

Report to Portfolio Committee on Trade and Industry

Quarter 1 and Quarter 2 Performance

19 November 2019



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I. Introduction



1. Legislative Mandate

- One of three bodies established to regulate competition in the market.
- The Commission investigates complaints, assesses mergers, evaluates exemption applications, undertakes market inquiries and advocacy, in order to achieve equity and efficiency in the South African economy.
- Purpose of the Competition Act is to promote and maintain competition in order to:
 - Promote efficiency and development of the economy;
 - Provide consumers with competitive prices and product choices;
 - Ensure SMME's an equitable opportunity in the economy;
 - Advance economic welfare of South Africans;
 - Expand opportunities for South African participation in world markets;
 - Promote greater spread of ownership, in particular HDI's.

2. Our Mission, Vision & Strategic Goals



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Competition Regulation for a Growing and Inclusive Economy

Strategic Goal 1

**“EFFECTIVE
COMPETITION
ENFORCEMENT
AND MERGER
REGULATION”**

*Use competition
instruments to
achieve our mandate.*

Strategic Goal 2

**“STRATEGIC
COLLABORATION
AND ADVOCACY”**

*Establish strategic
relationships to
advance competition
policy.*

Strategic Goal 3

**“A HIGH-
PERFORMING
AGENCY”**

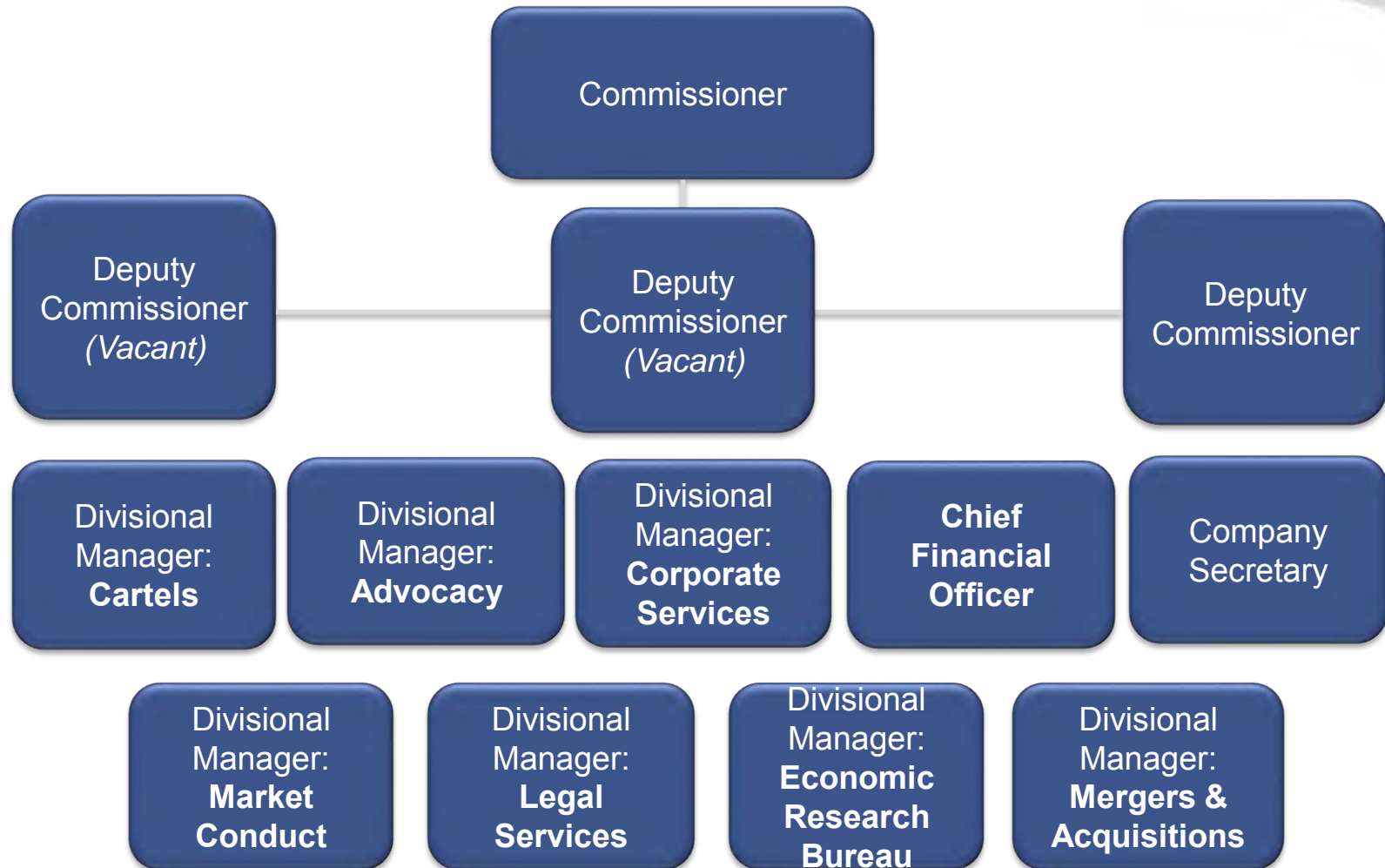
*Optimize our human
capital, resources,
systems and
processes.*

