



PRESENTATION TO PARLIAMENTARY PORTFOLIO COMMITTEE: DTIC



competitiontribunal
SOUTH AFRICA

Presented by

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CHAIR

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Focus

- ❖ Annual Integrated Report
2018/2019
- ❖ Quarter 1 and Quarter 2





ANNUAL
INTEGRATED
REPORT
2018/19

20 years of reporting



competitiontribunal
SOUTH AFRICA

Content

- ❖ Who we are
- ❖ What we do
- ❖ How we do it
- ❖ How did we perform?
- ❖ Finances

Who we are

LEGISLATIVE MANDATE

The Tribunal derives its legislative mandate from the Competition Act of 1998 (Act 89 of 1998) (the "Act" or "the Competition Act") and its purpose is to promote and maintain competition in the republic in order to:



(a) promote efficiency, adaptability and development of the economy;



(b) provide consumers with competitive prices and product choices;



(c) promote employment and advance the social and economic welfare of all South Africans;



(d) expand opportunities for South African participation in world markets;



(e) recognise the role of foreign competition;



(f) ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy;



(g) promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged people.

Who we are

CONSTITUTIONAL MANDATE

The mandate of the Tribunal is contained in section 34 of The Constitution of the Republic of South Africa, 1996, which states *"Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial Tribunal or forum".*

Who we are

- ❖ SA has a market-based economy subject to regulation – competition policy exists within this framework
- ❖ Competition law in South Africa is governed by the Competition Act
- ❖ The Competition Act (Act) regulates 2 broad areas of competition:
 - mergers & acquisitions : firms of a certain size are required to notify the commission of **intermediate and large mergers** to obtain approval*
 - prohibited practices (anti-competitive conduct): usually involve **cartel conduct** or **abuse of dominance***



What we do

- ❖ Competition Commission: acts as the “**prosecutor**” in the competition system.
- ❖ **Tribunal**: functions like a **court**
- ❖ Competition Appeal Court: considers appeals against Tribunal decisions



- ❖ Tribunal members hear a case and make a decision
- ❖ Must issue written reasons for decisions
- ❖ Tribunal can impose remedies such as administrative penalties
- ❖ Tribunal can approve, conditionally approve or prohibit large mergers

How we do it

- ❖ The Tribunal cannot set any objectives that are not directly expressed by or provided for in the law.
- ❖ The Tribunal has no control over the number and types of cases brought before it. The case load is determined entirely by complaint referrals and notified mergers and each case is adjudicated on its own merits.
- ❖ Nevertheless we have **set three broad strategic goals**.
- ❖ Our performance is measured against these targets.

How we do it

❖ Tribunal's three broad strategic goals:

Strategic Orientated Outcome Goal	Goal Statement
Adjudicative excellence	To ensure effective and efficient adjudication on matters brought before the Tribunal.
Stakeholder relationships	To build and develop effective stakeholder relationships.
Accountable, transparent and sustainable entity	To ensure effective leadership, transparency and accountability in the Tribunal through capacity building, effective reporting, policy management and financial compliance.

HOW
DID WE
PERFORM?

?

Adjudicative excellence - highlights

Adjudicative Excellence –

to ensure effective and efficient adjudication on matters brought before the Tribunal



Heard
215
matters



2 large mergers
prohibited

53.54% of the
99 large mergers

decided this year were
cleared in **60 days** or less



21.57 of the mergers
approved -
% approved subject
to conditions

Public interest conditions imposed on
eight of the **22 (36.36%)** mergers
approved with conditions

93.71 of the penalties
imposed were for cartel
cases and **95.96%**
of prohibited
practice cases
involved cartel
behaviour



The highest administrative penalty - Kawasaki
Kisen Kaisha, for its role in an international shipping cartel,
and amounted to R98.9 million

Adjudicative excellence

Our annual performance plan (APP) identifies 15 targets related to **adjudication**. 12 relate specifically to **effective case management** and the timeous issuing of decisions while 3 relate to **effective business applications**.



