the Commission's international engagements thus continue to relate to interactions with our BRICS and African colleagues, in line with our organisational strategy. Below, we highlight significant developments in the Commission's international relations this year:

African Competition Forum

The African Competition Forum held its 2nd Biennial conference on 11 - 12 October 2018 at Marrakech, Morocco, hosted by the Competition Council of Morocco. At the conference, a new Steering

Committee was elected, with South Africa as Chairperson and Tunisia and Mauritius as Vice Chairpersons, respectively. The new Steering Committee comprises of Algeria, Botswana, eSwatini, Kenya, Mauritius, Senegal, South Africa, The Gambia, Tanzania, Tunisia and Morocco. The ACF plays a pivotal role in the region in terms of regional cooperation and development. This demonstrates the CCSA's serious commitment towards the continent. The CCSA has been playing a huge role in influencing policy through participation in the AfCFTA Competition Protocol meetings, and taking forward inputs of the ACF members.

SADC

With efforts to promote regional cooperation and promote competition law, CCSA chaired the SADC Competition Committee meeting which was held in Gaborone, Botswana on 13 - 14 June 2019. The 9th Meeting of the SADC Competition and Consumer Law and Policy Committee meeting was attended by eight Member States, namely Botswana, Mauritius, Mozambique, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe. South Africa then hosted the 1st Meeting of the SADC Experts team, meeting to review the Cooperation Framework on Competition Framework on Competition and Consumer Law and Policy. CCSA also works very closely with the Department of Trade and Industry's SADC unit to keep abreast of developments.

Table 16: Engagements with international and foreign bodies in 2018/19 financial year

| COMPETITION BODY | NATURE OF ENGAGEMENT |
|------------------|--|
| ACF | <p>Three ACF Steering Committee meetings, two ACF capacity building trainings and ACF conference took place during the period under review:</p> <ol style="list-style-type: none"> 1. ACF SC meeting which took place in Lusaka, Zambia on 23 – 24 May 2018 2. ACF SC meeting which took place in Geneva on 13 July 2018 3. ACF SC meeting which took place in Marrakech, Morocco on 12 October 2018 4. ACF Cartel workshop which took place in Dar es Salaam, Tanzania on 19 – 20 September 2018 5. ACF Merger workshop which took place in Nairobi, Kenya on 4 – 5 July 2018 6. ACF Biennial Conference which took place in Marrakech, Morocco on 11 – 12 October 2018 |

| COMPETITION BODY | NATURE OF ENGAGEMENT |
|------------------|---|
| AfCFTA | <p>Two AfCFTA meetings took place during the period under review:</p> <ol style="list-style-type: none"> 1. Joint AUC and ECA Expert Group Meeting on a Draft Text for the Continental Free Trade Area Agreement in Addis Ababa, Ethiopia on 12-15 November 2018 2. UNECA Group of Experts Meeting on Assessing Regional Integration in Africa(ARIA) in Addis Ababa on 18 February 2019 |
| SADC | <p>Three meetings took place during the period under review:</p> <ol style="list-style-type: none"> 1. 9th Meeting of the SADC Competition and Consumer Law and Policy Committee meeting in Gaborone, Botswana on 13 – 14 June 2019 2. 1st Meeting of the SADC Experts team meeting in Pretoria, South Africa on 22 October 2018 3. DTI hosted a SADC Customs Union Assessment of progress in Pretoria, South Africa on 01 February 2019 |
| ICN | <p>No ICN conference participation under period of review:</p> <ol style="list-style-type: none"> 1. CCSA hosted the ICN UCWG Workshop in Stellenbosch, Cape Town on 01 - 02 November 2018 2. ICN Merger Working Group Regional Teleconference call hosted by South Africa on 14 November 2018 3. ICN Unilateral Conduct Webinar hosted by South Africa on 12 March 2019 4. CCSA participated in more than 20 teleconference calls and webinars |
| BRICS | <p>Four engagements took place under period of review:</p> <ol style="list-style-type: none"> 1. BRICS heads of authorities meeting in St Petersburg, Russia on 15 – 19 May 2018 2. BRICS Summit in Johannesburg, South Africa on 25 – 27 July 2018 3. BRICS Heads of authorities meeting in Sochi, Russia on 24 – 26 September 2018 4. 1ST Meeting of Digital Economy Working Group in Sao Paulo, Brazil on 24 – 26 October 2018 |
| UNCTAD | <p>CCSA participated in one UNCTAD competition committee meeting which took place in Geneva on 11 – 13 July 2018</p> |

| COMPETITION BODY | NATURE OF ENGAGEMENT |
|--|--|
| OECD | <p>In the period under review, we have had two Competition Committee meetings, one OECD government engagement and submitted 4 papers:</p> <ol style="list-style-type: none"> 1. OECD competition meeting which took place 2. OECD competition meeting which took place in Paris, France on 26 – 30 November 2018 3. DIRCO - OECD Relations interdepartmental meetings in Pretoria, South Africa on 05 February 2019 <p>Submitted papers:</p> <ol style="list-style-type: none"> 1. Competition Law and State-Owned Enterprises 2. Regional Cooperation Agreements 3. Excessive Pricing in Pharmaceuticals 4. Treatment of Privileged Information in Competition Proceedings |
| CCSA Staff exchange/ Benchmarking exercises/ Courtesy visits | <p>Two staff exchanges, one benchmarking exercise and one courtesy visit took place under period of review:</p> <ol style="list-style-type: none"> 1. Seychelles Fair Trading Commission in Pretoria, South Africa 2. Competition Authority of Botswana benchmarking exercise in Pretoria, South Africa 3. Competition Authority of Kenya staff exchange in Pretoria, South Africa 4. State Administration for Market Regulation (SAMR) Vice minister paid CCSA a courtesy visit in Pretoria, South Africa on (provide date) |
| Other | <p>CCSA participated in three other international events under period of review:</p> <ol style="list-style-type: none"> 1. US – South Africa Annual Bilateral Forum hosted by DIRCO in Pretoria, South Africa 2. Fordham Heads of Authorities workshop 3. 19th International Conference on Competition – Berlin, 13 - 15 March 2019 4. Global Competition Law Center Annual Conference, 31 January – 1 February 2019 |
| Regional Conference participation | <p>CCSA participated in two regional conferences:</p> <ol style="list-style-type: none"> 1. Competition and Consumer Protection Commission of Zambia hosted a Competition Conference in Zambia on 07 December 2018 2. Competition Authority of Mauritius in partnership with the OECD hosted a Financial Service Africa Conference in Mauritius on 15 - 16 March 2019 |

| COMPETITION BODY | NATURE OF ENGAGEMENT |
|-----------------------------------|--|
| Trainings | One training under period of review: 1. Professor Massimo Motta hosted a two-day training in CCSA ON 29 - 30 October 2018 |
| Memorandum of Understanding (MOU) | Two MOU's were signed in the period under review: 1. CCSA MOU with the World Bank (International Finance Cooperation) in Pretoria, South Africa on 11 March 2019 2. CCSA MOU with eSwatini in eSwatini on 25 June 2018 |

Stakeholder Engagements (Forums and Outreaches)

The Commission held workshops with the various trade unions on 29 May 2018. The objective was to brief the trade unions on the Public Passenger Transport Inquiry and obtain their active support, as well as to present the Public Interest Guidelines to them.

The Commission also held a consultative meeting with the Black Business Council on 19 September 2018. The purpose of the meeting was to discuss the South African Automotive Aftermarket Industry, and the proposed Codes from the Commission. The purpose of the Codes was to allow small and historically disadvantaged independent

service providers (HDI) to undertake service and maintenance work while the vehicle is still in-warranty; for small HDI independents to undertake in-warranty auto-body repairs, and for more HDIs to own Original Equipment Manufacturer (OEM) dealerships.

The Commission also held a two-day (6 & 7 September 2018) workshop with the South African Bureau of Standards (SABS) on Standard Setting and Competition Regulation. The workshop was part of the capacity-building commitments as per the MOU between the Commission and the SABS.

Table 17: Broad Stakeholder engagement sessions

| STAKEHOLDERS | PURPOSE OF ENGAGEMENT |
|---|--|
| The DTI- for the Association of Ferrous Metal Producers | Training provided – to raise awareness of the Application of the Competition Act and Information Exchange. |
| AFASA and NAFU | To discuss challenges faced by Black farmers, and to define a research agenda for the sector. |
| Development Funding Institutions | To discuss measures to promote entry and growth in industries, and identifying the barriers to access |
| South African Health Products Regulatory Authority | To discuss the licensing and registration processes and entry barriers |
| Trade union workshop | To brief trade unions on the Public Passenger Transport Inquiry and the Public Interest Guidelines |

| STAKEHOLDERS | PURPOSE OF ENGAGEMENT |
|--|---|
| Black Business Council | The objective of the meeting was to discuss the Code of Conduct for Competition in the South African Automotive Aftermarket Industry |
| University South Africa | Advocacy on procurement processes at Universities |
| South African Council for the Landscape Architectural Profession | To provide guidance on the exemptions processes and outcomes |
| LPG Safety Association Conference | Presentation on LPG Market Inquiry and the progress made by relevant stakeholders, on the recommendations. |
| Department of Trade and Industry (DTI) Industrial Policy Unit. | Presentation on the Competition Act and Abuse of Dominance Cases |
| Black Conveyancers Association | Engagement and discussions on challenges faced by small Black conveyancing companies re: access |
| Dullar Omar Institute - University of Western Cape | Presentation on the Commissions' work in the food and agro sector and also its work involving universities |
| DTI Automotive Unit | Presentation to the Motor Industry Development Council on Information Exchange |
| Bid-Rigging Workshops | Eastern Cape Correctional Services Nelson Bay Metro - suppliers to the municipality The EC Supply Chain Management Forum |
| World Bank: Improving Business Environment for Prosperity (IBEP) | Presentations from broader CCSA team covering: <ol style="list-style-type: none"> 1. CCSA mandate, the work of the Commission and how it contributes to the economy/business; 2. Priority sectors 3. Market inquiries, with a focus on the LPG Inquiry. 4. Amendments to the competition law in South Africa: objectives, strategies and considerations. 5. Impact assessments |
| School Outreaches | Fidelitas Comprehensive High School Winnie Mandela Secondary School Tsogo High School - Career Expo |

OFFICE OF THE COMMISSIONER

The Office of the Commissioner (OTC) is responsible for providing strategic leadership and oversight in the organisation. The Corporate

Governance function is situated in the OTC. Corporate Governance functions are discussed in detail under Part D.

7 CORPORATE SERVICES DIVISION

The Corporate Services Division (CSD) provides the following corporate support functions to the Commission: human capital management, security and facilities, records management, information resources services, and information and communications technology.

SUMMARY OF PERFORMANCE AGAINST TARGETS

The Corporate Services Division (CSD) was responsible for four (4) performance targets in the 2018/19 financial year. The CSD met two (2) targets, and two (2) targets were not met because of budgetary constraints and pending organisational structure.

- The implementation of the new performance management policy and a paperless system to manage performance management processes at the Commission;
- The institutionalisation of the employment equity committee with particular focus on setting achievable employment equity targets for the Commission;
- All Human Capital Management Policies were reviewed during the financial year, to ensure they are in line with best practices and are in line with the changes in legislation; and
- Limited implementation of some aspects of the new organisational structure whilst we await the approval of the structure by the Minister of Economic Development and the Minister of Finance.

PERFORMANCE HIGHLIGHTS

SUPPORTING OUR HUMAN CAPITAL

The Commission is a fast-paced environment driven by dynamic specialists in the areas of law and economics. The human capital (HC) function at the Commission provides strategic and administrative support to line managers in the areas of talent management, talent acquisition, employee relations management, organisational development support, and human capital development at the Commission. The Commission continues to benefit from the Business Partner model it adopted three years ago, as the HC function is better equipped to support managers and staff in the realisation of the High Performance Agency goals.

During the reporting period the HC function focused on driving the following initiatives:

- Improvements were made in talent acquisition systems, processes and policies to improve both the quality of talent sourced and the turnaround times for talent acquisition at the Commission;

PERFORMANCE MANAGEMENT

The Commission is committed to an effective performance management system, and to providing the right environment and resources for all employees to perform to their full potential – to enable a high-performance culture. Performance management is a continuous process, performed throughout the year, involving quarterly reviews to ensure that the organisation's strategic priorities and organisational performance against these are aligned and on target.

Performance management is a foundation for organisational success as it impacts on areas such as rewards and recognition, learning and development, succession management and career management.

In this reporting period the Commission implemented a new performance management system and focused on its successful implementation throughout the year.

THE COMPETITION CADETS PROGRAMME

The Commission is committed to the development of talent in the competition law and economics areas, both for contribution to the transformation of the area and for the development of its own talent pipeline. The Commission revamped the program from the old Grade Development Program and sought to improve the training and experiential learning aspects of the program. In 2018/19, the Commission enrolled 4 graduates.

EMPLOYMENT EQUITY

The Commission has made a deliberate effort to comply with the Employment Equity Act (EEA) (No. 55 of 1998) as amended. In terms of the applicable provisions of the EEA, the Commission's 2018 employment equity report was submitted to the Department of Labour. Diagram 1 shows the equity breakdown for the past years, including the year under review. From a gender and national economically active population (EAP) perspective, the Commission is doing very well. The EAP includes people between the ages of 15 and 64 who are either employed or unemployed and who are seeking employment. In 2018 the equity ratio for female and male representation is 43% and 57 %, respectively. People with disabilities represented 2% of Commission staff, in line with the target set by the government.

STAFF TURNOVER

As at end of the financial year, the Commission's staff complement stood at 220 employees. 26 resignations were recorded for the period. The Commission's effort towards a healthy staff retention rate is yielding positive results in that there has been a marked reduction in staff turnover in the year under review, as depicted in Diagram 4.

EMPLOYEE RELATIONS

In the year under review, the majority of the Commission's employees were members of the National Education Health and Allied Union. By year-end, the union's representation was 71%, which gave them majority rights in terms of the amended Chapter III of the Labour

Relations Act (No. 66 of 1998).

No employees were dismissed during the reporting period.