3. Our Priorities

The Commission's priority sectors in the reporting period were:

- i. Food and agro-processing
- ii. Healthcare
- iii. Intermediate industrial inputs
- iv. Construction and infrastructure
- v. Banking and financial services
- vi. Information and communication technology; and
- vii. Energy

4. Organizational Structure



5. About Us

- The staff complement is two hundred and eighteen (218) employees.
- Approx. 50:50 split between Economists and Lawyers among professional staff.
- The equity ratio for female and male representation is 55.2% and 44.8%, respectively.
- People with disabilities represented 1.7% of Commission staff, in line with the target set by the government.
- In terms of race, the Commission employed 170 Africans, 21 Coloureds, 6 Indians and 21 Whites.
- About 80% of staff are under the age of 40.

II. PERFORMANCE SUMMARY



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**GOVERNMENT STAKEHOLDER MEETING:
AUTOMOTIVE AFTERMARKET WORKSHOP**

Date: Thursday, 16 MARCH 2017

Venue: The Capital, Menlyn Maine, Pretoria

1. OBJECTIVES

As set out in the concept note, the aim of these two days is to develop all stakeholders within the automotive industry in order to make service relationships and repair & parts business for the industry in South Africa a more efficient, fair and competitive environment. In particular, the engagement will concentrate on the following areas:

- Establishing a framework for the automotive aftermarket industry to ensure that it is fair, competitive and sustainable.
- Identifying the key stakeholders in the industry and their roles and responsibilities.
- Developing a code of conduct for the industry.
- Establishing a dispute resolution mechanism.
- Developing a framework for the industry to ensure that it is fair, competitive and sustainable.

2. OUTCOMES

Following the engagement, the competition commission will produce a report on the findings of the workshop. The report will include the following:

- A summary of the key issues identified during the workshop.
- A list of recommendations for the industry.
- A timeline for the implementation of the recommendations.
- A list of stakeholders responsible for the implementation of the recommendations.

6. Performance Summary Q1 and Q2



Total APP Targets: 29	Q1	Q2
Applicable targets	16	20
Targets met in the Quarter	13	16
Targets not met in the Quarter	3	3
Targets not applicable in the Quarter	13	9
Total score %	81%	80%

7. Case Load

INVESTIGATIONS	Q1	Q2
Number of mergers applications received	68	88
Number of enforcement complaints received	26	75
Number of cartel cases under investigation	87	78
<i>Total Investigation Load</i>	181	241
LITIGATION	Q1	Q2
Number of cartel cases in litigation at the Tribunal and the courts	110	44
Number of abuse of dominance cases in litigation at the Tribunal and the courts	8	9
Number of minimum resale price maintenance cases in litigation at the Tribunal	1	2
Number of contested large mergers in the Tribunal	5	7
Number of reconsiderations in litigation	6	7
Number of prior implementation cases in litigation	4	5
Number of appeals, review and variation application	20	6
<i>Total Litigation Load</i>	154	80

III. MERGER OVERVIEW

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8. Performance Against Targets

Performance Indicator	Q1 Targets	Q1 Results	Q2 Targets	Q2 Results
1. Average turnaround time for Phase 1 merger investigations	≤ 20 days	19 days	≤ 20 days	17 days
2. Average turnaround time for Phase 2 merger investigations	≤ 45 days	40 days	≤ 45 days	38 days
3. Average turnaround time for Phase 3 intermediate and small merger investigations.	≤ 60 days	58 days	≤ 60 days	55 days
4. Average turnaround time for Phase 3 large merger investigations	≤ 120 days	139 days	≤ 120 days	133 days
5. % of imposed merger remedies and conditions monitored.	100%	100%	100%	100%

9. Performance Highlights

- 43 321 jobs saved by Commission's intervention.
- 18 mergers approved with public interest conditions.
- Received one hundred and fifty-six (156) new merger notifications (Q1 & Q2 combined).
- Finalised one hundred and sixty-one (161) transactions (Q1 & Q2 combined).