No. of
indicators

15



No. achieved/
exceeded

8



No. partially
achieved

4



No. that could not be
measured


3

Adjudicative excellence

TO WHAT DEGREE DID WE NOT COMPLY

- ❖ **Set down: large/intermediate and small mergers**
(65.71% of the matters set down within 10 business days
– 69 out of 105)
- ❖ **Reasons issued: large/intermediate and small mergers**
(72.92% of the reasons issued within required 20 business
days – 70 out of 96)
- ❖ **Reasons issued: prohibited practice cases** (40% of the
reasons issued were issued timeously – 3 out of 5)

Measuring the adjudicative process



YEAR	2018/2019	2017/2018	2018/2019	2017/2018	2018/2019	2017/2018
Type of matter	Heard		Orders issued		Reasons issued	
Large merger	101	121	99	121	96	121
Intermediate merger	4	6	3	4	2	1
Complaints from the Commission	18	14	5	5	5	5
Consent order	45	29	48	26	0	2
Complaints from the complainant	0	1	0	0	0	0
Interim relief	1	0	0	0	0	0
Procedural matter	46	42	32	51	12	28
Total	215	213	187	207	115	157

- ❖ Volume of matters heard appears to be constant
- ❖ Less orders and reasons issued this year – may be partly explained by complexity of issues being decided
- ❖ Case volume affected by state of economy, number of interlocutory applications and appeals from Commission merger decision

Measuring the adjudicative process

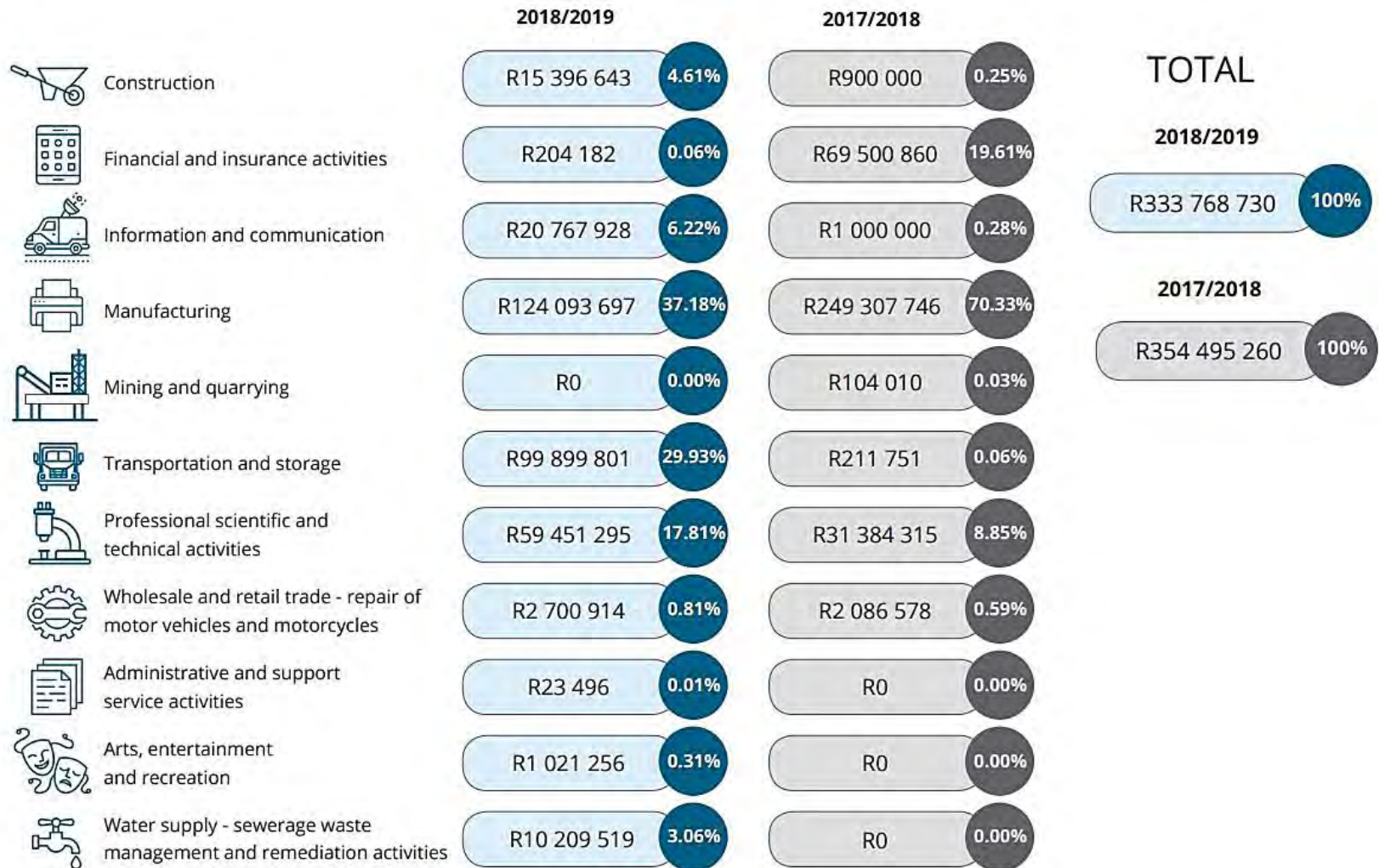
Value of large merger transactions decided by the Tribunal:



	2018/ 2019	2017/ 2018
Total combined turnover	R2 536 286 094 906	R4 886 307 336 295
Minimum combined turnover	R168 183 542	R59 691 000
Maximum combined turnover	R179 013 652 566	R1 666 123 080 000
Average combined turnover	R25 619 051 464	R40 382 705 259
Number of mergers decided	99	121
Total transaction value	R1 120 517 014 734	R2 312 703 185 496

Measuring the adjudicative process

Fines issued per sector over two years:



Stakeholder relationships - highlights

Stakeholder Relationships –

to build and develop effective stakeholder relationships



99 media releases issued for the **102** final merger decisions released this year



media releases subscribers increased from **3 854 to 4 640**

99 merger decisions and 30 complaint referral notifications were placed in the Government Gazette

82 801
website visitors



2 865 Tribunal stories were carried in the **media**

THIRTEEN schools represented during two school visits to the Tribunal this year



Stakeholder relationships

A communication framework, reviewed annually, provides a structured and focused process through which the Tribunal creates and enhances awareness of its work and activities. It also provides necessary guidelines to fulfil the Tribunal's predetermined **stakeholder relationship** objectives.



No. of
indicators

5



No. achieved/
exceeded

3



No. partially
achieved

2



No. that could not be
measured

0

Stakeholder Relationships

TO WHAT DEGREE DID WE NOT COMPLY

- ❖ **Stakeholder survey:** not conducted due to operational circumstances
- ❖ **Media release for final prohibited practice cases:** 60% issued within required two business days (3 out of 5)

Accountable, transparent and sustainable entity - highlights

Accountable, Transparent and Sustainable Entity –

to ensure effective leadership, transparency and accountability in the Tribunal through capacity building, effective reporting, policy management and financial compliance



Trophy awarded by the Auditor-General for a clean audit in 2017/2018

Tribunal won a **merit award** for its **annual integrated report for the third consecutive year** from the Chartered Secretaries Southern Africa

Clean audit – 2017/2018



Merit award for excellence for its 2017/2018 integrated annual report from the South African Publication Forum

116 days – Tribunal members and staff spent in workshops and conferences



Donated used furniture valued at **R29 014.28**

11 interns spent **1426.56 days** in training at the Tribunal

Accountable, transparent and sustainable entity

- ❖ 6 targets address the annual audit outcome and compliance with annual financial statements.
- ❖ 1 target relates to maintaining and implementing the case management internship programme.