LEARNING AND DEVELOPMENT

The Commission places great emphasis on developing its people. R 3 331 404 was spent on learning and development initiatives during the reporting period. The training budget includes local training, overseas training and conferences, and amounts to R2 000 000 in the reporting period.

The Commission is moving towards a Learning and Development Program that relies heavily on its internal expertise and information resources in the development and delivery of learning programs, whilst continuing to draw from best practices and innovation from outside the Commission. The Commission has invested a significant amount of effort in the development of learning content, and encouraging senior employees to participate in the development of other employees. Some of our senior employees have been involved in either providing content or running training and development programs for international competition authorities.

In line with its aspiration to support the development of its staff, the Commission supports staff to not only do their jobs, but also to grow as individuals. In 2018/19, 33 employees benefited from the R 1 570 290 the Commission spent on bursaries and loans for staff.

FACILITIES MANAGEMENT

The security and facilities section is responsible for ensuring the safety of Commission staff and visitors, assets of the Commission and information of the Commission. The section oversees physical security services, information resources and other services guided by the legislative framework, policies of the Commission and its plan to ensure a secure environment for the Commission.

This section is responsible for ensuring that the Commission has effectively managed space that is suitable by being fit for purpose, safe as per the requirements of the occupational health and safety regulatory framework, and comfortable to support the work of the Commission.

Diagram 2: Gender profile over five years

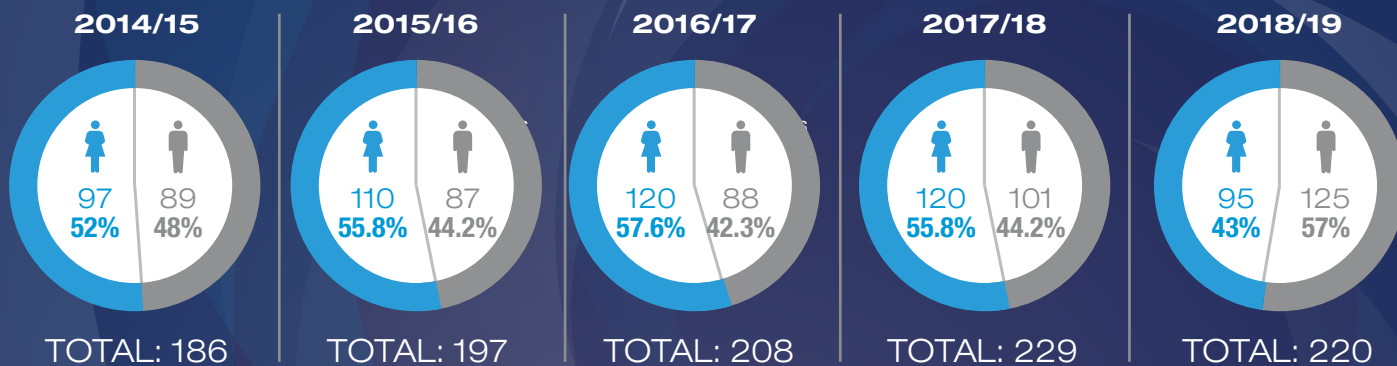


Diagram 3: Race and gender profile as at 31 March 2019

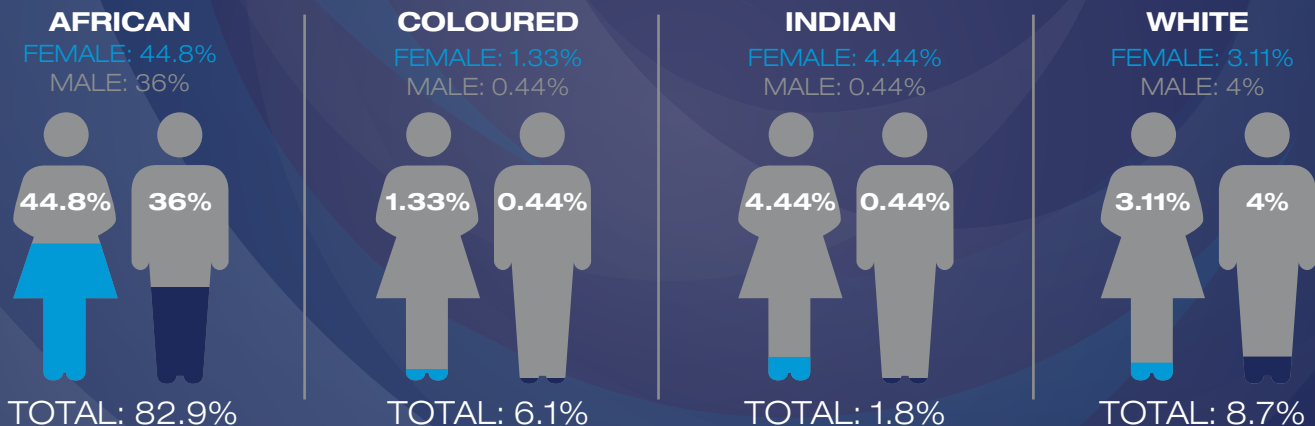


Diagram 4: Staff turnover figures over five years

| 2014/15 RESIGNATIONS: | 2015/16 RESIGNATIONS: | 2016/17 RESIGNATIONS: | 2017/18 RESIGNATIONS: | 2018/19 RESIGNATIONS: |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 28 | 21 | 32 | 21 | 26 |
| 13.07% | 9.48% | 15.38% | 9.1% | 2.8% |

INFORMATION AND COMMUNICATIONS TECHNOLOGY

The information and communication technology (ICT) is responsible for the provision of enabling technology to facilitate efficiencies in the work of the Commission, securing information resources, and ensuring continuity of the operations of the Commission. The Commission's ICT network is partly hosted by the Department of Trade and Industry (DTI) as some operations of the Commission are located on the DTI campus. The Commission conducted an extensive review of its technology requirements, remapped its business processes and designed blueprints for its requirements in the 2015/2016 financial years. The Commission has not been able to invest further in this area due to budgetary constraints; this has the potential to limit achievement of efficiencies and ensuring a secure ICT environment.

IT governance and improving research and communication technology was the main focus for the year. Updating and developing new IT policies included the Identity and Access Management Policy and the Disaster Recovery Policy. ToRs (what's this?) for the IT Committee were also developed during the financial year.

Despite these challenges, the Commission has been rolling out Office 365, improving some of its information storage capacity, and creating collaboration platforms for more efficient teams at the Commission.

RECORDS MANAGEMENT

The Commission's Records Management function continued to provide an efficient service to external clients and internal clients; to support the core and support functions of the Commission. The focus during the year under review was on the development of a policy framework that facilitates compliance with the regulatory framework affecting records and information at the Commission's disposal.

INFORMATION RESOURCES CENTRE (IRC)

The information-and-knowledge-intensive nature of the Commission's business requires access to an extensive repository of information sources, both in the legal field and market research. The Commission conducts its work in line with the South African legal framework, but due to the convergence of competition law worldwide, it can also tap into overseas jurisprudence. Hence it has maintained access to 17 odd databases which include international and local legal databases, as well as various business and marketing resources that are well-used. Book collections are kept current, with the addition of 26 new titles during the past year. Three hundred and eighty-four publications were issued during the year. Although the Information Resource Centre aims to bring information sources to the desktops of staff, it also assisted with 335 requests for information from staff members. Thirty-one staff members received either an orientation or reorientation of the Information Resource Centre's resources, 8 bulletins were circulated to keep staff abreast of new information resources, and 12 people attended presentations on a SA legal database.

PERFORMANCE AGAINST TARGETS: 2018/19

Table 18: 2018/19 performance against targets set

| PERFORMANCE MEASURE | | | ACCOUNTABLE PROGRAMME | ANNUAL TARGET 2018/19 | QUARTERLY TARGETS | | | | ACHIEVEMENT AGAINST TARGETS | | | | | |
|--|---------|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------------|----------------------|----------------------|----------------------|----------|---|
| OUTPUT | KPI No. | KEY PERFORMANCE INDICATORS (KPI) | | | | | | | | | | | | |
| | | | | | | | | | | | | | | |
| a) Merger & acquisition decisions | 1 | Average turnaround time for Phase 1 merger investigations | M&A | ≤ 20 days | ≤ 20 days | ≤ 20 days | ≤ 20 days | ≤ 20 days | 18 days | 14 days | 17 days | 17 days | 17 days | Target met |
| | 2 | Average turnaround time for Phase 2 merger investigations | M&A | ≤ 45 days | ≤ 45 days | ≤ 45 days | ≤ 45 days | ≤ 45 days | 40 days | 38 days | 40 days | 44 days | 41 days | Target met |
| | 3 | Average turnaround time for Phase 3 intermediate and small merger investigations | M&A | ≤ 60 days | ≤ 60 days | ≤ 60 days | ≤ 60 days | ≤ 60 days | 57 days | 60 days | 56 days | 56 days | 57 days | Target met |
| | 4 | Average turnaround time for Phase 3 large merger investigations | M&A | ≤ 120 days | ≤120 days | ≤120 days | ≤120 days | ≤120 days | 105 days | 98 days | 158 days | 113 days | 119 days | Target met |
| b) Merger litigation | 5 | % of merger decisions upheld by Tribunal and/or courts | LSD | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% | 100% | N/A | 0% | 100% | 67% | Target not met The Tribunal did not uphold the Commission's recommendations in Q3 |
| c) Compliance - monitoring for merger conditions | 6 | % of imposed merger remedies and conditions monitored | M&A | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% | Target met |
| a) Cartel Investigations | 7 | No. of cartel cases initiated | Cartels | 8 | 0 | 2 | 2 | 4 | 3 | 11 | 5 | 3 | 22 | Target Exceeded Information at hand warranted more initiations |
| | 8 | % of cartel investigations completed within 24 months | Cartels | ≥50% within 12 months | ≥50% within 12 months | ≥50% within 12 months | ≥50% within 12 months | ≥50% within 12 months | 0% within 12 months | 50% within 12 months | 0% within 12 months | 0% within 12 months | 13% | Target Not Met Target not met due to resource constraints. Inability to outsource litigation due to financial constraints resulted in resources for Investigations being moved to Litigation |
| | | | | ≥60% within 18 months | ≥60% within 18 months | ≥60% within 18 months | ≥60% within 18 months | ≥60% within 18 months | 37% within 18 months | 63% within 18 months | 0% within 18 months | 29% within 18 months | 32% | |
| | | | | ≥75% within 24 months | ≥75% within 24 months | ≥75% within 24 months | ≥75% within 24 months | ≥75% within 24 months | 87% within 24 months | 88% within 24 months | 50% within 24 months | 50% within 24 months | 69% | |

| PERFORMANCE MEASURE | | | ACCOUNTABLE PROGRAMME | ANNUAL TARGET 2018/19 | QUARTERLY TARGETS | | | | ACHIEVEMENT AGAINST TARGETS | | | | | |
|---|---------|--|-----------------------|-----------------------|-------------------|------|------|------|-----------------------------|------|-------|------|----------------|--|
| OUTPUT | KPI No. | KEY PERFORMANCE INDICATORS (KPI) | | | | | | | | | | | | |
| | | | | | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 | ANNUAL RESULTS | REASON FOR VARIANCE |
| a) Cartel prosecutions | 9 | % of cartel cases won at the Tribunal and the courts | LSD & Cartels | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% | 75% | 100% | 50% | 100% | 81% | Target met |
| a) Investigations of abuse of dominance and restrictive cases | 10 | % of abuse of dominance investigations completed within 24 months | Market Conduct | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% | 97% | 97% | 95.7% | 100% | 97% | Target met |
| | 11 | No. of abuse of dominance conduct cases initiated in prioritised sectors | Market Conduct | 2 | 0 | 0 | 0 | 2 | 1 | N/A | N/A | 0 | 1 | Target not met The initiation of cases was deferred due to budget constraints. Resources were directed to the on-going market inquiries |
| b) Prosecution of abuse of dominance and restrictive cases | 12 | % of abuse of dominance cases won at the Tribunal and the courts | LSD | ≥70% | ≥70% | ≥70% | ≥70% | ≥70% | N/A | N/A | N/A | N/A | N/A | Target not applicable Target was not triggered as there were no decisions granted by the Tribunal/ Courts in the period under review |
| c) Decisions on exemptions applications | 13 | % of exemption applications completed within 12 months | Market Conduct | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% | N/A | N/A | 0% | N/A | 0% | Target not met There were no exemption applications received or completed in Q1, Q2, Q4. Delays in Q3 were due to complexity of the existing exemptions and objections from external stakeholders |
| a) External Guidelines on the application of the Act | 14 | No. of guidelines on the application of the Act issued to stakeholders | LSD | 1 | 0 | 0 | 0 | 1 | N/A | N/A | N/A | 1 | 1 | Target met |
| a) Industry scoping studies | 15 | No. of industry scoping studies conducted in prioritised sectors | ERB | 1 | 0 | 0 | 0 | 1 | N/A | 1 | N/A | 0 | 1 | Target met |

| PERFORMANCE MEASURE | | | ACCOUNTABLE PROGRAMME | ANNUAL TARGET 2018/19 | QUARTERLY TARGETS | | | | ACHIEVEMENT AGAINST TARGETS | | | | | |
|--|---------|---|-----------------------|-----------------------|-------------------|----|----|----|-----------------------------|-----|-----|-----|----------------|--|
| OUTPUT | KPI No. | KEY PERFORMANCE INDICATORS (KPI) | | | | | | | | | | | | |
| | | | | | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 | ANNUAL RESULTS | REASON FOR VARIANCE |
| b) Market inquiries | 16 | No. of market inquiries initiated | Market Conduct | 1 | 0 | 0 | 0 | 1 | N/A | N/A | N/A | 0 | 0 | Target not met The initiation of a new market inquiry was deferred due to resource constraints as teams are working on the four on-going market inquiries |
| | 17 | No. of market inquiries completed within 24 months | Market Conduct | 2 | 0 | 0 | 0 | 2 | N/A | N/A | N/A | 0 | 0 | Target not met Delays in ongoing market inquiries were due to financial and human resource constraints, in addition to the complex stakeholder engagement |
| c) Impact assessments on Commission decisions or competition policy | 18 | No. of impact assessment studies completed | ERB | 1 | 0 | 0 | 1 | 0 | N/A | 1 | 0 | N/A | 1 | Target met |
| a) Working partnerships with relevant economic stakeholders | 19 | No. of workshops or seminars on competition, trade/ industrial policy and regulatory matters hosted | Advocacy | 2 | 0 | 1 | 0 | 1 | 2 | 1 | N/A | 1 | 4 | Target exceeded Engagements with emerging farmers in Q1 warranted the hosting of stakeholder workshops |
| | 20 | No. of submissions or responses to policy or regulation | Advocacy | 4 | 1 | 1 | 1 | 1 | 2 | 1 | 2 | 1 | 6 | Target exceeded More regulatory matters which required input than anticipated, including requests for comments |
| b) Working relationship with Criminal Justice (CJ) system counterparts on anti-cartel activities | 21 | No. of training & capacity-building initiatives with criminal justice system counterparts hosted | LSD | 1 | 0 | 0 | 0 | 1 | N/A | N/A | 1 | 0 | 1 | Target met |