10. MIH E-Commerce Holdings (Pty) Ltd & We Buy Cars



- The Commission has recommended to the Tribunal that the proposed acquisition of WeBuyCars (Pty) Ltd (WeBuyCars) by MIH eCommerce Holdings (Pty) Ltd (MIH eCommerce), an entity of the Naspers Group, be prohibited.
- The Commission found that the Naspers Group acquired a stake in Frontier Car Group Inc (FCG) and through this acquisition, the Naspers Group intended to enter the South African market for wholesale and online buying of cars from the public (using an instant cash model) and selling to dealers in direct competition with WeBuyCars.
- The Commission's view is that proposed merger will result in the removal of WeBuyCars, a dominant potential competitor in the wholesale and online buying of used cars from the public.
- The Tribunal hearings of this matter are ongoing.

11. Aton/Murray & Roberts Pty (Ltd)

- On 16 July 2019 the Commission recommended that the Competition Tribunal prohibit a large merger wherein ATON GMBH (“ATON”) intended to acquire control of M&R Holdings Limited (“M&R”)
- The Commission assessed the activities of the merging parties and found that the proposed merger results in a horizontal overlap as both the merging parties are active in the provision of underground mining services
- The Commission found that the proposed merger is likely to result in unilateral effects post-merger because the merged entity would have high combined market shares ranging from 44% - 90% in the relevant markets.
- The Commission found that the merging parties are each other’s closest competitor in the relevant markets (shaft-sinking, raise boring, contract mining as well as mine development and underground construction). This suggests that the merged entity would be able to exercise its market power without the credible disciplining effect of rivalry
- The merging parties and the Commission were ultimately also not able to agree on a set of merger conditions which would remedy the competition concerns identified.
- The merger was eventually withdrawn by the parties after Competition Commission decision

IV. MARKET CONDUCT OVERVIEW

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13. Performance Against Targets

Performance indicator	Q1 targets	Q1 results	Q2 targets	Q2 results
1. % of abuse of dominance investigations completed within 24 months.	≥75%	100%	≥75%	97%
2. % of exemption applications completed within 12 months.	≥75%	N/A	≥75%	N/A
3. No. of market inquiries completed.	0	N/A	2	1

14. Uniplate fined for Abuse of Dominance

- In November 2015 the Commission referred two abuse of dominance complaints against Uniplate to the Tribunal for adjudication.
- From its investigation, the Commission found that Uniplate had entered into long term exclusive agreements, of generally 10 years, with a significant number of number plate embossers. The agreements required embossers to exclusively purchase their number plate blanks from Uniplate when purchasing a Uniplate embossing machine.
- The Tribunal held that Uniplate is a dominant firm and is under a special duty to not engage in exclusionary conduct without pro-competitive justifications. The Tribunal held that “Uniplate’s exclusive contracts have foreclosed the market to Uniplate’s competitors...Locked in customers, meaning that competitors such as NNPR was unable to access the market.”
- Following this finding, the Tribunal imposed an administrative penalty of approximately R16 million for the contravention.

15. Appeal by Computicket against Tribunal finding



- On 25 June 2019 the CAC heard Computicket's appeal against the Tribunal's judgement of 21 January 2019. The Tribunal had found that Computicket contravened section 8(d)(i) of the Act for the period mid 2005-2010 and was fined an administrative penalty of R20 million.
- The Commission argued that Computicket had an all-or-nothing policy in terms of which inventory providers either had to use Computicket exclusively or not use Computicket at all. Exclusivity lasted for the most part for a period of 3 years and applied to 99% of Computicket's contracts during the relevant period.
- The Commission argued that because of the exclusivity clauses in Computicket's agreement, new entrants were not able to gain effective entry into the market. The Commission further argued that exclusivity was not necessary to protect Computicket's investments and not a justification of efficiencies.
- Computicket disputed the allegations made by the Commission. Their submissions included a denial that the mere existence of exclusivity is sufficient to conclude that the Competition Act has been contravened.
- The CAC has not yet handed down judgement in the appeal.