No. of
indicators

7



No. achieved/
exceeded

7



No. partially
achieved

0

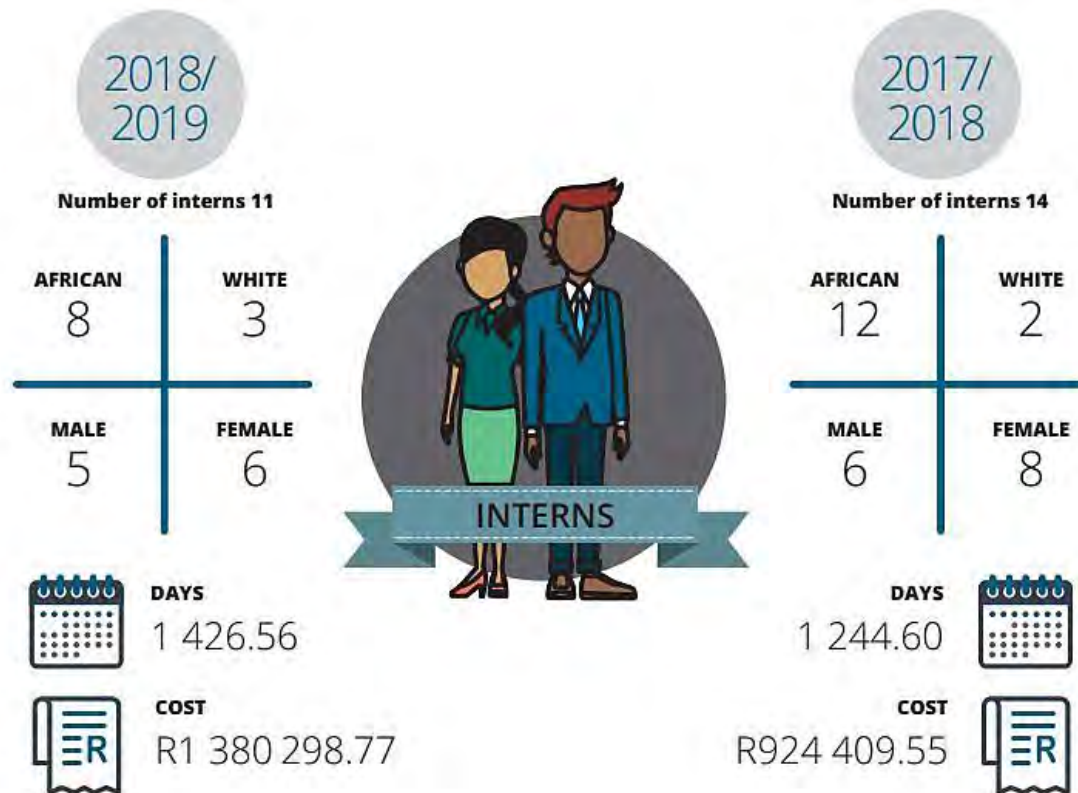


No. that could not be
measured

0

Accountable, transparent and sustainable entity

- ❖ We focus on developing and building sustainable capacity i.e. internship programme
- ❖ The internship programme is well entrenched in the Tribunal. Annually a number of students benefit from it. It is important with regard to developing skilled capacity, thus contributing to sustainability in the Tribunal and the broader competition law and policy area.



Accountable, transparent and sustainable entity

Legislation and areas of compliance that guide our operations



The Competition Act

Application in our day-to-day activities

Prescribes our functions, powers, activities, procedures and rules of the Tribunal. Compliance is monitored quarterly by the EDD and annually by parliament.



The PFMA and Treasury Regulations

Application in our day-to-day activities

Prescribes requirements for accountable and transparent financial management. Compliance is monitored quarterly by the EDD and annually by the Auditor-General.



Occupational Health and Safety (OHS) Act

Application in our day-to-day activities

Requirements implemented by an OHS committee and compliance is monitored internally and by the Tribunal's risk committee.



Levies and taxes

Application in our day-to-day activities

Compliance is monitored internally by the Tribunal and annually by the Auditor-General to ensure that we are registered for and meet our obligations in respect of required and legislated levies and taxes.



Ethics

Application in our day-to-day activities

Internal policies and procedures adopted and implemented to ensure that we maintain high ethical standards and compliance with principles of honesty, integrity and independence.