| PERFORMANCE MEASURE | | | ACCOUNTABLE PROGRAMME | ANNUAL TARGET 2018/19 | QUARTERLY TARGETS | | | | ACHIEVEMENT AGAINST TARGETS | | | | | |
|--|---------|---|-----------------------|---|-------------------|----|----|---|-----------------------------|-----|-----|-------------------|----------------|---|
| OUTPUT | KPI No. | KEY PERFORMANCE INDICATORS (KPI) | | | | | | | | | | | | |
| | | | | | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 | ANNUAL RESULTS | REASON FOR VARIANCE |
| a) Collaboration with BRICS and African competition agencies | 22 | No. of collaborative research and/or other projects undertaken with African and BRICS partners of value to South Africa | Advocacy and OTC | 2 | 0 | 1 | 0 | 1 | 3 | 3 | 1 | 1 | 8 | Target exceeded An invitation to participate in BRICS the Digital Markets Working Group during the year expanded the work scope |
| b) Thought leadership on competition and development issues | 23 | No. of Commission-initiated media engagements | Advocacy and OTC | 20 | 5 | 5 | 5 | 5 | 29 | 18 | 14 | 12 | 73 | Target exceeded The Commission was dealing with a number of high profile matters that required more media interest than planned |
| | 24 | No. of issues of the Commission's newsletter published | Advocacy | 4 | 1 | 1 | 1 | 1 | 0 | 2 | 1 | 1 | 4 | Target met |
| c) Domestic Outreach initiatives | 25 | Annual competition conferences hosted | Advocacy | 1 | 0 | 1 | 1 | 0 | N/A | 0 | 1 | 0 | 1 | Target met |
| | 26 | Established university programs on competition law & economics | ERB | Signature of MOUs with two universities | 0 | 0 | 1 | 1 | N/A | N/A | 0 | 0 | 0 | Target not met There is ongoing engagement with the universities, however the conclusion of MoUs was put on hold due to the lack of funding to support the programme |
| | 27 | No. of Commission-initiated stakeholder training and education workshops or outreach programmes conducted | Advocacy | 4 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 4 | Target met |
| a) Integrated IT and Knowledge Management System (IMS) | 28 | Implemented IT and Knowledge Management system (IMS) | CSD | 1 | 0 | 0 | 0 | Approved implementation report of the IMS | N/A | N/A | N/A | 0 | 0 | Target not met The project has been deferred due to budget constraints |
| a) Clean financial audit | 29 | A clean audit | Finance | Clean Audit | 0 | 0 | 0 | Clean Audit | N/A | N/A | N/A | Unqualified Audit | 0 | Target not met Irregular expenditure finding in the previous financial year |

| PERFORMANCE MEASURE | | | ACCOUNTABLE PROGRAMME | ANNUAL TARGET 2018/19 | QUARTERLY TARGETS | | | | ACHIEVEMENT AGAINST TARGETS | | | | | |
|--|---------|--|-----------------------|---|---|------|---|---|--|--------|--|-------------------------|---|---|
| OUTPUT | KPI No. | KEY PERFORMANCE INDICATORS (KPI) | | | | | | | | | | | | |
| | | | | | a) Human Capital Management systems which align individual, divisional and organisational performance | 30 | Invest percentage of HR spend in learning and development (L&D) | CSD | Approved implementation report of 1% HR spend on L&D | 0 | Approved implementation report of 1% HR spend on L&D | 0 | Approved implementation report of 1% HR spend on L&D. | N/A |
| | 31 | % retention rate of staff complement | CSD | ≥90% | ≥90% | ≥90% | ≥90% | ≥90% | 98.7% | 97.02% | 99.10% | 97.81% | 98% | Target met |
| b) A strategy-relevant Organisational Structure (OS) | 32 | 70% implementation of the approved staff establishment | CSD | Approved implementation report for ≥70% of the approved staff establishment | 0 | 0 | 0 | Approved Implementation Report for ≥70% of the approved staff establishment | N/A | N/A | N/A | Implementation deferred | 0% | Target not met Filling of new positions deferred as Organisational Structure not approved by the Economic Development Department (EDD) |



PART D

CORPORATE GOVERNANCE



Corporate governance is about ensuring sound management, compliance and integrity. The OTC oversees the corporate governance function, and it has established the systems and practices described below to ensure transparency and accountability throughout the organisation.

DECISION-MAKING STRUCTURES

The Commissioner is the accounting authority of the Commission and is appointed by the Minister of the Economic Development Department (EDD). The Commissioner is responsible for general administration, managing and directing the activities of the Commission, supervising staff, and for performing any functions assigned to him in terms of the Competition Act and the Public Finance Management Act (No. 1 of 1999) (PFMA). Mr Tembinkosi Bonakele, after serving as the Acting Commissioner between October 2013 and 19 April 2014, was appointed as the Commissioner on 20 April 2014 for a five-year period. He performed the duties of Commissioner for the period under review.

THE COMMISSION MEETING

The Commission Meeting is the highest decision-making structure in relation to case-related work of the Commission. The Commission meeting is chaired by the Commissioner, who is assisted by the Deputy Commissioner(s) to carry out the functions of the Commission. The Commission Meeting ordinarily meets on a weekly basis with the Chief Legal Counsel, Chief Economist and Divisional Managers responsible for dealing with the statutory, case-related work. They also perform an advisory role to the Commissioners. The Commission Meeting held 33 meetings during the period under review. Its core functions are to receive recommendations and to make decisions on cases, as well as provide guidance and direction in the conduct of investigations. The Commissioners receive updates on important cases, adopt policies and procedures

regarding the conduct of cases, and receive reports and give direction on advocacy and communication relating to the work of the Commission, as prescribed by the Act. During the reporting period, the Commissioners consisted of the Commissioner and one Deputy Commissioner.

THE EXECUTIVE COMMITTEE AND SUB-COMMITTEES

The Commission's executive committee (EXCO) is chaired by the Commissioner and comprises the Deputy Commissioner and the Divisional Managers, including the Chief Financial Officer. The heads of departments (Strategy and Planning, Human Resources, Information Technology, Stakeholder Relations, Communications, International Relations and Registry) form part of the extended EXCO and participate in EXCO meetings when invited by the Commissioner. The EXCO advises the Commissioners in decision-making on the administrative and operational aspects of their functions. The EXCO held 7 ordinary meetings and 2 special meetings during the period under review. The key functions of the EXCO are to undertake strategic and business planning, monitor the implementation of strategic and business plans, and to mobilise and allocate financial and human resources. The EXCO also plays an oversight role over the management of human resources, information technology, security and facilities management, and risk management. It is responsible for approving policies relating to operations, provides leadership and sets the tone for the overall operations of the Commission. The company secretary advises the EXCO on compliance with relevant legislation and regulations. Performance against targets is discussed on a quarterly basis at the EXCO meetings in order to monitor expenditure, activities and progress. The Commission submits quarterly reports to the EDD in terms of the PFMA. The EXCO has established five committees to assist it in performing its oversight function and to provide it with guidance on matters falling within the terms of reference for the committees, as described below.

THE MANAGEMENT COMMITTEE

The EXCO is assisted by the Management Committee, which is chaired by the Deputy Commissioner and meets on a biannual basis.

The Management Committee comprises all management of the Commission including members of EXCO and a layer of management below EXCO, which is representative of all functions including Heads of Departments. The management committee held 3 meetings during the financial year.

The role of the management committee is to review and confirm the annual performance plan of the Commission, to approve business plans for respective functions, and to review organisational and functional performance. It provides strategic and operational oversight over investigations to assess progress, reviews investigative strategies, and complements existing functional and inter-divisional structures.

IT COMMITTEE

The IT Committee comprises select EXCO members and is tasked with overseeing the delivery of strategic IT projects that support the business. It is also responsible for developing and reviewing IT policies and ensuring that these are effectively implemented. The Committee held 4 meetings during the financial year.

FINANCE COMMITTEE

The Finance Committee comprises the Commissioners and select EXCO members. It is tasked with the following responsibilities:

- recommending the annual organisational budget to EXCO for adoption;
- ensuring the organisational budget is aligned with the Commission's strategic plan and government priorities;
- monitoring and reporting on the Commission's financial performance against organisational and divisional priorities and approved budgets;
- formulating strategies for improving the Commission's financial position, including the approval and monitoring of organisational budget processes;
- reviewing the interim and annual financial statements for recommendation to the audit and risk committee; and
- monitoring and reviewing under-expenditure and over-expenditure.

The finance committee held 4 meetings during the period under review.

HUMAN RESOURCES COMMITTEE

The Human Resources (HR) Committee comprises select EXCO members and is tasked with oversight over the implementation of the HR strategy and ensuring that policies are developed, implemented and reviewed. The HR committee met 4 times during the period under review.

EMPLOYMENT EQUITY COMMITTEE

The Employment Equity Committee comprises of Commission employees who represent all levels in the organisation, who are selected in line with the provisions of the Employment Equity Act. The Committee oversees the transformational agenda of the Commission. Its objectives are to do an analysis of the employee profile, play a consultative role in setting targets for transformation, and identify and resolve barriers to transformation. The Committee held 4 meetings during the financial year.

RISK AND GOVERNANCE COMMITTEE

The Risk and Governance Committee comprises select EXCO members and representatives from respective functions. It is tasked with oversight over governance and risk management and was chaired by the Chief Financial Officer. The Committee met 3 times during the period under review.

OVERSIGHT COMMITTEES

AUDIT AND RISK COMMITTEE

Details on the work of this Committee appear under the Annual Financial Statements section.

REMUNERATION COMMITTEE

The committee consists of 3 independent non-executive members. The committee plays an oversight role and makes recommendations to the Commissioner in his capacity as Accounting Authority on matters relating to remuneration of employees at all employee levels. The committee held a total of 4 meetings during the period under review.

COMPLIANCE WITH LEGISLATION

PUBLIC FINANCE MANAGEMENT ACT, 1999 AND NATIONAL TREASURY REGULATIONS

In accordance with the PFMA and National Treasury Regulations, the Commission submitted the following documents to the EDD for approval during the period under review:

- quarterly reports on the Commission's expenditure, budget variance, activities and performance against set targets;
- monthly expenditure reports;
- annual performance plan for the period 2018/19; and
- annual report

SKILLS DEVELOPMENT ACT, 1998

The Commission submitted the annual training report and the annual workplace skills plan.

SKILLS DEVELOPMENT LEVIES ACT, 1999

A skills development levy equal to 1% of the total payroll is paid to the South African Revenue Service (SARS) monthly. This is distributed to the relevant sector education and training authorities (SETAs), which promote training in various disciplines. Employers are able to claim back part of the skills levies, paid as a skills grant.

EMPLOYMENT EQUITY ACT, 1998

The Commission submitted its employment equity report.

UNEMPLOYMENT INSURANCE ACT, 2001

For the period under review, all contributions to the Unemployment Insurance Fund were paid on a monthly basis. These contributions consist of an employee contribution of 1% and an employer contribution of 1%.

OCCUPATIONAL HEALTH AND SAFETY ACT, 1993

During the year under review, the Commission took all reasonable precautions to ensure a safe working environment and conducted its business with due regard for environmental issues.

INCOME TAX ACT, 1962

SARS exempted the Commission in terms of section 10(1)(A)(i) of the Income Tax Act, 1962.

LEVIES AND TAXES

The Commission has registered for and met its obligations in relation to the following levies and taxes:

- Skills Development Levy;
- Workmen's Compensation;
- Unemployment Insurance Fund; and
- Pay-As-You-Earn (PAYE).

PART E

ANNUAL FINANCIAL STATEMENTS



ACCOUNTING AUTHORITY

STATEMENT OF RESPONSIBILITY

The Accounting Authority is required by the Public Finance Management Act (Act 1 of 1999), to maintain adequate accounting records and is responsible for the content and integrity of the annual financial statements and related financial information included in this report.

The accounting authority is responsible for the preparation, integrity and fair presentation of the annual financial statements of the Competition Commission of South Africa for the year ended 30 March 2019.

The Annual Financial Statements have been prepared in accordance with Standards of Generally Recognised Accounting Practice (GRAP) including any interpretations, guidelines and directives issued by the Accounting Standards Board.

The accounting authority initially approved and submitted the Annual Financial Statements to the Auditor General of South Africa on 31 May 2019.

REPORT OF THE **AUDITOR GENERAL**

TO PARLIAMENT ON COMPETITION COMMISSION

REPORT ON THE AUDIT OF THE FINANCIAL STATEMENTS

Opinion

1. I have audited the financial statements of the Competition Commission set out on pages 100 to 134, which comprise the statement of financial position as at 31 March 2019, the statement of financial performance, statement of changes in net assets, cash flow statement and the statement of comparison of budget and actual amounts for the year then ended, as well as the notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Commission as at 31 March 2019, and its financial performance and cash flows for the year then ended in accordance with the South African Standards of Generally Recognised Accounting Practice (SA Standards of GRAP) and the requirements of the Public Finance Management Act of South Africa, 1999 (Act No. 1 of 1999) (PFMA).