16. PRASA case referred to the Tribunal



- Between 2017 and 2019, the Commission received several complaints against Passenger Rail Agency of South Africa SOC Ltd (“PRASA”).
- In the main, the complainants allege that PRASA is abusing its dominant position by restraining bus operators from accessing essential bus terminal facilities at Park Station and by giving preference to its subsidiary, Autopax Passenger Services (SOC) Ltd (“Autopax”), for accessing these facilities
- The Commission’s investigation concluded that Park Station, as an intermodal facility with features that include bus terminal facilities, constitutes a separate market and that PRASA, which manages and owns this facility, holds a monopoly position in the facility
- The Commission found that PRASA’s denied its competitors access to an essential facility when it is economically feasible to do so, in contravention of section 8(b), alternatively 8(c) of the ActThe Commission also found that PRASA has engaged in excessive pricing in contravention with section 8(a) of the Act
- The Commission has since taken a decision to refer this complaint to the Tribunal for prosecution

V. CARTELS OVERVIEW

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17. Performance Against Targets

Performance Indicator	Q1 Targets	Q1 Results	Q2 Targets	Q2 Results
1. No. of cartel investigations completed	3	0	3	12
2. % of cartel cases won at the Tribunal and the courts.	≥75%	80%	≥75%	67%

18. Settlement with Power Construction

- On 11 September 2019, the Tribunal confirmed a settlement agreement between the Commission and Power Construction (Pty) Ltd and Power (West Cape) (Pty) Ltd. The order included a settlement amount of R3 069 887.43
- This matter follows from the Commission's 2011 "fast-track" invitation to construction firms to settle collusive conduct in the industry. Power responded to this invitation and self-reported Power WC's collusive conduct.
- The settlement confirmed that Power WC had tendered collusively with a competitor, Haw & Inglis (Pty) Ltd for the maintenance of the N1 from Touws River to Langsberg. Power WC admitted this conduct as a contravention of the Act.

19. Hearing on Cape Gate cartel

- On 11 June 2019, the hearing of the complaint against Cape Gate (Pty) Ltd resumed before the Tribunal.
- The Commission alleged that Cape Gate and its competitors reached an agreement to fix the price of scrap using a standard price formula and also fixed the level of premiums payable to suppliers of scrap, in contravention of section 4(1)(b)(i) the Act
- The Commission has concluded settlement agreements with Columbus Stainless (Pty) Ltd and ArcelorMittal South Africa Ltd. Scaw South Africa (Pty) Ltd was the leniency applicant in this matter. Cape Gate is the only remaining respondent in this matter.
- On June 2019, the Tribunal heard the evidence of Cape Gate's subpoenaed witness, and on 26 and 28 June 2019, the Tribunal heard the arguments of both the Commission and Cape Gate, on the merits of this case
- The Commission await the Tribunal's judgment of the matter on the merits.

20. FOREX Exchange cartel (1/2)

- In February 2017, the Commission filed a referral with the Tribunal against eighteen banks in which the Commission alleged that traders related to the banks had colluded in the market for the exchange of currency, specifically between the US dollar and South African Rand. The Commission supplemented the referral, sought to join a further five banks to the referral
- All of the respondent banks thereafter filed applications exception to the referral. The grounds of exception were broadly that the Tribunal lacked jurisdiction over certain of the respondents, that the Commission had failed to plead sufficient facts in its referral to sustain a cause of action and that the joinder of the additional parties should not succeed.
- The Tribunal refused to dismiss the case but ordered the Commission to refile its papers and not to seek penalties against foreign based banks with no local presence, but seek a declaratory order against them. The banks have appealed the case and hearing is in December.
- The Constitutional Court heard the case on Standard Bank objections and we await judgement.

VI. LEGAL SERVICES OVERVIEW

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22. Performance Against Targets

Performance Indicator	Q1 Targets	Q1 Results	Q2 Targets	Q2 Results
1. % of merger decisions upheld by Tribunal and/or courts.	≥75%	100%	≥75%	100%
2. % of cartel cases won at the Tribunal and the courts.	≥75%	80%	≥75%	67%
3. % of abuse of dominance cases won at the Tribunal and the courts.	≥70%	100%	≥70%	0%

VII. ADVOCACY

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24. Performance Against Targets: Advocacy