Internal audit

Application in our day-to-day activities

The internal audit function is outsourced, its function is defined in a charter and the audit is conducted in accordance with an internal audit plan approved by the audit committee.



External audit

Application in our day-to-day activities

In accordance with the PFMA this audit is conducted by the Auditor-General so as to provide an independent opinion on the financial statements of the Tribunal and report findings regarding predetermined objectives, compliance with laws, regulations and internal controls. See the Auditor-General's report in part 1 for his detailed findings.



Broad-Based Black Economic Empowerment

Application in our day-to-day activities

The Tribunal is currently working on becoming compliant with the relevant sections of the Act in terms of promoting black economic empowerment.

Accountable, transparent and sustainable entity

- ❖ The PFMA and National Treasury regulations require that a **fraud prevention plan** is included as a component of a risk management strategy
- ❖ The Tribunal has adopted a fraud prevention plan (FPP) and appointed a **fraud prevention committee** (FPC)
- ❖ The FPP is drafted to ensure that the necessary mechanisms to prevent, detect and deter fraud are in place. In addition, it addresses policy and processes for reporting, investigation and resolution
- ❖ The plan is communicated to all employees and they are required to sign an antifraud statement, thus confirming their commitment to the **Tribunal's policy of zero tolerance to fraud**

Accountable, transparent and sustainable entity









- ❖ Effective oversight structures are in place – Audit Committee, Risk Committee and Fraud Prevention Committee
- ❖ Effective financial management and reporting achieved
- ❖ Awarded a trophy by the AG for a **clean audit** for the year ending **March 2018**
- ❖ Received a **clean audit** for the year ending **March 2019** , the third in a row and testimony to the full achievement of targets

HOW EFFECTIVELY ARE WE USING OUR FINANCIAL RESOURCES?

“ *In my
opinion, the financial
statements present
fairly, in all material
respects, the financial
position of the
Competition Tribunal
as at 31 March
2019* ”

Finances






The Tribunal's budget is allocated according to the three strategic goals. We are able to annually report expenditure against each goal and determine the direct cost of our core business: **adjudication.**

 Strategic orientated outcome goal	 Goal statement	 Budget allocated	 Budget spent	 No. of indicators	 No. achieved or exceeded	 No. partially achieved	 No. that could not be measured
Adjudicative excellence	To ensure effective and efficient adjudication on matters brought before the Tribunal	R 30 160 973.00	R27 061 254.12	15	8	4	3
Stakeholder relationships	To build and develop effective stakeholder relationships	R 1 189 403.38	R1 087 176.69	5	3	2	0
Accountable transparent and sustainable entity	To ensure effective leadership, transparency and accountability in the Tribunal through capacity building, effective reporting, policy management and financial compliance.	R11 010 738.37	R8 347 143.32	7	7	0	0
Other expenses		R12 711 538.25	R12 171 567.97				
TOTAL		R55 072 653.00	R48 667 182.00	27	18	6	3

Finances

Total income received in the current period is 13.96% higher than in the prior period. This is the combined result of a 16.80% increase in the grant allocated to the Tribunal and a 7.85% increase in the filing fees received from the Commission. In December 2018 the fee payable by parties filing a merger application increased by 10% for intermediate and large mergers and this may, in part, explain the increase in our fee income.

Income by category over the last two years

	Revenue	R'M 2018/2019	% 2018/2019	R'M 2017/2018	% 2017/2018
	Government grants	R35.09	65.30%	R30.04	63.71%
	Filing fees	R17.58	32.72%	R16.30	34.57%
	Other income	R1.07	1.98%	R0.81	1.72%
	Total revenue	R53.73	100.00%	R47.15	100.00%

Finances

Expenditure analysis by category over two years

Expenditure	R'm (2018/2019)	%	R'm (2017/2018)	%
Personnel	R29.51	60.63%	R27.58	58.10%
Administrative expenses	R9.33	19.17%	R9.89	20.83%
Part-time Tribunal members' fees	R3.20	6.57%	R3.91	8.24%
Professional services	R3.72	7.65%	R2.94	6.19%
Training	R0.97	1.99%	R1.30	2.75%
Other operating expenses	R1.94	3.99%	R1.85	3.90%
Total expenditure	R48.67	100%	R47.47	100%

The cost of travel, occupation on the DTI campus, software renewals and the running costs of various governance and oversight structures are included in the category 'administrative expenses' while 'operating expenses' include depreciation, finance charges and various IT support services. Professional services include payments to the Commission in terms of the MOA, transcription and recording services, website support and consulting, legal fees and recruitment fees among others.