Basis for opinion

3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of this auditor's report.
4. I am independent of the constitutional institution in accordance with sections 290 and 291 of the International Ethics Standards Board for Accountants' Code of ethics for professional accountants (IESBA code), parts 1 and 3 of the International Ethics Standards Board for Accountants' International Code of Ethics for Professional

Accountants (including International Independence Standards) and the ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA codes.

5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Material uncertainty relating to financial sustainability

6. I draw attention to the matter below. My opinion is not modified in respect of this matter.
7. I draw attention to note 21 to the financial statements, which indicates that there is a material uncertainty on whether the public entity will be able to investigate and prosecute all cases that require its attention as a result of fiscal constraints.

Emphasis of matters

8. I draw attention to the matters below. My opinion is not modified in respect of these matters.

Irregular expenditure

9. As disclosed in note 26 to the financial statements, the public entity incurred irregular expenditure of R39 224 000 as it did not follow proper tender processes.

Restatement of corresponding figures

10. As disclosed in note 33 to the financial statements, the corresponding figures for 31 March 2018 were restated as a result of an error in the financial statements of the public entity at, and for the year ended, 31 March 2019.

Responsibilities of the accounting authority for the financial statements

11. The accounting authority is responsible for the preparation and fair presentation of the financial statements in accordance with the SA Standards of GRAP and the requirements of the PFMA, and for such internal control as the accounting authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.
12. In preparing the financial statements, the accounting officer is responsible for assessing the Competition Commission's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the public entity or to cease operations, or has no realistic alternative but to do so.

Auditor-general's responsibilities for the audit of the financial statements

13. My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the ISAs will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.
14. A further description of my responsibilities for the audit of the financial statements is included in the annexure to this auditor's report.

REPORT ON THE AUDIT OF THE ANNUAL PERFORMANCE REPORT

Introduction and scope

15. In accordance with the Public Audit Act of South Africa, 2004 (Act No. 25 of 2004) (PAA) and the general notice issued in terms

thereof, I have a responsibility to report material findings on the reported performance information against predetermined objectives for selected strategic goals presented in the annual performance report. I performed procedures to identify findings but not to gather evidence to express assurance.

16. My procedures address the reported performance information, which must be based on the approved performance planning documents of the public entity. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures also did not extend to any disclosures or assertions relating to planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.
17. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected strategic goals presented in the annual performance report of the public entity for the year ended 31 March 2019:

| Strategic Goals | Page in the annual performance report |
|--|---------------------------------------|
| Strategic goal 1 – Effective competition enforcement and merger regulation | 82 to 84 |

18. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.
19. I did not raise any material findings on the usefulness and reliability of the reported performance information for this strategic goal:
 - Strategic goal 1 – Effective competition enforcement and merger regulation

Other matter

20. I draw attention to the matter below.

Achievement of planned targets

21. Refer to the annual performance report on pages 82 to 86 for information on the achievement of planned targets for the year and explanations provided for the under and over achievement of a number of targets.

REPORT ON THE AUDIT OF COMPLIANCE WITH LEGISLATION

Introduction and scope

22. In accordance with the PAA and the general notice issued in terms thereof, I have a responsibility to report material findings on the compliance of the public entity with specific matters in key legislation. I performed procedures to identify findings but not to gather evidence to express assurance.
23. I did not raise material findings on compliance with the specific matters in key legislation set out in the general notice issued in terms of the PAA.

Other information

24. The accounting authority is responsible for the other information. The other information comprises the information included in the annual report. The other information does not include the financial statements, the auditor's report and those selected strategic goals presented in the annual performance report that have been specifically reported in this auditor's report.
25. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion thereon.
26. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the

other information is materially inconsistent with the financial statements and the selected strategic goals presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.

27. If, based on the work I have performed, I conclude that there is a material misstatement in this other information, I am required to report that fact. I have nothing to report in this regard

INTERNAL CONTROL DEFICIENCIES

28. I considered internal control relevant to my audit of the financial statements, reported performance information and compliance with applicable legislation; however, my objective was not to express any form of assurance on it. I did not identify any significant deficiencies in internal control.

OTHER REPORTS

29. I draw attention to the following engagement conducted that could have an impact on the matters reported in the public entity's financial statements, reported performance information, compliance with applicable legislation and other related matters. This report did not form part of my opinion on the financial statements or my findings on the reported performance information or compliance with legislation.

Investigations

30. The Economic Development Department initiated a forensic investigation that would cover a period of three years from 2015-16 to 2017-18. The aim of the investigation is to determine whether there was irregular expenditure incurred by the Commission, its causes and whether the Commission is implementing effective measures to address it. As at date of this report, the investigation had not been finalised.

Auditor-General

Auditor-General
Pretoria
31 July 2019



ANNEXURE

AUDITOR-GENERAL'S RESPONSIBILITY FOR THE AUDIT

1. As part of an audit in accordance with the ISAs, I exercise professional judgement and maintain professional scepticism throughout my audit of the financial statements, and the procedures performed on reported performance information for selected strategic goals and on the public entity's compliance with respect to the selected subject matters.

Financial statements

2. In addition to my responsibility for the audit of the financial statements as described in this auditor's report, I also:
 - identify and assess the risks of material misstatement of the financial statements whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control
 - obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the public entity's internal control
 - evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting authority
 - conclude on the appropriateness of the accounting authority's use of the going concern basis of accounting in the preparation of the financial statements. I also conclude,

based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Competition Commission's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify the opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor's report. However, future events or conditions may cause a public entity to cease continuing as a going concern

- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation

Communication with those charged with governance

3. I communicate with the accounting authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.
4. I also confirm to the accounting authority that I have complied with relevant ethical requirements regarding independence, and communicate all relationships and other matters that may reasonably be thought to have a bearing on my independence and, where applicable, related safeguards.

AUDIT & RISK COMMITTEE

REPORT

The Audit and Risk Committee is pleased to present its report for the financial year ended March 31, 2019.

AUDIT COMMITTEE MEMBERS AND ATTENDANCE

The Audit and Risk Committee consists of the members listed hereunder and should meet a minimum of 4 times per annum as per its approved terms of reference. During the current year 5 meetings were held.

| Name of member | Number of meetings attended | Number of meetings held |
|-------------------------------|-----------------------------|-------------------------|
| Mr. V Nondabula (Chairperson) | 5 | 5 |
| Ms. M Ramataboe | 5 | 5 |
| Mr. S Gounden | 4 | 5 |
| Mr. N Mhlongo | 5 | 5 |

AUDIT AND RISK COMMITTEE RESPONSIBILITY

The Committee reports that it has complied with its responsibilities arising from section 38(10)(1) of the PFMA and Treasury Regulations 3.1. The Audit and Risk Committee also reports that it has regulated its affairs in compliance with its charter and has discharged all its responsibilities as contained therein.

THE EFFECTIVENESS OF INTERNAL CONTROL

The system of internal control applied by the Commission over its financial system and risk management is effective, transparent and efficient. From internal auditors we obtained some reasonable assurance that internal controls are adequate, effective and appropriate. This is achieved by means of the risk management process as well as the implementation of risk based internal audit plans which led to the identification of some corrective actions and recommended improvements in some controls and processes.

MANAGEMENT AND MONTHLY / QUARTERLY REPORTS

We are satisfied with the content and quality of monthly and quarterly reports prepared and submitted to National Treasury during the year under review, as required by the PFMA.

EVALUATION OF ANNUAL FINANCIAL STATEMENTS

The audit committee has:

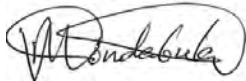
- reviewed and discussed the audited Annual Financial Statements to be included in the annual report, with the Auditor General South Africa and the Accounting Authority
- reviewed the Auditor-General South Africa's management report and management's responses thereto;
- reviewed the entity's compliance with legal and regulatory provisions; and
- reviewed the information on predetermined objectives to be included in the annual report.

INTERNAL AUDIT

Internal Audit provided the Committee and management with reasonable assurance on internal controls. We are satisfied that the internal audit function is operating effectively and that it has addressed the risks pertinent to the entity and its audits.

AUDITOR-GENERAL OF SOUTH AFRICA

The Audit and Risk Committee met with the Auditor-General South Africa to ensure that there were no unresolved issues. The Committee concurs with and accepts the Auditor-General South Africa's audit report on the Annual Financial Statements and are of the opinion that the audited Annual Financial statements should be accepted and read together with the report of the Auditor-General South Africa.

A handwritten signature in black ink, appearing to read 'Victor Nondabula', enclosed within a hand-drawn oval.

Victor Nondabula

Chairperson of the Audit and Risk Committee
Competition Commission

STATEMENT OF FINANCIAL POSITION

AS AT MARCH 31, 2019

| | Note(s) | 2019 R'000 | 2018 Restated* R'000 |
|---|---------|----------------|----------------------------|
| ASSETS | | | |
| Current Assets | | | |
| Inventories | 4 | 1,162 | 405 |
| Receivables from exchange transactions | 5 | 2,973 | 11,893 |
| Cash and cash equivalents held on behalf of EDD | 23 | 33,244 | 58,047 |
| Cash and cash equivalents | 6 | 5,069 | 3,401 |
| | | 42,448 | 73,746 |
| Non-Current Assets | | | |
| Property, plant and equipment | 2 | 21,525 | 22,956 |
| Intangible assets | 3 | 1,266 | 2,489 |
| | | 22,791 | 25,445 |
| Total Assets | | 65,239 | 99,191 |
| LIABILITIES | | | |
| Current Liabilities | | | |
| Finance lease obligation | 7 | 861 | 912 |
| Payables from exchange transactions | 8 | 26,004 | 51,574 |
| Provisions | 30 | 14,651 | 22,530 |
| Penalties payable to EDD | 23 | 33,244 | 58,047 |
| | | 74,760 | 133,063 |
| Non-Current Liabilities | | | |
| Finance lease obligation | 7 | - | 861 |
| Total Liabilities | | 74,760 | 133,924 |
| Net Assets | | (9,521) | (34,733) |
| Accumulated (deficit) surplus | | (9,521) | (34,733) |

STATEMENT OF FINANCIAL PERFORMANCE

AS AT MARCH 31, 2019

| | Note(s) | 2019 R'000 | 2018 Restated* R'000 |
|---------------------------------------|----------|------------------|----------------------------|
| REVENUE | | | |
| Fees earned | 10 | 70,672 | 62,686 |
| Other income | 11 | 832 | 4,873 |
| Interest received | 12 | 31,014 | 16,843 |
| Government grants & subsidies | 13 | 281,788 | 268,354 |
| Total revenue | 9 | 384,306 | 352,756 |
| EXPENDITURE | | | |
| Employee related costs | 14 | (223,794) | (210,782) |
| Administrative expenses | 15 | (6,409) | (7,789) |
| Depreciation and amortisation | 2&3 | (4,853) | (4,555) |
| Finance costs | 16 | (323) | (303) |
| Lease rentals on operating lease | | (21,704) | (21,389) |
| Operating expenses | 17 | (102,923) | (175,735) |
| Total expenditure | | (360,006) | (420,553) |
| Operating deficit | | 24,300 | (67,797) |
| Loss on disposal of assets | | (860) | (1,527) |
| Surplus (deficit) for the year | | 23,440 | (69,324) |

STATEMENT OF CHANGES IN **NET ASSETS**

AS AT MARCH 31, 2019

| | R'000 | R'000 |
|--|---------------------|---------------------------------|
| | Accumulated surplus | Total net assets/ (liabilities) |
| Balance at April 1, 2017 as restated* | 34,590 | 34,590 |
| Changes in net assets | | |
| Surplus for the year | (67,552) | (67,552) |
| Deficit for the year as previously stated | (67,552) | (67,552) |
| Opening balance as previously reported | (34,734) | (34,734) |
| Adjustments | | |
| Correction of errors | 1,773 | 1,773 |
| Restated* Balance at April 1, 2018 | (32,961) | (32,961) |
| Surplus for the year | 23,440 | 23,440 |
| Total changes | 23,440 | 23,440 |
| Balance at March 31, 2019 | (9,521) | (9,521) |

CASH FLOW STATEMENT

AS AT MARCH 31, 2019

| | Note(s) | 2019 R'000 | 2018 Restated* R'000 |
|---|-----------|------------------|----------------------------|
| CASH FLOWS FROM OPERATING ACTIVITIES | | | |
| Receipts | | | |
| Rendering of services | | 70,672 | 62,686 |
| Grants | | 281,788 | 268,354 |
| Interest received | | 31,691 | 14,141 |
| Other income | | 10,806 | 1,562 |
| | | 394,957 | 346,743 |
| Payments | | | |
| Employee costs | | (226,092) | (197,415) |
| Suppliers | | (162,903) | (218,209) |
| Finance costs | | (323) | (303) |
| | | (389,318) | (415,927) |
| Net cash flows from operating activities | 18 | 5,639 | (69,184) |
| CASH FLOWS FROM INVESTING ACTIVITIES | | | |
| Purchase of property, plant and equipment | 2 | (3,059) | (8,432) |
| Purchase of other intangible assets | 3 | - | (408) |
| Net cash flows from investing activities | | (3,059) | (8,840) |
| CASH FLOWS FROM FINANCING ACTIVITIES | | | |
| Finance lease payments | | (912) | (763) |
| Net increase/(decrease) in cash and cash equivalents | | 1,668 | (78,787) |
| Cash and cash equivalents at the beginning of the year | | 3,401 | 82,188 |
| Cash and cash equivalents at the end of the year | 6 | 5,069 | 3,401 |

STATEMENT OF COMPARISON OF BUDGET AND ACTUAL AMOUNTS

AS AT MARCH 31, 2019

| | R'000 | R'000 | R'000 | R'000 | R'000 | R'000 |
|--|--------------------|-------------|------------------|---|---|-----------|
| | Approved budget | Adjustments | Final Budget | Actual amounts on comparable basis | Difference between final budget and actual | Reference |
| Statement of Financial Performance | | | | | | |
| REVENUE | | | | | | |
| Revenue from exchange transactions | | | | | | |
| Fees earned | 75,331 | - | 75,331 | 70,672 | (4,659) | 32.1 |
| Other income | 900 | - | 900 | 832 | (68) | 32.2 |
| Interest received | 1,981 | - | 1,981 | 31,014 | 29,033 | 32.3 |
| Total revenue from exchange transactions | 78,212 | - | 78,212 | 102,518 | 24,306 | |
| Revenue from non-exchange transactions | | | | | | |
| Transfer revenue | | | | | | |
| Government grants & subsidies | 281,788 | - | 281,788 | 281,788 | - | 32.4 |
| Total revenue | 60,000 | - | 360,000 | 384,306 | 24,306 | |
| EXPENDITURE | | | | | | |
| Personnel | (223,735) | - | (223,735) | (223,794) | (59) | 32.5 |
| Administration | (6,600) | - | (6,600) | (6,409) | 191 | 32.6 |
| Depreciation and amortisation | (5,202) | - | (5,202) | (4,853) | 349 | 32.7 |
| Finance costs | - | - | - | (323) | (323) | 32.8 |
| Lease rentals on operating lease | (21,719) | - | (21,719) | (21,704) | 15 | 32.9 |
| Operating expenses | (102,744) | - | (102,744) | (102,923) | (179) | 32.10 |
| Total expenditure | (360,000) | - | (360,000) | (360,006) | (6) | |
| Operating surplus | - | - | - | 24,300 | 24,300 | |
| Loss on disposal of assets and liabilities | - | - | - | (860) | (860) | |
| Surplus | - | - | - | 23,440 | 23,440 | |
| Actual Amount on Comparable Basis as Presented in the Budget and Actual Comparative Statement | - | - | - | 23,440 | 23,440 | |

ACCOUNTING POLICIES

1. BASIS OF PREPARATION

The annual financial statements have been prepared in accordance with the Standards of Generally Recognised Accounting Practice (GRAP), issued by the Accounting Standards Board in accordance with Section 91(1) of the Public Finance Management Act (Act 1 of 1999).

