



ANNUAL PERFORMANCE PLAN 2021/22

BASED ON STRATEGIC PLAN 2020 – 2025

Submitted to the Department of Trade, Industry and Competition on 31 March 2021.

MINISTER'S FOREWORD

This Annual Performance Plan (APP) of the **Competition Commission** has been prepared by the management for consideration by the Executive Authority and tabling in Parliament. The Annual Performance Plans (APP) of public entities identify the outputs, output indicators and targets that an entity aims to achieve in the new financial year. The Executive Authority is responsible to ensure the APP is aligned with the Strategic Plan, the institution's mandate and government's priorities and to provide direction on the development and implementation of strategic priorities and policies.

The Covid-19 pandemic changed the landscape within which DTIC-entities operate and they are therefore expected to adjust their operations to address the new environment and new priorities. There is an urgent need to boost levels of economic growth and economic recovery, support transformation and build a capable state.

In particular, the APP for the 2021/22 financial year will need to reflect the policy priorities set out in Budget Vote statements tabled in Parliament during this Administration and those that arise from:

- The Economic Recovery and Reconstruction Plan tabled in Parliament in October 2020 by President Ramaphosa;
- The priorities set out in the 2021 State of the Nation Address;
- The new performance compacts between members of the Executive and the Presidency signed in November 2020; and
- The New District Development Model as an integration of development efforts at local level.

This APP is tabled and updates to the Plan – when these are effected – will be tabled in Parliament in due course, taking account of the above.

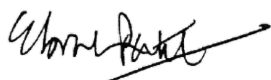
As the practical means to ensure alignment between APPs and policy priorities, the Annual Performance Plan for the DTIC itself has sets out the requirement to ensure integration between the work of the department and all public entities that report to it. Seven new Joint-Indicators (J-KPIs) have been developed for the DTIC that contain the major policy priorities and these are expected to be included in the work of the Commission, with progress against these to be reported to the Ministry on a quarterly basis.

The Competition Commission will be expected to report on a quarterly basis how, within its legal mandate, it has contributed to the achievement of the outcomes for the following seven Joint Indicators (details of which are contained in more detail in the APP of the department itself):

- Joint Indicator 1: Integrated Support to Drive Industrialisation
- Joint Indicator 2: Contribution to the development of an AfCFTA Export Plan
- Joint Indicator 3: Investment Facilitation and Growth
- Joint Indicator 4: Development Model and Spatial Equity
- Joint Indicator 5: Actions to Promote Transformation
- Joint Indicator 6: The Green Economy and Greening the Economy
- Joint Indicator 7: Strengthening and Building a Capable State

In this way, the combined efforts of all public entities will begin to be aligned to the national priorities in a more explicit manner. The Joint-Indicators cover, among others, the work of sector masterplans, initiatives to boost levels of investment and localisation in the economy, expanding trade within the continent, enabling better local economic development, supporting the growth of new industries (in the green economy and through beneficiation) and building a capable state. In respect of Joint-Indicator 7 for example, all public entities will be required to review their procedures, timeframes for delivery, forms to be filled in and public communication of services to simplify these, make processes expeditious where possible, remove unnecessary red-tape where these exist and make it easier for users to access services.

The Competition Commission will play an important role in Government's overall objective to increase the level of industrialisation and investment in the economy, particularly through contribution to the sector masterplans and the localisation drive. This APP is therefore not about many new objectives but rather on a new way of implementation, with the focus on integration, to enhance the development impact of the work. I therefore endorse the work to align the APP of the Commission with the national priorities and accordingly table the APP for the Commission in accordance with the request by the Speaker.



EBRAHIM PATEL

MINISTER OF TRADE, INDUSTRY AND COMPETITION

ACCOUNTING OFFICER'S STATEMENT

Competition regulation in a Covid-19 world

The 2021/22 financial year marks the second year of the Commission's five-year strategy. The Commission developed its five-year strategy amid a global pandemic, known as the Covid19. The pandemic has and will continue to have a significant effect on how the Commission carries out its mandate in the coming years: with the external economic environment severely altered, and continuously shifting, the next few years will be a testing ground on the strength of the institution.

No one could have foreseen the extent of the challenges brought about by the pandemic in 2020. The Commission began the financial year with an influx of complaints related to price-gouging, as per the *Consumer and Customer Protection and National Disaster Management Regulations and Directions*. The organization had to find adaptive ways to fulfil its mandate during these tumultuous times. I am proud that the Commission was able to be swift and nimble in its response to the many hundreds of complaints streaming in, reorganizing its focus and operations to meet the demands of the time. During this time, exemptions were granted to firms in the essential services sectors, such as healthcare, to enable the efficient delivery of services to citizens. The Commission prioritised Covid-19 investigations and prosecution by fast-tracking the investigations, referring the Covid-19 complaints to the Tribunal within 10 days and winning 90% of Covid-19 cases in litigation.