Quarter 1 and Quarter 2



Content

- ❖ Highlights
- ❖ Cases processed
- ❖ Penalties levied
- ❖ Performance Information
- ❖ Income
- ❖ Expenditure
- ❖ Looking forward
- ❖ Current Challenges

Highlights – 2019/2020

The year so far:

- ❖ 89 matters heard over 73 hearing days
- ❖ 216 person days spent in hearings
- ❖ Part-time Tribunal members = 28.70% of these days
- ❖ Variable cost of adjudicative process R1.98m
- ❖ Part-time Tribunal members' fees = 63.80% of cost
- ❖ Penalties total R 37.46m
- ❖ 49 press releases issued for 49 final merger decisions
- ❖ 1592 media reports on Tribunal matters



Cases processed – 2019/2020

Case Type	On the roll from the previous period	Received	No of matters set down	Number heard	Withdrawn/ Settled/ Abandoned/ Removed from Roll	Orders issued	Reasons issued	On the roll at the end of the period
Large Mergers	16	45	46	46	1	47	44	16
Small/Intermediate Mergers	7	3	1	1	1	2	3	6
Consent orders/ Settlement agreements	1	23	0	16	0	14	0	10
Interim Relief	7	2	0	0	1	1	1	7
Exemption Appeals	0	0	0	0	0	0	0	0
Totals	31	73	47	63	3	64	48	39



Penalties levied – 2019/2020

Sector	Total over period	%	Largest penalty
Manufacturing	R 27 763 214.13	74.11%	Quarter 1
Construction	R 9 129 543.09	24.37%	R 6 038 852.00
Administrative and support service activities	R 40 300.59	0.11%	GVK Siyazama Building Contractors – collusive tendering
Transportation and storage	R 240 647.05	0.64%	Quarter 2
Professional scientific and technical activities	R 286 846.39	0.77%	R 5 001 364.34
Total	R 37 460 551.25	100%	Hendok Pty Ltd – price fixing through agreed price lists

Performance information – 2019/2020

- **Targets**

- ❖ *26 performance targets for current financial year*
- ❖ *15 relate to core business: adjudication (12 targets)
enhancement of business applications (3 targets)*
- ❖ *4 targets relate to maintaining, enhancing our profile*
- ❖ *7 relate to accountability, transparency and sustainability*

Adjudicative targets	Year to date	%
Targets met or exceeded in the quarter	2	16.67%
Targets not met in the quarter	9	75%
Targets that could not be measured in 1 st the quarter	1	8.33%
Total adjudicative targets	12	100%

Performance against targets– 2019/2020

Indicator	Target	Achievement	Number meeting target	Status
Large merger set down	80% within 10 business days of filing of merger referral	85%	39 out of 46 set down	Met
Intermediate/small merger set down	70% within 10 business days of receipt of Commission's record	0%	0 out of 1 set down	Not met
Large merger orders issued	95% within 10 business days of last hearing date	100%	47 out of 47 orders issued	Exceeded
Intermediate/small merger orders issued	80% within 10 business days of last hearing date	50%	1 out of 2 orders issued	Not met
Large merger reasons issued	80% issued within 20 business days of order being issued	66%	29 out of 44 reasons issued	Not met
Intermediate/small merger reasons issued	60% issued within 20 business days of order being issued	33%	1 out of 3 reasons issued	Not met