These annual financial statements have been prepared on an accrual basis of accounting and are in accordance with historical cost convention as the basis of measurement, unless specified otherwise. They are presented in South African Rand. All figures presented are rounded off to the nearest thousand.

Assets, liabilities, revenues and expenses were not offset, except where offsetting is either required or permitted by a Standard of GRAP and when the Commission has a legal right to set-off the amounts and intends to settle on a net basis to realize the asset and settle the liability simultaneously.

A summary of the significant accounting policies, which have been consistently applied in the preparation of these annual financial statements, are disclosed below.

1.1 Going concern assumption

These annual financial statements have been prepared based on the expectation that the entity will continue to operate as a going concern for at least the next 12 months.

1.2 Materiality

Material omissions or misstatements of items are material if they could, individually or collectively, influence the decisions

or assessments of users made on the basis of the financial statements. Materiality depends on the nature or size of the omission or misstatement judged in the surrounding circumstances. The nature or size of the information item, or a combination of both, could be the determining factor.

Assessing whether an omission or misstatement could influence decisions of users, and so be material, requires consideration of the characteristics of those users. The Framework for the Preparation and Presentation of Financial Statements states that users are assumed to have a reasonable knowledge of government, its activities, accounting and a willingness to study the information with reasonable diligence. Therefore, the assessment takes into account how users with such attributes could reasonably be expected to be influenced in making and evaluating decisions.

1.3 Significant judgements and sources of estimation uncertainty

In preparing the annual financial statements, management is required to make estimates and assumptions that affect the amounts represented in the annual financial statements and related disclosures. Use of available information and the application of judgement is inherent in the formation of estimates. Actual results in the future could differ from these estimates which may be material to the annual financial statements. Significant judgements include:

Trade receivables

Trade and other receivables classified as Loans and Receivables and are measured at amortised cost using the effective interest rate method. Appropriate allowances for estimated irrecoverable amounts are recognised in profit or loss when there is objective evidence that the asset is impaired.

Contingent liabilities

The Commission is involved in a number of legal case proceedings that are form part of the nature of the operations of the entity. Due to inherent uncertainties precipitated by the nature of the cases, no accurate quantification of any cost, or timing of such cost, which may arise from any of the legal proceedings can be made.

Lease classification

Management uses judgement in assessing whether an arrangement is or contains a lease is based on the substance of the arrangement at inception date of whether the fulfilment of the arrangement is dependent on the use of a specific asset or the arrangement conveys a right to use the asset. Management assess the following in each lease contract (using GRAP 13) to classify a lease as a finance lease or operating lease:

In order to make the determination as to whether a lease is a finance lease, the entity considers several variables (non- exhaustive) and applies judgment to the assessment of whether any of the conditions noted hereunder using the guidance of GRAP 13. These include but are not limited to:

- Transfer of ownership
- Remaining economic life of the asset
- The expected term of the lease
- Fair value of the underlying asset

Trade receivables (impairment of financial assets)

The Commission assesses its trade receivables for impairment at the end of each reporting period. In determining whether an impairment loss should be recorded in profit and loss, the Commission makes judgements as to whether there is observable data indicating a measurable decrease in the estimated future cash flows from a financial asset.

Performance Bonus

Performance bonus to employees and management is determined based on the performance of the Commission subject to availability

of funds. This bonus is at management's discretion and is decided annually. The bonus is based on performance and is evaluated using a rating method on an annual basis.

Determination of impairment of non-financial assets

Management is required to make judgements concerning the cause, timing and amount of impairment of such assets. In the identification of impairment indicators, management considers the impact of changes in current market conditions, technological obsolescence, physical damage, the cost of capital and other circumstances that could indicate that impairment exists. Management's judgement is also required when assessing whether a previously recognised impairment loss should be reversed.

Where impairment indicators exist, determination of the recoverable amount requires management to make assumptions to determine the fair value less costs to sell and value in use. Fair value less costs to sell is based on the best information available to management that reflects the amount that the Commission could obtain, at the year end, from the disposal of the asset in an arm's length transaction with a market participant in its principal market, after deducting the costs of disposal. Value in use is based on key assumptions on which management has based its determination.

Impairment of non-cash generating assets

The Commission assesses at each reporting date whether there is any indication that an asset may be impaired. If any such indication exists, the Commission estimates the recoverable service amount of the asset.

If there is any indication that an asset may be impaired, the recoverable service amount is estimated for the individual asset. If it is not possible to estimate the recoverable service amount of the individual asset, the recoverable service amount of the cash-generating unit to which the asset belongs is determined.

The recoverable service amount is the higher of a non-cash

generating asset's fair value less costs to sell and its value in use. The value in use for a non-cash generating asset is the present value of the asset's remaining service potential.

If the recoverable service amount of an asset is less than its carrying amount, the carrying amount of the asset is reduced to its recoverable service amount. That reduction is an impairment loss.

An impairment loss of assets carried at cost less any accumulated depreciation or amortization is recognised immediately in surplus or deficit.

Management assesses at each reporting date whether there is any indication that an impairment loss recognised in prior periods for assets may no longer exist or may have decreased. If any such indication exists, the recoverable service amounts of those assets are estimated.

The increased carrying amount of an asset attributable to a reversal of an impairment loss does not exceed the carrying amount that would have been determined had no impairment loss been recognised for the asset in prior periods.

A reversal of an impairment loss of assets carried at cost less accumulated depreciation or amortization is recognised immediately in surplus or deficit.

Impairment of cash generating assets

The Commission assesses at each reporting date whether there is any indication that an asset may be impaired. If any such indication exists, the Commission estimates the recoverable amount of the individual asset.

If there is any indication that an asset may be impaired, the recoverable amount is estimated for the individual asset. If it is not possible to estimate the recoverable amount of the individual asset, the recoverable amount of the cash-generating unit to which the asset belongs is determined.

The best evidence of fair value less cost to sell is the price in a binding sale agreement in an arm's length transaction, adjusted for the incremental cost that would be directly attributable to the disposal of the asset.

The recoverable amount of an asset or a cash-generating unit is the higher of its fair value less costs to sell and its value in use.

If the recoverable amount of an asset is less than its carrying amount, the carrying amount of the asset is reduced to its recoverable amount. That reduction is an impairment loss.

An impairment loss of assets carried at cost less any accumulated depreciation or amortization is recognised immediately in surplus or deficit.

Provisions

Provisions were raised and management determined an estimate based on the information available. Additional disclosure of these estimates of provisions are included in note 30 - Provisions.

Depreciation and amortisation

The entity's management determines the estimated useful lives and related depreciation charges. This estimate is based on industry norm. Management will increase the depreciation charge where useful lives are less than previously estimated useful lives.

1.4 Property, plant and equipment

The cost of an item of property, plant and equipment is recognised as an asset when:

- it is probable that future economic benefits or service potential associated with the item will flow to the entity; and
- the cost of the item can be measured reliably.

Property, plant and equipment is carried at cost less accumulated depreciation and any impairment losses. The useful lives of items of property, plant and equipment have been assessed as follows:

| Item | Depreciation method | Average useful life |
|------------------------|---------------------|---------------------|
| Furniture and fixtures | Straight line | 12 - 21 years |
| Motor vehicles | Straight line | 5 - 8 years |
| Office equipment | Straight line | 8 - 20 years |
| IT equipment | | |
| - Computer equipment | Straight line | 3 - 17 years |
| - Servers | Straight line | 5 - 9 years |
| - GPS | Straight line | 3 - 14 years |
| Leasehold Improvements | Straight line | 3 years |
| Cellphone | Straight line | 6 years |
| Leased assets | Straight line | Period of lease |

The depreciable amount of an asset is allocated on a systematic basis over its useful life.

The entity assesses at each reporting date whether there is any indication that the entity expectations about the residual value and the useful life of an asset have changed since the preceding reporting date. If any such indication exists, the entity revises the expected useful life and/or residual value accordingly. The change is accounted for as a change in an accounting estimate.

The depreciation charge for each period is recognised in surplus or deficit unless it is included in the carrying amount of another asset.

Items of property, plant and equipment are derecognised when the asset is disposed of or when there are no further economic benefits or service potential expected from the use of the asset.

The gain or loss arising from the derecognition of an item of property, plant and equipment is included in surplus or deficit when the item is derecognised. The gain or loss arising from the derecognition of an item of property, plant and equipment is determined as the difference between the net disposal proceeds, if any, and the carrying amount of the item.

1.5 Intangible assets

An intangible asset is recognised when:

- it is probable that the expected future economic benefits or service potential that are attributable to the asset will flow to the entity; and
- the cost or fair value of the asset can be measured reliably.

Intangible assets are carried at cost less accumulated amortisation and any impairment losses.

The amortisation period and the amortisation method for intangible assets are reviewed at each reporting date. Intangible assets are acquired.

Amortisation is provided to write down the intangible assets, on a straight line basis, to their residual values as follows:

| Item | Depreciation method | Useful life |
|-------------------|---------------------|--------------|
| Computer software | Straight line | 3 - 21 years |

Intangible assets are derecognised:

- on disposal; or
- when no future economic benefits or service potential are expected from its use or disposal.

1.6 Financial instruments

Initial recognition and measurement

Financial instruments are recognised when The Commission becomes a party to the contractual provision of the instrument. These financial instruments are initially measured at fair value plus transaction costs, except for those financial instruments that are classified at fair value through profit or loss.

Subsequent measurement of financial assets and financial liabilities

The subsequent measurement of financial instruments is stated below:

The Commission classifies financial instruments, or their component parts, on initial recognition as a financial asset, a financial liability or an equity instrument in accordance with the substance of the contractual arrangement.

Receivables from exchange transactions

Trade and other receivables classified as Loans and Receivables and are measured at amortised cost using the effective interest rate method. Appropriate allowances for estimated irrecoverable amounts are recognised in profit or loss when there is objective evidence that the asset is impaired.

Cash and cash equivalents

Cash and cash equivalents comprise cash on hand, on deposit and other short-term readily realisable liquid instruments. Cash and cash equivalents that have been classified as Loans and Receivables are initially recognised at fair value and subsequently measured at amortised cost.

Payables from exchange transactions

Trade and other payables are classified as liabilities at amortised cost and are measured at amortised cost using the effective interest rate method.

Offsetting

Financial assets and financial liabilities are set-off against each other and the net amount presented in the statement of financial position when the Commission has a legal right to set-off the amounts and intends to settle on a net basis to realize the asset and settle the liability simultaneously.

Impairment of financial assets

Financial assets are assessed for indicators of impairment at each end of the reporting period. The financial assets are impaired where there is objective evidence that, as a result of one or more events that have occurred after the initial recognition of the financial asset, the estimated future cash flows of the asset have been impacted. Impairment losses are recognised in profit or loss.

Where an impairment loss subsequently reverses, the carrying amount of the asset is increased to the revised estimate of its recoverable amount, but so that the increased carrying amount does not exceed the carrying amount that would have been determined had no impairment loss been recognised for the asset in prior years. Reversal of impairment losses are recognised in profit or loss.

Derecognition

Financial assets are derecognized if The Commission's contractual rights to the cash flows from the financial assets expire or if The Commission transfers the financial assets to another party without retaining control, or transfers substantially all of the risks and rewards of the asset. Financial liabilities are derecognized if The Commission's obligations specified in the contract expire or are discharged or cancelled.

1.7 Leases

A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership. A lease is classified as an operating lease if it does not transfer substantially all the risks and rewards incidental to ownership.

When a lease includes both land and buildings elements, the entity assesses the classification of each element separately.

Finance leases

Finance leases are recognised as assets and liabilities in the statement of financial position at amounts equal to the fair value of

the leased property or, if lower, the present value of the minimum lease payments. The corresponding liability to the lessor is included in the statement of financial position as a finance lease obligation.

The discount rate used in calculating the present value of the minimum lease payments is the interest rate implicit in the lease.

Minimum lease payments are apportioned between the finance charge and reduction of the outstanding liability. The finance charge is allocated to each period during the lease term so as to produce a constant periodic rate of on the remaining balance of the liability.

Any contingent rents are expensed in the period in which they are incurred.

Operating leases - Lessee

Operating lease payments are recognised as an expense on a straight-line basis over the lease term. The difference between the amounts recognised as an expense and the contractual payments are recognised as an operating lease asset or liability.