Performance indicator	Q1 Targets	Q1 Results	Q2 Targets	Q2 Results
1. No. of workshops or seminars on competition, trade/industrial policy and regulatory matters hosted.	1	1	1	1
2. No. of submissions or responses to policy or regulation.	1	1	1	2
3. No. of collaborative research and/or other projects undertaken with African and BRICS partners of value to South Africa.	1	1	2	4

25. Performance Against Targets: OTC

Performance indicator	Q1 targets	Q1 results	Q2 targets	Q2 results
1. No. of Commission-initiated media engagements.	8	19	8	10
2. No. of issues of the Commission's newsletter published.	1	0	1	1
3. No. of 20th Anniversary Commemoration activities.	0	N/A	1 Conference hosted	1 Conference hosted
4. No. of strategic activities undertaken in collaboration with universities.	0	N/A	1	1

26. Performance Highlights

- We celebrated the 20 year anniversary of the competition authorities. Hosted the 13th Annual Conference with local and international guest; ran the initial Moot Court Competition where students from 5 universities participated.
- We submitted three (3) policy responses:
 - Draft Sports Broadcasting Services Amendment Regulations
 - Draft General Policy on the Allocation of Commercial Fishing Rights and the Draft Policy for the Transfer of Commercial Fishing Rights
 - National Treasury's draft paper on Economic transformation, inclusive growth, and competitiveness: Towards an Economic Strategy for South Africa.
- We concluded MOUs with ICASA and the Zimbabwe Competition and Tariff Commission.
- We hosted a Dialogue with Labour & Business to discuss how competition policy and regulation can be used to promote inclusive participation of HDIs and SMEs in the economy.

27. School Uniform

- As early as 2010, the Commission continued to be inundated with complaints from parents and school uniform suppliers due to:
 - the high and escalating cost of school uniforms
 - the high prevalence of exclusive long-term agreements between schools and their respective uniform suppliers.
- The Commission undertook several advocacy initiatives to address these concerns, one of which was engagements with the National Department of Basic Education (“DBE”)
- That culminated in the DBE Circular of May 2015 setting out guidelines for schools relating to the procurement of school uniforms
- During the period the Commission concluded:
 - A Memorandum of Understanding (“MoU”) with FEDSAS, whereby FEDSAS would actively endorse and encourage its members to adopt and implement the guidelines contained in the DBE Circular; and
 - Settlement agreements confirmed by the Competition Tribunal with some the largest school groups in South Africa, whereby said school groups agreed to adopt and implement, inter alia, the guidelines contained in the DBE Circular across of their incumbent schools in South Africa (approx. 340 schools)

28. Automotive Aftermarkets

- Since 2017 the Commission has conducted an extensive advocacy consultation process with automotive industry participants following concerns of anti-competitive conduct in the automotive aftermarkets
- The purpose of these engagement was to address the need to open up the market, transform and encourage increased participation of SMEs and HDIs in this sector
- The Commission drafted a Code of Conduct for Competition in the South African Automotive Industry and engaged stakeholders on same
- Stakeholder responses to the Code where divergent with some in support while others opposed
- The Commission has been engaging stakeholders in the sector including NAAMSA and SAIA in a final effort to reach resolution to the issues in the sector

VIII. MARKET INQUIRIES

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29. Health Market Inquiry (1/2)

- The Health Market Inquiry (HMI) was completed and the final report published and officially handed over to the Minister of the DTIC on 30 September 2019.
- The inquiry revealed that the private healthcare market is characterised by highly concentrated funders and facilities markets, disempowered and uninformed consumers, a general absence of value-based purchasing, practitioners who are subject to little regulation and failures of accountability at many levels.
- A more competitive private healthcare market will translate into lower costs and prices, more value-for-money for consumers and should promote innovation in the delivery and funding of healthcare. The inquiry advocated that competition in the healthcare sector should occur on price, cost and quality, and not on risk avoidance.
- The inquiry panel made several recommendations which are designed to promote systemic change to improve the context within which facilities, funders, and practitioners operate, and create a shift towards a pro-competitive environment.

30. Health Market Inquiry (2/2)

It was recommended that:

- The Commission review its approach to **creeping mergers** to address high levels of concentration and provide guidance to practitioner associations about what constitutes pro-competitive conduct.
- That a healthcare regulatory authority (**the Supply Side Regulator**) be established to focus on regulating the supply-side of the healthcare market. The Supply Side Regulator will have four main functions: healthcare facility planning (which includes licensing); economic value assessments; health services monitoring; and health services pricing.
- That a single, comprehensive, **standardised base benefit option** be introduced, which must be offered by all schemes to increase comparability. This will enable consumers to compare products, reward those funders which are able to innovate to offer lower prices and/or higher quality, and, thereby, both discipline and reward the market.
- **Other recommendations** involve promotion of competitive contracting, including, possible practitioners bilateral negotiations with funders; value-based contracts that are transparent and limited to 3 years, before new contracts must be initiated.