Performance against targets– 2019/2020

Indicator	Target	Achievement	Number meeting target	Status
Simple prohibited practice cases	100% of reasons issued within 100 business days of order	No reasons issued	No reasons issued	Cannot be measured
Complex prohibited practice cases	100% of reasons issued within 125 business days of order	67%	2 out of 3 reasons issued	Not met
Very complex prohibited practice cases	100% of reasons issued within 150 business days of order	50%	1 out of 2 reasons issued	Not met
Orders in procedural matter cases	85% of orders issued within 45 business days of last hearing date	52%	16 out of 31 orders issued	Not met
Consent orders and orders in settlement agreements	95% of orders issued within 10 business days of last hearing date	93%	13 out of 14 orders issued	Not met
Reasons in interim relief cases	90% of reasons issued within 20 business days	0%	0 out of 1 reasons issued	Not met

Reasons for not meeting targets – 2019/2020

Adjudicative Target	Factors that effect our ability to deliver in line with predetermined targets
Delays in set down	<ul style="list-style-type: none">• Parties not ready and request other dates• Shortage of Tribunal members• Unavailability of part-time members• Panels cannot be constituted for reasons above
Orders not issued within the required timeframes	<ul style="list-style-type: none">• Matters may be very complex and require substantial deliberation before order is issued• Panels comprise members with other work causing delays
Reasons not issued within the required time frame	<ul style="list-style-type: none">• Matters complex and requiring substantial research or deliberation• Shortage of Tribunal members• Members sitting on number of hearings with no time to draft reasons• Panels comprise members with other work causing delays

Income – 2019/2020

Income source	Total budget	Budget YTD	Revenue YTD	Percentage of total budget
Government grant	R36.17m	R24.11m	R24.11m	58.66%
Filing fees	R19.5m	R9.75m	R6.68m	31.63%
Other income	0	0	R0.01m	
Interest received	R0.68m	R0.34m	R0.57m	1.10%
Use of accumulated surplus	R5.31m	R5.31m	R0	8.61%
Total income	R61.66m	R39.51m	R31.38m	100%

Income stream – 2019/2020

- **Government grant**

- ❖ *National Treasury approved R36.17m government grant for 2019/2020*

- **Filing fees**

- ❖ *Agreement: Tribunal receives 30% of large merger and 5% of intermediate merger filing fees received by the Commission*

- **Use of accumulated surplus**

- ❖ *National Treasury has approved the retention of accumulated cash surpluses to fund shortfalls anticipated in the current year's budget.*

Expenditure – 2019/2020

Strategic goal	Total budget	Budget YTD	Expenditure YTD	Percentages
Adjudicative excellence	R33.29m	R14.63m	R14.34m	53.97%
Stakeholder relationship	R1.45m	R0.69m	R0.60m	2.27%
Accountable, transparent and sustainable entity	R10.16m	R4.96m	R4.53m	17.07%
Administrative and operating expenses	R14..12m	R7.06m	R6.28m	23.65%
Capital	R1.91m	R1.46m	R0.55m	2.08%
Appeal Court	R0.73m	R0.36m	R0.25m	R0.96%
Total	R61.66m	R31.20m	R26.56	100%

Looking forward

Changes to the Competition Act

- ❖ Will substantially increase the mandate of the Tribunal
- ❖ Likely to increase the case load of the Tribunal in terms of volume and complexity
- ❖ Allows for an increase in the number of members (from 11 to 15) and gives the Minister power to appoint acting part-time members.
- ❖ Additional capacity will greatly improve Tribunal efficiency
- ❖ Increased case load and capacity will impact all costs
- ❖ Budgetary impact expected to be R9m over the three years

Current challenges

- **Funding**

- ❖ *Need to request permission annually to retain surpluses*
- ❖ *Projections indicate need for additional funding in two outer years of MTEF period (2021/2022 and 2022/2023)*

- **Capacity shortage**

- ❖ *Only 10 out of maximum of 15 Tribunal members*
- ❖ *Budgeted for additional full-time Tribunal member but no appointment yet*
- ❖ *Lack of case management capacity to deal with increased case volumes/workload*
- ❖ *Recruitment process being followed*

Thank You

Questions and Answers