After several lockdowns throughout 2020, the end of the year saw increased economic activity as the country moved to Level 1. Again, this required a shift to our operations as there was a slight uptick in merger activity and a return of complaints that were not related price gouging.

The Commission achieved several victories in the courts during 2020/21: Babelegi was one of the seminal cases related to price gouging. The Babelegi judgment set a very important precedent by confirming that a small firm can attain dominance during abnormal market circumstances such as the state of emergency, and that abuse of such dominance is prosecutable. The Commission also had a breakthrough with the Pickfords matter where the Constitutional Court upheld the Commission's appeal that section 67(1) of the Act does not prevent the Commission from investigating and prosecuting cartel conduct that ceased three years before an investigation was started. The court further held that it is not necessary for the Commissioner to list all firms in a cartel when initiating a complaint as the complaint is initiated against the restricted practice. The Court upheld the Commission's appeal that section 67(1) of the Act does not prevent the Commission from investigating and prosecuting cartel conduct that stopped three years before the investigation started. The court further held that it is not necessary for the Commissioner to list all firms in a cartel when initiating a complaint as the complaint is initiated against the restricted practice. During the past year, the Commission also reached a settlement agreement with Rooibos Ltd. In terms of the

agreement, Rooibos Ltd will publish the results of completed production research on its website without any conditions or access restrictions. Rooibos will also enter into supply agreements of no more than five (5) years with rooibos tea farmers, where farmers are not constrained to supply Rooibos Ltd's competitors. The undertakings are expected to open the market for processors of rooibos tea and to facilitate expansion in the market for processing of rooibos tea.

The Commission made progress in the implementation of recommendations of previous market inquiries. There were landmark settlement agreements entered into with Shoprite Checkers and Pick 'n Pay in relation to removal of exclusive lease agreements, an outcome of the Grocery Retail Inquiry. There has also been some progress regarding the HMI, having begun discussion on MoU with a significant health regulator, the Council for Medical Schemes during the financial year. The engagements with policy makers and NERSA continued regarding the policy recommendations of the Liquid Petroleum Gas inquiry, the Commission and NERSA are in the process of concluding an MOU which will assist in dealing with co-regulating in the energy sector. We intend to finalize the Public Passenger Market Inquiry by the end of March 2021.

Again, as South Africa is experiencing a second wave of infections in early 2021, the Commission will continue to be adaptive and responsive, whilst remaining focused on its strategic objectives.

The Commission's MTEF is changing substantively, with a significant increase in its budget allocation. Over the years, the Commission's grant allocation was reduced (by 11% in 2019/20) whilst it also had a significant decline in fees arising from merger filings, due to the pandemic economic constraints. The Auditor-General, has in previous reports of the Commission, expressed concern about the status of the Commission.

The increase in the Commission's budget allocation, an amount of circa R300 million additionally over the MTEF, is thus very welcome. The budget increase comes at a time when the amount and scope of work that the authority deals with has substantially increased over the years. These latest budgetary increases thus place the Commission in a strong position regarding its operations.

The amendments of various provisions of the Competition Act were promulgated between February and July 2019, which have enlarged the mandate of the Commission. Among others, the aim of the new provisions is to open up the economy to small and medium enterprises and to Black South Africans. The amendments address two structural constraints to economic growth and inclusion: the high levels of concentration in markets and the skewed ownership profile of the economy towards a racial minority. This is a welcome mandate for the competition authorities, which has shaped our crafting of this strategy. Our consideration of public interest in merger, enforcement and advocacy work will be particularly pointed to advancing the participation of Women and Blacks in the economy.

In the year 2021/22 and the medium term, the Commission will capacitate itself in order to efficiently perform the extended functions. With the enabling provisions in the Competition Amendment Act, we anticipate an increase in the types of complaints related to abuse of dominance- a complex prohibition to investigate.

A major focus of the Commission's activities in the coming three years is working alongside all South Africans in the rebuilding of the economy. Following the devastation that the pandemic has wreaked on the economy, the current economic policy imperative for government and its agencies is to support economic recovery. The President announced the Economic Recovery and Reconstruction Plan which sets out a coordinated approach to a more inclusive growth path, including structural reforms alongside more immediate support for job creation.