31. Update on Other Market Inquiries

- The **Grocery Market Inquiry** - following the publication of its Preliminary Report on Findings and Recommendations on 29 May 2019, the Inquiry received and assessed the submissions from stakeholders and held a number of engagements with stakeholders regarding their submissions. The Commission is currently finalizing the report, for publication at the end of November 2019.
- The **Data Services Market Inquiry** is nearing completion and the Commission intends to release the final report containing findings and recommendations by the end of November 2019. The Commission has also engaged ICASA regarding the Policy Directive on spectrum assignment.
- The Commission is finalizing the drafting of **Public Passenger Transport Market Inquiry** report. The provisional report will be released soon for public comment and final report by March 2020.



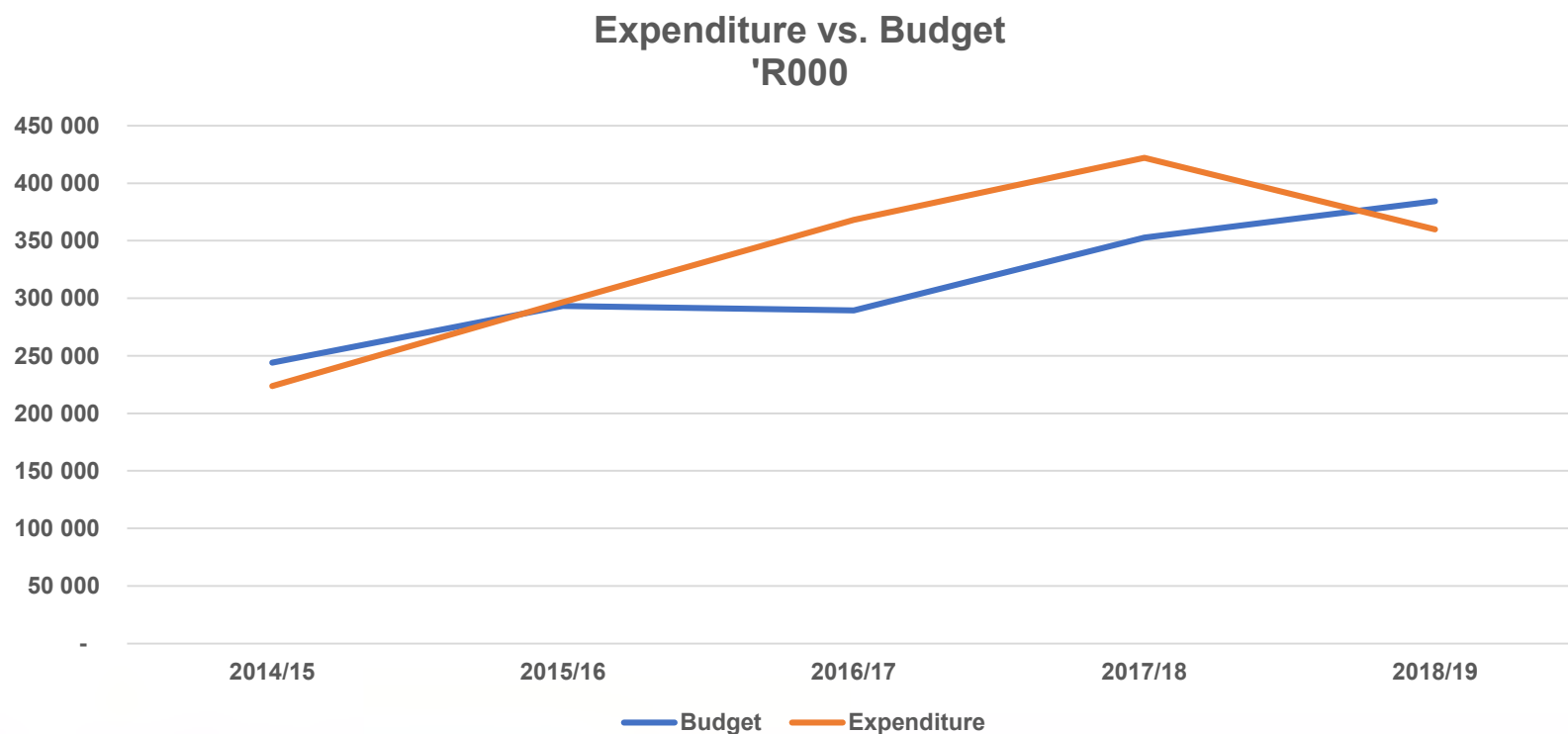
IX. FINANCIAL OVERVIEW

32. Performance Highlights

- **Audit Outcome:** Clean Audit Report
- **Irregular Expenditure:** With help from the National Treasury COP office, the Commission managed to reduce and restate the irregular expenditure amount disclosed in the 2017/18 Financial year as follows:
 - *Before the Consultation with COP: R128,590 million*
 - *After the Consultation with COP office: R71,586 million*
 - *All irregular expenditure relates to diviations signed off by Commissioner instead of National Treasury, and oversight acknowledged by the Commission.*

33. Budget vs Expenditure over time

- Over the years the Commission used surpluses from the previous financial years to fund its operations.
- From 2016/17 the surplus were depleted and as a result the Commission over spent its budget in the 2017/18 Financial Year.



34. Budget Overspending

- From the 2018/19 Financial Year, the Commission curtailed investigations and other operations in order to reduce the Cash Deficit which arose as a result of the budget over spending in the 2017/18 Financial Year.
- The Commission recorded an operating surplus of R24,3 million in the 2017/18 Financial Year. This was a significant improvement from the two 2 previous financial years where the Commission recorded financial deficits.