1.8 Inventories

Inventories are initially measured at cost.

Subsequently inventories are measured at the lower of cost and net realisable value.

Net realisable value is the estimated selling price in the ordinary course of operations less the estimated costs of completion and the estimated costs necessary to make the sale, exchange or distribution.

Current replacement cost is the cost the entity incurs to acquire the asset on the reporting date.

The cost of inventories comprises of all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.

The cost of inventories of items that are not ordinarily interchangeable and goods or services produced and segregated for specific projects is assigned using specific identification of the individual costs.

The cost of inventories is assigned using the first-in, first-out (FIFO) formula. The same cost formula is used for all inventories having a similar nature and use to the entity.

1.9 Employee benefits

Short-term employee benefits

The cost of short-term employee benefits, (those payable within 12 months after the service is rendered, such as paid vacation leave and sick leave, bonuses, and non-monetary benefits such as medical care), are recognised in the period in which the service is rendered and are not discounted.

The expected cost of compensated absences is recognised as an expense as the employees render services that increase their entitlement or, in the case of non-accumulating absences, when the absence occurs.

The expected cost of bonus payments is recognised as an expense when there is a legal or constructive obligation to make such payments as a result of past performance.

1.10 Provisions and contingencies

Provisions are recognised when:

- the entity has a present obligation as a result of a past event;
- it is probable that an outflow of resources embodying economic benefits or service potential will be required to settle the obligation; and
- a reliable estimate can be made of the obligation.

The amount of a provision is the best estimate of the expenditure expected to be required to settle the present obligation at the reporting date.

Where the effect of time value of money is material, the amount of a provision is the present value of the expenditures expected to be required to settle the obligation.

The discount rate is a pre-tax rate that reflects current market assessments of the time value of money and the risks specific to the liability.

Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement is recognised when, and only when, it is virtually certain that reimbursement will be received if the entity settles the obligation. The reimbursement is treated as a separate asset. The amount recognised for the reimbursement does not exceed the amount of the provision.

Provisions are reviewed at each reporting date and adjusted to reflect the current best estimate. Provisions are reversed if it is no longer probable that an outflow of resources embodying economic benefits or service potential will be required, to settle the obligation.

Where discounting is used, the carrying amount of a provision increases in each period to reflect the passage of time. This increase is recognised as an interest expense.

A provision is used only for expenditures for which the provision was originally recognised. Provisions are not recognised for future operating loss. If an entity has a contract that is onerous, the present obligation (net of recoveries) under the contract is recognised and measured as a provision.

Contingent assets and contingent liabilities are not recognised. Contingencies are disclosed in a note 31.

1.11 Revenue from exchange transactions

Revenue is the gross inflow of economic benefits or service potential during the reporting period when those inflows result in an increase in net assets.

An exchange transaction is one where the commission receives a fee and in exchange investigates and assess whether a merger is likely to substantially likely to prevent or lessen competition and whether a merger can or cannot be justified on substantial public grounds and for exemptions and advisory opinions.

Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

Measurement

Revenue is measured at the fair value of the consideration received or receivable, net of trade discounts and volume rebates.

1.12 Revenue from non-exchange transactions

Non-exchange transactions are transactions that are not exchange transactions. In a non-exchange transaction, an entity either receives value from another entity without directly giving approximately equal value in exchange, or gives value to another entity without directly receiving approximately equal value in exchange.

Recognition

An inflow of resources from a non-exchange transaction recognised as an asset is recognised as revenue, except to the extent that a liability is also recognised in respect of the same inflow.

As the entity satisfies a present obligation recognised as a liability in respect of an inflow of resources from a non-exchange transaction recognised as an asset, it reduces the carrying amount of the liability recognised and recognises an amount of revenue equal to that reduction.

Measurement

Revenue from a non-exchange transaction is measured at the amount of the increase in net assets recognised by the entity.

When, as a result of a non-exchange transaction, the entity recognises an asset, it also recognises revenue equivalent to the amount of the asset measured at its fair value as at the date of acquisition, unless it is also required to recognise a liability. Where a liability is required to be recognised it will be measured as the best estimate of the amount required to settle the obligation at the reporting date, and the amount of the increase in net assets, if any, recognised as revenue. When a liability is subsequently reduced, because the taxable event occurs or a condition is satisfied, the amount of the reduction in the liability is recognised as revenue.

1.13 Borrowing costs

Borrowing costs are interest and other expenses incurred by an entity in connection with the borrowing of funds.

Borrowing costs are recognised as an expense in the period in which they are incurred.

1.14 Fruitless and wasteful expenditure

Fruitless expenditure means expenditure which was made in vain and would have been avoided had reasonable care been exercised.

All expenditure relating to fruitless and wasteful expenditure is recognised as an expense in the statement of financial performance in the year that the expenditure was incurred. The expenditure is classified in accordance with the nature of the expense, and where recovered, it is subsequently accounted for as revenue in the statement of financial performance.

1.15 Irregular expenditure

Irregular expenditure as defined in section 1 of the PFMA is expenditure other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including -

- a. this Act; or
- b. the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of the Act; or
- c. any provincial legislation providing for procurement procedures in that provincial government.

National Treasury practice note no. 4 of 2008/2009 which was issued in terms of sections 76(1) to 76(4) of the PFMA requires the following (effective from 1 April 2008):

Irregular expenditure that was incurred and identified during the current financial and which was condoned before year end and/or before finalisation of the financial statements must also be recorded appropriately in the irregular expenditure register. In such an instance, no further action is also required with the exception of updating the note to the financial statements.

Irregular expenditure that was incurred and identified during the current financial year and for which condonement is being awaited at year end must be recorded in the irregular expenditure register. No further action is required with the exception of updating the note to the financial statements.

Where irregular expenditure was incurred in the previous financial year and is only condoned in the following financial year, the register and the disclosure note to the financial statements must be updated with the amount condoned.

Irregular expenditure that was incurred and identified during the current financial year and which was not condoned by the National Treasury or the relevant authority must be recorded appropriately in the irregular expenditure register. If liability for the irregular expenditure can be attributed to a person, a debt account must be created if such a person is liable in law. Immediate steps must thereafter be taken to recover the amount from the person concerned. If recovery is not possible, the accounting officer or accounting authority may write off the amount as debt impairment and disclose such in the relevant note to the financial

statements. The irregular expenditure register must also be updated accordingly. If the irregular expenditure has not been condoned and no person is liable in law, the expenditure related thereto must remain against the relevant programme/expenditure item, be disclosed as such in the note to the financial statements and updated accordingly in the irregular expenditure register.

1.16 Budget information

The Commission is typically subject to budgetary limits in the form of appropriations or budget authorisations (or equivalent), which is given effect through authorising legislation, appropriation or similar.

General purpose financial reporting by the Commission shall provide information on whether resources were obtained and used in accordance with the legally adopted budget.

The approved budget is prepared on an accrual basis and presented by functional classification linked to performance outcome objectives.

The approved budget covers the fiscal period from 4/1/2018 to 3/31/2019.

The annual financial statements and the budget are on the same basis of accounting therefore a comparison with the budgeted amounts for the reporting period have been included in the Statement of comparison of budget and actual amounts.

1.17 Related parties

A related party is a person or an entity with the ability to control or jointly control the other party, or exercise significant influence over the other party, or vice versa, or an entity that is subject to common control, or joint control.

The Commission is exempt from disclosure requirements in relation to related party transactions if that transaction occurs within normal supplier and/or client/recipient relationships on terms and conditions no more or less favourable than those which it is reasonable to expect the Commission to have adopted if dealing

with that individual entity or person in the same circumstances and terms and conditions are within the normal operating parameters established by that reporting entity's legal mandate.

Where the Commission is exempt from the disclosures in accordance with the above, the Commission discloses narrative information about the nature of the transactions and the related outstanding balances, to enable users of the entity's financial statements to understand the effect of related party transactions on its annual financial statements.

1.18 Events after reporting date

Events after reporting date are those events, both favourable and unfavourable, that occur between the reporting date and the date when the financial statements are authorised for issue. Two types of events can be identified:

- those that provide evidence of conditions that existed at the reporting date (adjusting events after the reporting date); and
- those that are indicative of conditions that arose after the reporting date (non-adjusting events after the reporting date).

The Commission will adjust the amount recognised in the financial statements to reflect adjusting events after the reporting date once the event occurred.

The Commission will disclose the nature of the event and an estimate of its financial effect or a statement that such estimate cannot be made in respect of all material non-adjusting events, where non-disclosure could influence the economic decisions of users taken on the basis of the financial statements.

1.19 Commitments

Commitments represent goods/services that have been ordered, but no delivery has taken place at the reporting date. These amounts are not recognised in the statement of financial position as a liability or as expenditure in the statement of financial performance as the annual financial statements are prepared on an accrual basis of accounting, but are however disclosed as part of the disclosure.

1.20 Penalties and Settlements

In terms of section 59(1) of the Competition Act, the Competition Tribunal may impose an administrative penalty in terms of an order, which is collected by the Competition Commission and in terms of Section 59(4) of the Competition Act must be paid over to the National Revenue Fund.

In terms of section 49D of the Competition Act, the Competition Commission and a respondent may agree on the terms of an appropriate order, which the Competition Tribunal may confirm as a consent order in terms of section 58(1)(b). The consent order may contain a settlement amount which is collected by the Competition Commission. In terms of Section 59(4) of the Competition Act must be paid over to the National Revenue Fund.

The accepted practice of National Treasury is that no monies are directly paid to the National Revenue Funds but rather they are paid via a specific department to which the entity reports. In the case of the settlement amounts or administrative penalties, the Competition Commission pays the monies to the Economic Development Department who in turn must pay the monies over to the National Revenue Fund.

The consent orders and orders of the Tribunal may allow the respondents to pay the settlement amount or administrative penalty over more than one financial year of the Competition Commission. This situation will result in an outstanding amount due to the National Revenue Fund which will be collected by the Competition Commission.

In terms of Section 40(1) of the Competition Act, the settlement amounts and the administrative penalties are not listed as a source of finance for the Competition Commission nor are the amounts of revenue defined in terms of GRAP 23. As such these amounts are not recognised in the statement of financial performance. Furthermore, the outstanding amounts do not meet the asset and liability definitions in terms of GRAP 1 and are therefore not recognised on the statement of financial position of the Competition Commission.

Penalties levied and received

The Statement of Financial Position includes a financial asset and a financial liability relating to penalties levied and received. The financial asset and financial liability will be the same amount and are shown as “Cash and Cash Equivalents held on behalf of EDD” and “Penalties Payable to EDD” in the Statement of Financial Position.

For penalties levied but not yet received

Penalties levied but not yet received do not meet the requirements of a financial asset and financial liability in terms of GRAP 104 and accordingly are not presented in the Statement of Financial Position.

NOTES TO THE ANNUAL FINANCIAL STATEMENTS

AS AT MARCH 31, 2019

2019
R'000

2018
R'000

2. PROPERTY, PLANT AND EQUIPMENT

| | 2019 | | | 2018 | | |
|------------------------|--------|---|----------------|--------|---|----------------|
| | Cost | Accumulated depreciation and accumulated impairment | Carrying value | Cost | Accumulated depreciation and accumulated impairment | Carrying value |
| Leasehold Improvements | 1,973 | (1,315) | 658 | 1,973 | (658) | 1,315 |
| Furniture and fixtures | 6,797 | (2,690) | 4,107 | 6,571 | (2,292) | 4,279 |
| Motor vehicles | 4,430 | (1,332) | 3,098 | 4,430 | (907) | 3,523 |
| Office equipment | 3,574 | (1,344) | 2,230 | 3,502 | (996) | 2,506 |
| IT equipment | 16,167 | (5,563) | 10,604 | 13,670 | (4,121) | 9,549 |
| Cell phone | 12 | (8) | 4 | 26 | (12) | 14 |
| Leased Assets | 3,110 | (2,286) | 824 | 3,110 | (1,340) | 1,770 |
| Total | 36,063 | (14,538) | 21,525 | 33,282 | (10,326) | 22,956 |

Reconciliation of property, plant and equipment - 2018

| | Opening Balance | Additions | Disposals | Depreciation | Total |
|------------------------|-----------------|-----------|-----------|--------------|--------|
| Leasehold Improvements | 1,315 | - | - | (657) | 658 |
| Furniture and fixtures | 4,279 | 227 | - | (399) | 4,107 |
| Motor vehicles | 3,523 | - | - | (425) | 3,098 |
| Office equipment | 2,506 | 73 | - | (349) | 2,230 |
| IT equipment | 9,549 | 2,759 | (203) | (1,501) | 10,604 |
| Cell phone | 14 | - | (7) | (3) | 4 |
| Leased Assets | 1,770 | - | - | (946) | 824 |
| Total | 22,956 | 3,059 | (210) | (4,280) | 21,525 |

| | 2019 | 2018 |
|---|-------|-------|
| | R'000 | R'000 |
| Reconciliation of property, plant and equipment - 2018 | | |

| | Opening Balance | Additions | Disposals | Depreciation | Total |
|------------------------|-----------------|-----------|-----------|--------------|--------|
| Leasehold Improvements | 962 | 984 | - | (631) | 1,315 |
| Furniture and fixtures | 3,778 | 869 | - | (368) | 4,279 |
| Motor vehicles | 1,725 | 2,093 | - | (295) | 3,523 |
| Office equipment | 2,263 | 576 | - | (333) | 2,506 |
| IT equipment | 7,281 | 3,738 | (154) | (1,316) | 9,549 |
| Cell phone | 298 | 16 | (288) | (12) | 14 |
| Leased Assets | 2,560 | 156 | - | (946) | 1,770 |
| Total | 18,867 | 8,432 | (442) | (3,901) | 22,956 |

Pledged as security

None of the property plant and equipment were pledged as security for any obligation. There are no future contractual commitments for acquisition of property plant and equipment.