In general, the mandate of the Commission supports the objectives of greater levels of inclusive growth which the Recovery Plan seeks to achieve. A more competitive economy results in higher growth and job creation by enhancing the ability of domestic firms to replace imports and expand exports. It also provides consumers with lower prices and more product choice. The Act seeks to ensure that such growth is more inclusive, addressing past exclusion through actively promoting transformation and small and medium enterprises (SME) participation as well as public interest objectives in its enforcement actions. The recent amendments to the Act strengthen the Commission's ability to address concentration and foster greater participation in the economy. The additional budget allocation enables us to undertake enforcement investigations, advocacy work and market inquiries- activities which were previously revised downwards.

In conclusion, it is indeed our commitment to ensure that our activities in the coming year yield positive outcomes for the economy of South Africa.

Tembinkosi Bonakele
Commissioner

Official Sign-Off

It is hereby certified that this Annual Performance Plan:

- Was developed by the management of the Competition Commission under the guidance of Minister of the Department of Trade, Industry and Competition.
- Considers all the relevant policies, legislation and other mandates for which the Competition Commission is responsible.
- Accurately reflects the Programs, Key Performance Indicators and Targets which the Competition Commission will endeavour to achieve over the period 2021/22 financial year.

Signature:  _____

Mr. Amos Moledi, Chief Financial Officer

Date: 31 March 2021


Signature: _____

Mr. Tembinkosi Bonakele, Commissioner

Date: 31 March 2021


Signature: _____

Minister Ebrahim Patel MP, Minister of Trade, Industry and Competition

Date: 31 March 2021

Abbreviations

| Abbreviation | Full title |
|---------------------|---|
| ACF | African Competition Forum |
| ACFTA | African Continental Free Trade Area |
| AMCU | Association of Mineworkers and Construction Union |
| BRICS | Brazil, Russia, India, China and South Africa |
| CAC | Competition Appeal Court |
| Commission | Competition Commission South Africa |
| CSD | Corporate Services Division |
| DAFF | Department of Agriculture, Forestry and Fisheries |
| DTIC | Department of Trade, Industry and Competition |
| EDD | Economic Development Department |
| EXCO | Executive Committee |
| GDP | Gross Domestic Product |
| HMI | Health Market Inquiry |
| ICASA | Independent Communications Authority of South Africa |
| ICN | International Competition Network |
| IPAP | Industrial Policy Action Plan |
| ICT | Information and Communication Technology |
| KMS | Knowledge Management System |
| LSD | Legal Services Division |
| MANCOM | Management Committee (Divisional Managers, Principals, Heads of Department) |
| MCD | Market Conduct Division |
| MFSA | Mining Forum of South Africa |
| MOU | Memorandum of Understanding |
| MSA | Medical Schemes Act |
| MTEF | Medium Term Expenditure Framework |
| M&A | Mergers and Acquisitions |
| NDP | National Development Plan |
| NEDLAC | National Economic Development and Labour Council |
| NGP | New Growth Path |
| NHI | National Health Insurance |
| OECD | Organization for Economic Cooperation and Development |

| | |
|-----------------|--|
| OTC | Office of the Commissioner |
| SADC | Southern African Development Community |
| SMMEs | Small, Medium and Micro Enterprises |
| SOEs | State Owned Enterprises |
| Tribunal | Competition Tribunal South Africa |
| TFTA | Tripartite Free Trade Area |
| UASA | United Association of South Africa |
| WTO | World Trade Organisation |