- Furthermore, R18 million is set aside towards repaying the deficit in the 2019/20 Financial Year.
- The deficit is currently at R36,8 million from R62 million in the 2017/18 Financial Year.

35. Revenue

TOTAL REVENUE	ANNUAL BUDGET	YTD TOTAL	YTD BUDGET	YTD VARIANCE	YTD VARIANCE %
Fee Income					
- Mergers & Acquisitions	79,324,000	33,602,290	39,662,000	(6,059,710)	-15%
- Exemptions	-	-	-	-	0%
- Legal Services	-	-	-	0	0%
Accommodation Costs - Grant	-	-	-	-	0%
Government Grant	295,436,000	147,718,000	147,718,000	-	0%
Health Market Inquiry - Grant	-	-	-	-	0%
Interest Received	2,000,000	2,222,034	1,000,000	1,222,034	122%
Other Income	-	400,404	-	400,404	0%
TOTAL	376,760,000	183,942,728	188,380,000	(4,437,272)	-2%

36. Expenditure

TOTAL PER MAIN ITEM	ANNUAL BUDGET	YTD ACTUAL	YTD BUDGET	YTD VARIANCE	YTD VARIANCE %	TOTAL AVAILABLE BUDGET
Total	380,713,178	164,887,592	182,673,095	17,785,503	10%	215,825,586
Human Resources	236,756,239	112,380,673	118,551,994	6,171,321	5%	124,375,567
Premises & Equipment	37,065,327	16,788,071	18,532,664	1,744,592	9%	20,277,256
Other Operational	10,843,669	4,694,877	5,421,834	726,957	13%	6,148,791
Research & Information	2,001,112	874,415	1,095,556	221,141	20%	1,126,697
IT and system Development	2,675,000	423,649	1,337,500	913,852	68%	2,251,352
Educational Awareness	6,354,466	5,241,442	5,745,388	503,946	9%	1,113,023
Case Related Costs	39,315,000	11,797,303	19,657,500	7,860,197	40%	27,517,697
Capital Expenditure	2,284,915	1,364,749	1,397,458	32,708	2%	920,166
Depreciation	3,262,572	2,507,089	2,131,286	-375,803	-18%	755,483
Other Programme Costs	40,154,878	8,815,323	8,801,915	-13,408	-0%	31,339,554

37. Conclusion

- The Commission met 13 out of 16 applicable targets in Q1 of (81%), and met 16 out of the 20 targets in Q2 (80%) of 2019/20.
- There is increased volume of work and complexity in the investigation + prosecution of cases:
 - Longer time frames for litigation in the courts;
 - Specialist skills and industry knowledge required for some investigations.
- The Commission continues to conduct the three market inquiries and aims to complete them within the current financial year.

THANK YOU!

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