3. INTANGIBLE ASSETS

| | 2019 | | | 2018 | | |
|-------------------|----------------|---|----------------|----------------|---|----------------|
| | Cost/Valuation | Accumulated amortisation and accumulated impairment | Carrying value | Cost/Valuation | Accumulated amortisation and accumulated impairment | Carrying value |
| Computer Software | 2,803 | (1,537) | 1,266 | 4,167 | (1,678) | 2,489 |

Reconciliation of intangible assets - 2019

| | Opening Balance | Disposals | Amortisation | Total |
|-------------------|-----------------|-----------|--------------|-------|
| Computer software | 2,489 | (650) | (573) | 1,266 |

Reconciliation of intangible assets - 2018

| | Opening Balance | Additions | Disposals | Amortisation | Total |
|-------------------|-----------------|-----------|-----------|--------------|-------|
| Computer software | 3,850 | 408 | (1,115) | (654) | 2,489 |

Pledged as security

None of the intangible assets were pledged as security for any obligation. There are no future contractual commitments for acquisition of intangible assets.

4. INVENTORIES

Consumable stores

2019
R'000

2018
R'000

1,162

405

5. RECEIVABLES FROM EXCHANGE TRANSACTIONS

Sundry Debtors

2,973

11,893

Trade and other receivables pledged as security

None of the trade and other receivables were pledged as security for any obligation

Sundry debtors is made up of the following.

Accrued interest

2,179

2,857

Refunds

-

8,063

Deposits

712

712

Other

126

261

Total

3,017

11,893

6. CASH AND CASH EQUIVALENTS

Cash and cash equivalents consist of:

Bank Balances

5,069

3,398

Cash on hand

-

3

5,069

3,401

Credit quality of cash at bank and short term deposits, excluding cash on hand

The credit quality of cash at bank and short term deposits, excluding cash on hand that are neither past due nor impaired can be assessed by reference to external credit ratings (if available) or historical information about counterparty default rates. None of the financial institutions with which bank balances are held defaulted in the prior periods and as a result a credit rating of high was ascribed by the financial institutions. The entity's maximum exposure to credit risk as a result of the bank balances held is limited to the carrying value of these balances as detailed above. All the bank balances are held with two banking institution which reduces the related banking risk.

| | |
|-------|-------|
| 2019 | 2018 |
| R'000 | R'000 |

7. FINANCE LEASE OBLIGATION

Minimum lease payments due

- within one year
- in second to fifth year inclusive

less: future finance charges

Present value of minimum lease payments

Present value of minimum lease payments due

- within one year
- in second to fifth year inclusive

Non-current liabilities

Current liabilities

| | |
|------|-------|
| 916 | 1,099 |
| - | 909 |
| 916 | 2,008 |
| (55) | (235) |
| 861 | 1,773 |
| 861 | 912 |
| - | 861 |
| 861 | 1,773 |
| - | 861 |
| 861 | 912 |
| 861 | 1,773 |

The entity is leasing equipment under finance lease. The lease agreement does not impose any restrictions.

The average lease term was 3 years and the average effective borrowing rate was 14.00% (2018: 14%).

The entity's obligations under finance leases are secured by the lessor's charge over the leased assets. Refer note 2. The lease agreement can be extended at the end of the 3 year period for a further period.

8. PAYABLES FROM EXCHANGE TRANSACTIONS

- Trade payables
- Accrued expense
- Operating lease payables

| | |
|--------|--------|
| 24,251 | 35,261 |
| 1,076 | 9,171 |
| 677 | 5,371 |
| 26,004 | 49,803 |

9. REVENUE

- Fees earned
- Other income
- Interest received - investment
- Government grants & subsidies

| | |
|---------|---------|
| 70,672 | 62,686 |
| 832 | 4,873 |
| 31,014 | 16,843 |
| 281,788 | 268,354 |
| 384,306 | 352,756 |

| | 2019 R'000 | 2018 R'000 |
|---|----------------|---------------|
| The amount included in revenue arising from exchanges of goods or services are as follows: | | |
| Fee income | 70,672 | 62,686 |
| Other income | 832 | 4,873 |
| Interest received - investment | 31,014 | 16,843 |
| | <u>102,518</u> | <u>84,402</u> |

The amount included in revenue arising from non-exchange transactions is as follows:

Taxation revenue

Transfer revenue

| | | |
|-------------------------------|----------------|----------------|
| Government grants & subsidies | <u>281,788</u> | <u>268,354</u> |
|-------------------------------|----------------|----------------|

10. FEE INCOME

| | | |
|-------------|---------------|---------------|
| Fees earned | <u>70,672</u> | <u>62,686</u> |
|-------------|---------------|---------------|

The filing fees relate to revenue generated from mergers, exemptions and advisory opinion cases.

11. OTHER INCOME

| | | |
|------------------------------------|------------|--------------|
| Insurance recovered | 16 | 69 |
| Study bursaries recovered | 28 | 57 |
| Refunds, SETA grant and recoveries | 788 | 4,747 |
| | <u>832</u> | <u>4,873</u> |

12. INTEREST RECEIVED

Interest revenue

| | | |
|---|---------------|---------------|
| Interest received on short term deposits and late penalties | <u>31,014</u> | <u>16,843</u> |
|---|---------------|---------------|

13. GOVERNMENT GRANTS AND SUBSIDIES

Operating grants

| | | |
|---------------------------------|----------------|----------------|
| Government grants and subsidies | <u>281,788</u> | <u>268,354</u> |
|---------------------------------|----------------|----------------|

| | 2019 R'000 | 2018 R'000 |
|---|----------------|----------------|
| 14. EMPLOYEE RELATED COSTS | | |
| Basic | 175,293 | 175,293 |
| Performance Bonus | 13,328 | 13,328 |
| Cellphone and Data allowance | 1,491 | 1,491 |
| Clothing Allowance | 3 | 3 |
| Danger Allowance | 2 | 2 |
| Group life and pension administration | 2,742 | 2,742 |
| Medical Aid | 5,929 | 5,929 |
| Recruitment fees | 3,041 | 3,041 |
| Other staff related costs | 8,953 | 8,953 |
| | 210,782 | 210,782 |
| Accounting Authority's Emoluments | | |
| Annual Remuneration | 1,815 | 1,839 |
| Subsistence Allowance | 150 | 116 |
| | 1,965 | 1,955 |
| Executive Committee's Emoluments | | |
| Annual Remuneration | 21,282 | 18,770 |
| Cellphones and data allowances | 129 | 98 |
| Group life and pension administration | 2,706 | 1,476 |
| | 24,117 | 20,344 |
| Other Employees | | |
| Annual Remuneration | 166,179 | 145,670 |
| Performance Bonuses | 5,000 | 15,281 |
| Cellphone and data allowances | 1,172 | 1,175 |
| Group life and pension administration | 13,741 | 13,196 |
| Other staff related cost - medical aid | 7,080 | 5,564 |
| Other staff related cost - recruitment cost | 745 | 3,621 |
| Other staff related cost - Other | 5,760 | 5,931 |
| | 199,677 | 190,438 |

15. ADMINISTRATIVE EXPENSES

| | 2019 R'000 | 2018 R'000 |
|---|---------------|---------------|
| General and administrative expenses | 6,371 | 6,371 |
| Auditors remuneration - external audit fees | 1,418 | 1,418 |
| | <u>7,789</u> | <u>7,789</u> |

16. FINANCE COSTS

| | | |
|------------------------------|------------|------------|
| Leased assets (Photocopiers) | <u>323</u> | <u>303</u> |
|------------------------------|------------|------------|

17. OPERATING EXPENSES

| | | |
|--|----------------|----------------|
| Audit and Risk and Remuneration committee fees | 781 | 430 |
| Advertising | 46 | 425 |
| Internal audit fees | 962 | 1,247 |
| Consulting and professional fees | 21,763 | 37,536 |
| Case related costs - Legal | 52,434 | 85,218 |
| Research and development costs | 291 | 1,532 |
| Security | 4,336 | 16,067 |
| Subscriptions and membership fees | 1,158 | 694 |
| Training | 206 | 1,203 |
| Travel and accommodation | 6,196 | 5,654 |
| Education and awareness | 8,505 | 12,552 |
| Maintenance, repairs and running costs | 3,331 | 4,187 |
| Publications | 629 | 2,958 |
| Meeting Refreshments | 621 | 956 |
| Workshops | 210 | 2,033 |
| Other expenses | 1,454 | 1,271 |
| | <u>102,923</u> | <u>173,963</u> |

| | 2019 R'000 | 2018 R'000 |
|---|---------------|-----------------|
| 18. CASH GENERATED FROM (USED IN) OPERATIONS | | |
| Surplus (deficit) | 23,440 | (67,552) |
| Adjustments for: | | |
| Depreciation and amortisation | 4,853 | 4,555 |
| Loss on disposal of assets | 860 | 1,527 |
| Movements in provisions | (7,879) | (1,424) |
| Other non-cash items | (1) | 31 |
| Changes in working capital: | | |
| Inventories | (757) | 76 |
| Receivables from exchange transactions | 8,920 | (10,885) |
| Payables from exchange transactions | (23,797) | 4,488 |
| | 5,639 | (69,184) |

19. COMMITMENTS

Already contracted for but not provided for

- Existing contracts - goods and services
- Other goods and services

| | |
|---------------|---------------|
| 15,400 | 40,029 |
| 4,200 | 2,401 |
| 19,600 | 42,430 |

This committed expenditure will be financed by allocated operational budget of future years.

Operating leases - as lessee (expense)

Minimum lease payments due

- within one year
- in second to fifth year inclusive
- later than five years

| | |
|---------------|---------------|
| 11,319 | 24,700 |
| - | 11,319 |
| - | - |
| 11,319 | 36,019 |

Operating lease payments represent rentals payable by the entity for leased office space. Leases are negotiated for an average term of three years and rentals. No contingent rent is payable.

20. RELATED PARTIES

Relationships

| | |
|--|--|
| The Competition Tribunal | Public entity in National sphere |
| The Department of Trade and Industry | National Department in National sphere |
| Economic Development Department | National Department in National sphere |
| Public Investment Corporation | Public entity in National sphere |
| Department of Telecommunications and Postal Services | National Department in National sphere |
| Members of key management | Members of the Executive Authority |

| | 2019 R'000 | 2018 R'000 |
|--|---------------|---------------|
| RELATED PARTY BALANCES | | |
| Amounts included in trade payables regarding related parties | | |
| The Competition Tribunal | 1,774 | 2,465 |
| Amounts included in the trade receivables regarding related parties | | |
| The Department of Trade and Industry | 933 | 5,715 |
| RELATED PARTY TRANSACTIONS | | |
| The Department of Trade and Industry | | |
| Rental expense | 10,300 | 1,335 |
| Telephone and Internet costs expense | 248 | 326 |
| The Competition Tribunal | | |
| Filing fees | 17,579 | 16,295 |
| Facility Fee | 912 | 828 |
| Other admin related costs | 104 | 72 |
| Economic Development Department | | |
| Government grant received | 281,788 | 263,534 |
| Department of Telecommunications and Postal Services | | |
| Grant received | - | 5,000 |
| Penalties collected on behalf of related parties and transferred to related parties | | |
| Economic Development Department | 980,107 | 568,634 |

Remuneration of management

EXECUTIVE MANAGEMENT

NAME:

Commissioner

Mr T Bonakele

Deputy Commissioner

Mr H Ratshisusu

Divisional Manager: Economic Research Bureau

Dr L Mncube

Divisional Manager: Market Conduct

Ms N Nompucuko

Divisional Manager: Human Capital

Mr A Gwabeni (Appointed 1 May 2017)

Chief Financial Officer

Mr M Kgauwe

Divisional Manager: Legal Services

Mr B Majenge

Divisional Manager: Cartels

Mr M Mohlala

Divisional Manager: Advocacy

Ms K Qobo

Divisional Manager: Mergers and Acquisition

Ms L Mabidikane

Company Secretary

Mr M Msibi

Divisional Manager: Economic Research Bureau

Mr J Hodge (01 March 2019)

Acting Chief of Staff

Mr D Maimela

| 2019 | | | |
|--------------------|--|-------------------------|--------|
| Guaranteed Package | Bonuses and performance related payments | Other benefits received | Total |
| 1,815 | - | 151 | 1,966 |
| 2,276 | 367 | 40 | 2,683 |
| 1,939 | 313 | 18 | 2,270 |
| 2,063 | 256 | 5 | 2,324 |
| 1,901 | 162 | 5 | 2,068 |
| 1,652 | 147 | - | 1,799 |
| 1,829 | 225 | 5 | 2,059 |
| 1,886 | 232 | 24 | 2,142 |
| 1,782 | 224 | 18 | 2,024 |
| 1,615 | 138 | 23 | 1,776 |
| 1,344 | 34 | - | 1,378 |
| 166 | - | - | 166 |
| 1,462 | - | - | 1,462 |
| 21,730 | 2,098 | 298 | 24,117 |

EXECUTIVE MANAGEMENT

NAME:

Commissioner

Mr T Bonakele

Deputy Commissioner

Mr H Ratshisusu

Divisional Manager: Economic Research Bureau

Dr L Mncube

Divisional Manager: Market Conduct

Ms N Nompucuko

Divisional Manager: Human Capital

Mr A Gwabeni (Appointed 1 May 2017)

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Mr M Kgauwe

Divisional Manager: Legal Services

Mr B Majenge

Divisional Manager: Cartels

Mr M Mohlala

Divisional Manager: Advocacy

Ms K Qobo

Divisional Manager: Mergers and Acquisition

Ms L Mabidikane

Company Secretary

Mr M Msibi

Divisional Manager: Office of the Commissioner

Ms A Khun (Resigned 30 November 2017)

| | 2018 | | | | Total |
|---|--------------------|--|------------------------------------|-------------------------|--------|
| | Guaranteed Package | Bonuses and performance related payments | Other short-term employee benefits | Other benefits received | |
| Commissioner Mr T Bonakele | 1,839 | - | - | 117 | 1,956 |
| Deputy Commissioner Mr H Ratshisusu | 2,061 | 293 | - | 61 | 2,415 |
| Divisional Manager: Economic Research Bureau Dr L Mncube | 1,753 | 275 | - | 43 | 2,071 |
| Divisional Manager: Market Conduct Ms N Nompucuko | 1,915 | 93 | - | 21 | 2,030 |
| Divisional Manager: Human Capital Mr A Gwabeni (Appointed 1 May 2017) | 1,907 | - | - | 10 | 1,917 |
| Chief Financial Officer Mr M Kgauwe | 1,655 | 197 | - | - | 1,852 |
| Divisional Manager: Legal Services Mr B Majenge | 1,691 | 226 | - | 1 | 1,921 |
| Divisional Manager: Cartels Mr M Mohlala | 1,745 | 272 | - | 33 | 2,087 |
| Divisional Manager: Advocacy Ms K Qobo | 1,676 | 222 | - | 7 | 1,905 |
| Divisional Manager: Mergers and Acquisition Ms L Mabidikane | 1,539 | 52 | - | 1 | 1,592 |
| Company Secretary Mr M Msibi | 1,290 | 95 | - | - | 1,385 |
| Divisional Manager: Office of the Commissioner Ms A Khun (Resigned 30 November 2017) | 1,138 | - | - | 30 | 1,168 |
| | 20,209 | 1,725 | - | 324 | 22,299 |

21. GOING CONCERN

The annual financial statements have been prepared on the basis of accounting policies applicable to a going concern basis as management is not aware of any plans by government to close it down nor to stop its current financial support.

The Commission working together with the Economic Development Department (EDD) and National Treasury, has begun a process to find a long-term sustainable funding model for the Commission. In the short term, management have implemented stringent cost control measures in order to avoid overspending. Management have decided to put on hold some of its investigations, curtail non-critical expenditure in 2018/19 financial year and have also submitted a request for additional budget allocation from government as part of the budget process. In addition, the Commission has set aside funds from the current year budget to cover and make good of the prior year cash overspending. These allocated funds are not available for use for in the 2018/19 financial year. There is however a material uncertainty on whether the Commission will be able to investigate and prosecute all cases that require its attention

We draw attention to the fact that at March 31, 2019, the entity had an accumulated deficit of R9,521 million and that the entity's total liabilities exceed its assets by R9,521 million.

22. EVENTS AFTER THE REPORTING DATE

There were no events after the reporting date.

23. PENALTIES RECEIVED AND PENALTIES PAYABLE

| | | |
|---|---------------|---------------|
| Opening Balance | 58,047 | 13,336 |
| Penalties collected | 881,179 | 568,634 |
| Less: Amounts paid to the Economic Development Department | (905,760) | (523,923) |
| | <u>33,466</u> | <u>58,047</u> |

An amount of R881,179 million was collected in the current year and R905,760 million was paid over to Economic Development Department as at 31 March 2019. The balance of R33,466 million (2018: R58,047 million) is still to be paid to the Economic Development Department in the next financial year. The penalties payable are held in the Commission's bank account and are represented by Cash and Cash Equivalents held on behalf of EDD disclosed under current assets on the Statement of Financial Position.

| | | |
|--|------------------|------------------|
| Outstanding penalties amount at the beginning of the year | 1,585,444 | 1,799,583 |
| Add: Amounts of settlements and penalties levied by the Competition Tribunal | 333,769 | 354,495 |
| Less: Amounts collected by Competition Commission | (881,179) | (568,634) |
| Outstanding penalties amount at the end of the year | <u>1,038,034</u> | <u>1,585,444</u> |

Section 64(3) states that proceedings under subsection (2) may not be initiated more than three years after the imposition of the administrative penalty. A total of R333,769 million (2018: R354,495 million) was levied by the Competition tribunal in the current financial year.

The closing balance of R1,038,034 million as at 31 March 2019, included a total amount of R72,066 million which of which fined entities are behind the agreed payment terms. This may result in a material loss to the National Revenue Fund. Management has effected collection processes to recover the outstanding amounts in default. Some of the defaulters have requested a deferral their payment arrangement due to financial challenges and those requests are being considered by management.

24. NEW STANDARDS AND INTERPRETATIONS

24.1 Standards and interpretations issued, but not yet effective

The entity has not applied the following standards and interpretations, which have been published and are mandatory for the entity's accounting periods beginning on or after April 1, 2019 or later periods. The below standards will be applied when they become effective:

| Standard / Interpretation: | Effective date: Years beginning on or after | Expected impact: |
|---|---|--|
| • GRAP 104: Financial Instruments | April 1, 2019 | Impact is currently being assessed |
| • GRAP 109: Accounting by Principals and agents | April 1, 2019 | Impact is currently being assessed |
| • GRAP 20: Related parties | April 1, 2019 | Impact is currently being assessed |
| • GRAP 32: Service Concession Arrangements: Grantor | April 1, 2019 | Unlikely there will be a material impact |
| • GRAP 108: Statutory Receivables | April 1, 2019 | Unlikely there will be a material impact |

25. FRUITLESS AND WASTEFUL EXPENDITURE

Fruitless and wasteful expenditure

23

23

The amount relates to payment to a fraudulent bank account. The Commission was fraudulently requested to change the bank account details for one of the service providers. This fraud was identified before any additional payments were made. The fraud case has been reported to the South African Police Services. Controls have been put in place to ensure that such expenditure is avoided in the future.

| | |
|-------|-------|
| 2019 | 2018 |
| R'000 | R'000 |

26. IRREGULAR EXPENDITURE

| | | |
|---|----------------|---------------|
| Opening balance | 74,052 | 3,972 |
| Add: Irregular Expenditure - current year | 39,224 | 71,586 |
| Less: Amounts condoned | (2,466) | (1,506) |
| Balance at the end of the year | 110,810 | 74,052 |

Irregular expenditure is made up of the following:

1. An amount of R71,586 million which relates to an expenditure incurred in contravention of the Supply Chain Management Regulations and overspending in the 2017/18 financial year. The supply chain management contraventions relates to the appointment of professional services experts. This amount was previously disclosed as R126,124 million in the 2017/18 Financial Statements. Management has since reviewed this amount in the consultation with the National Treasury. The irregular expenditure attributable to the overspending is R34,734 million.
2. An amount of R39,224 million which mainly relates to an expenditure incurred in contravention of the Supply Chain Management Regulations in the 2018/19 Financial Year. The amount mainly relates to the appointment of professional services experts.
3. An amount of R1,7 million in contravention of Supply Chain Management Regulations. An investigation has been done and National Treasury have subsequently condoned this expenditure.
4. An amount of R745 000 for which was found to have been incurred through fraudulent activities. A fraud case was reported to the South African Police Service (SAPS). SAPS have not been able to trace perpetrator. Due to the time that has lapsed with the case remaining unresolved, the accounting authority has condoned the irregular expenditure in accordance with the National Treasury guidelines.

27. RECONCILIATION BETWEEN BUDGET AND STATEMENT OF FINANCIAL PERFORMANCE

2019
R'000

2018
R'000

Reconciliation of budget surplus/deficit with the surplus/deficit in the statement of financial performance:

| | | |
|--|----------|----------|
| Net surplus (deficit) per the statement of financial performance | 23,440 | (67,552) |
| Adjusted for: | | |
| (Increase)/ Decrease in fee income | 4,659 | 12,645 |
| Decrease in Government grants & subsidies | - | (5,000) |
| Increase in interest received | (29,033) | (10,843) |
| Increase)/ Decrease in other income | 68 | (4,033) |
| Under expenditure on personnel | 59 | (4,634) |
| Under expenditure on administration | (191) | (3,184) |
| Over/ (Under) expenditure on depreciation | (349) | (366) |
| Over expenditure on finance costs | 323 | 303 |
| Under expenditure on operating lease | (15) | 4,224 |
| Loss disposal of assets | 860 | 1,527 |
| Over/ (Under) expenditure on general expenses | 179 | 76,913 |
| Net surplus per approved budget | - | - |

28. COMPARATIVE FIGURES

Certain comparative figures have been reclassified.

At the beginning of the financial year the useful lives of some assets were reviewed and adjusted in the prior period.

29. RISK MANAGEMENT

Financial risk management

The Commission has a policy and framework on risk management. The strategic risk register is reviewed annual by management. The entity's activities expose it to interest, credit and liquidity risks.

Liquidity risk

The Commission's risk to liquidity is a result of the funds available to cover future commitments. The Commission manages liquidity risk by monitoring forecasted cashflows and ensuring that the necessary funds are available to meet any commitments which may arise. Cash which is not utilised is immediately invested in the Corporation for Public Deposits and call accounts.

Exposusre to liquidity risk

The following table reflects the commission's exposure to liquidity risk from financial liabilities:

2019
R'000

2018
R'000

2019

Payables from exchange transactions

| Carrying Amount | Total Cash Flow | Contractual Cash Flow within one year | Contractual cashflow between two and five years |
|-----------------|-----------------|---------------------------------------|---|
| 26,004 | 26,004 | 26,004 | - |

2018

Payables from exchange transactions

| Carrying Amount | Total Cash Flow | Contractual Cash Flow within one year | ToContractual cashflow between two and five yearsal |
|-----------------|-----------------|---------------------------------------|---|
| 49,803 | 49,803 | 49,803 | - |

CONCENTRATION OF CREDIT RISK

2019

Cash and cash equivalents
Trade and other receivables

| Less than 1 year | Between 1 and 2 years | Between 2 and 5 years | Over 5 years |
|------------------|-----------------------|-----------------------|--------------|
| 5,069 | - | - | 5,069 |
| 2,973 | - | - | 2,973 |

2018

Cash and cash equivalents
Trade and other receivables

| Less than 1 year | Between 1 and 2 years | Between 2 and 5 years | Over 5 years |
|------------------|-----------------------|-----------------------|--------------|
| 3,401 | - | - | 3,401 |
| 11,893 | - | - | 11,893 |

Credit risk

The Commission trades only with recognised, creditworthy third parties. In addition, receivables balances are monitored on an ongoing basis with the result that the Commission's exposure to bad debts is not significant. The maximum exposure is the carrying amounts as disclosed . There is no significant concentration of credit risk within the Commission. With respect to credit risk arising from the other financial assets of the Commission, which comprise cash and cash equivalents, the Commission's exposure to credit risk arises from default of the counterparty, with a maximum exposure equal to the carrying amount of these instruments. The Commission cash and cash equivalents are placed with high credit quality financial institutions therefore the credit risk with respect to cash and cash equivalents is low. Trade and other receivables are not rated.

Financial assets exposed to credit risk at year end were as follows:

Financial instrument
Cash and cash equivalents
Trade and other receivables
Total

| 2019 | 2018 |
|--------------|---------------|
| 5,069 | 3,401 |
| 2,973 | 11,893 |
| 8,042 | 15,294 |

| 2019 | 2018 |
|-------|-------|
| R'000 | R'000 |

Market risk

Market risk is the risk that changes in the market prices, such as the interest rates which will affect the value of the financial assets of the commission.

Interest rate risk

As the entity has no significant interest-bearing assets, the entity's income and operating cash flows are substantially independent of changes in market interest rates.

The Commission is exposed to interest rate changes in respect of returns on its investments with financial institutions and interest payable on finance leases contracted with outside parties.

The Commission's exposure to interest risk is managed by investing, on a short term basis, in current accounts and the Corporation for Public Deposits.

30. PROVISIONS

| | | |
|-----------------------------|---------------|---------------|
| Leave provision | 9,651 | 9,202 |
| Performance bonus provision | 5,000 | 13,328 |
| | <u>14,651</u> | <u>22,530</u> |

Leave provision

The Commission does not have an unconditional right to defer settlement of its leave liabilities and its policies stipulate that leave is forfeited if not used within 6 months after the reporting date.

Reconciliation

| | | |
|-----------------|--------------|--------------|
| Opening balance | 9,202 | 6,598 |
| Utilised | (15,220) | (12,238) |
| Additions | 15,669 | 14,842 |
| | <u>9,651</u> | <u>9,202</u> |

| 2019 | 2018 |
|-------|-------|
| R'000 | R'000 |

Performance bonus provision

Employees sign performance contracts as part of their conditions of service at the beginning of each financial year. Employees are assessed biannually. The amount is dependent on the outcome of individual performance evaluations and it is at the discretion of management, subject to the availability of funds.

Reconciliation

| | | |
|-----------------|----------|----------|
| Opening balance | 13,328 | 17,312 |
| Utilised | (13,328) | (16,812) |
| Additions | 5,000 | 12,828 |
| | 5,000 | 13,328 |

31. CONTINGENT ASSETS AND LIABILITIES

Cases before the courts

There are pending cases before the courts emanating from ongoing investigations by the Commission. The outcome thereof may result in legal costs awarded against or for the Commission.

32. BUDGET DIFFERENCES

Material differences between budget and actual amounts

32.1. Fee income

Fee income is below the budgeted amount due to lower merger applications filed than anticipated and filing fee increase that could only be effected mid-year.

32.2. Other income

The difference is not material.

32.3. Interest received - investment

Interest is higher than budgeted amount due to more funds in the bank.

32.4. Government grants & subsidies

The difference is not material.

32.5. Employee related costs

No material difference.

32.6. Administrative expenses

No material difference.

32.7. Depreciation and amortisation

No material difference.

32.8. Finance costs

No material difference.

32.9. Lease rentals on operating lease

The difference is not material.

32.10. Operating expenses

No material difference.

33. PRIOR PERIOD ERROR

33.1. During the review of trade payables the entity identified previous year's balances which needed to be restated. The adjustments have been made according to GRAP 3.

| | |
|-------|-------|
| 2019 | 2018 |
| R'000 | R'000 |

The result of prior period adjustment is as follows:

| | 2019 | 2018 |
|--|------|---------|
| Statement of financial position | | |
| Current Liabilities | | |
| Paybles from exchange transactions | - | (1,773) |
| Net Assets | | |
| Accumulated Deficit | - | 1,773 |
| Statement of Financial Position | | |
| Expenditure | | |
| Depreciation and amortisation | - | (1,773) |

33.2. During the year management reviewed irregular expenditure of R128 124 million as disclosed in the previous year financial statements. Management reviewed this amount in consultation with the National Treasury. The reviewed amount is R79 million and has been disclosed accordingly.



NOTES

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This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

NOTES

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NOTES

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