Table of Contents

| | |
|---|----|
| MINISTER'S FOREWORD | 2 |
| ACCOUNTING OFFICER'S STATEMENT | 4 |
| INTRODUCTION | 12 |
| PART A: OUR MANDATE | 14 |
| 1. RELEVANT LEGISLATIVE AND POLICY MANDATES | 14 |
| 1.1. THE COMPETITION ACT | 14 |
| 1.2. AMENDMENTS TO THE COMPETITION ACT | 15 |
| 1.3. COVID-19 COMPETITION REGULATIONS | 19 |
| 1.4. ECONOMIC RECONSTRUCTION AND RECOVERY PLAN 2020 | 20 |
| 2. UPDATE TO RELEVANT COURT RULINGS | 21 |
| PART B: SITUATIONAL ANALYSIS..... | 26 |
| 3. EXTERNAL ENVIRONMENTAL ANALYSIS..... | 26 |
| 3.1. ECONOMIC OUTLOOK | 26 |
| 3.2. PRIORITISING ECONOMIC RECOVERY | 29 |
| 3.3. IMPACT OF COVID-19 PANDEMIC ON MERGER ACTIVITY | 31 |
| 3.4. THE ECONOMIC POLICY FRAMEWORK..... | 32 |
| 3.5. GLOBAL AND REGIONAL COMPETITION POLICY DEVELOPMENTS | 36 |
| 3.6. DIGITIZATION AND IMPLEMENTATION OF THE COMPETITION ACT | 38 |
| 4. INTERNAL ENVIRONMENTAL ANALYSIS | 38 |
| 4.1. CASE PIPELINE MANAGEMENT | 39 |
| COMPLAINTS-HANDLING: ENFORCEMENT | 39 |
| CARTEL ENFORCEMENT..... | 39 |
| LITIGATION | 40 |
| 4.2. CORPORATE SERVICES | 40 |
| 4.3. INFORMATION COMMUNICATION TECHNOLOGY (ICT) ENVIRONMENT | 41 |
| 4.4. ORGANIZATIONAL STRUCTURE | 42 |
| PART C: MTEF PERFORMANCE PLAN | 43 |
| 5. FINANCE | 43 |
| 5.1. EXPENDITURE ANALYSIS..... | 43 |
| 6. PRIORITY SECTORS | 45 |
| 7. PERFORMANCE PROGRAMS | 50 |
| 7.1. MERGERS & ACQUISITIONS DIVISION..... | 50 |
| 7.2. CARTELS DIVISION | 50 |
| 7.3. MARKET CONDUCT DIVISION | 51 |
| 7.4. LEGAL SERVICES DIVISION | 51 |
| 7.5. ECONOMIC RESEARCH DIVISION | 52 |
| 7.6. ADVOCACY DIVISION..... | 52 |
| 7.7. CORPORATE SERVICES DIVISION | 53 |

| | | |
|------|--|----|
| 7.8. | FINANCE | 53 |
| 7.9. | OFFICE OF THE COMMISSIONER | 54 |
| 8. | MTEF OUTCOMES, OUTPUTS, PERFORMANCE INDICATORS & TARGETS | 55 |
| 9. | ANNUAL INDICATORS AND QUARTERLY TARGETS - 2021/22 | 64 |
| 10. | STRATEGIC RISKS | 70 |
| 11. | TECHNICAL INDICATORS DESCRIPTIONS 2021/22 | 73 |

List of Tables

| | |
|---|----|
| TABLE 1: KEY COURT RULINGS – 2014/15 -2020/21 | 21 |
| TABLE 2: EXPENDITURE PER STRATEGIC OBJECTIVE | 43 |
| TABLE 3: TOTAL EXPENDITURE PER MAIN ITEM | 44 |
| TABLE 4: REVENUE | 44 |
| TABLE 5: MATERIALITY | 44 |
| TABLE 6: PRIORITY SECTORS | 45 |

List of Figures

| | |
|--|----|
| FIGURE 1: COMMISSION'S VISION, MISSION & GOALS | 12 |
| FIGURE 2: CASE PIPELINE PROCESS- ENFORCEMENT | 40 |

INTRODUCTION

This document comprises the Competition Commission's 2021/22 Annual Performance Plan (APP), based on its five-year Strategic Plan (2020/21 – 2024/25). The Commission has undertaken a thorough planning process leading to consolidation of its three main goals with specific focus on the key mandate areas.

The 2021/22 Annual Performance Plan takes into account the authority's response to the Covid-19 pandemic and the phase of economic recovery South Africa must enter. The Commission's three Strategic Outcome-Oriented goals together with 12 Outcomes in its 2020-2025 Strategic Plan remain a relevant planning framework, upon which annual Key Performance Indicators and Targets have been developed.

FIGURE 1: COMMISSION'S VISION, MISSION & GOALS

Vision

• ***A Growing, Deconcentrated and Inclusive Economy***

Our vision is for the realization of a growing and inclusive economy. Economic growth remains a particularly compelling vision to aspire towards in the context of the Covid-19 pandemic, where there are prospects of an economic downturn. The Commission will play its role to ensure that there is healthy competition between firms, new businesses can emerge, existing businesses can expand, concentration levels in markets are lowered and wherein all citizens are able to participate in the economy .

Mission

• ***To promote a regeneration of the economy and maintain competition whilst advancing public interest objectives to enhance economic participation for all South Africans.***

In a depressed economic environment, the Commission will support efforts by Government aimed at economic regeneration. The Commission will use its tools to ensure that viable, competitive businesses can remain in the market. The Commission will advance public interest objectives through its work, with a particular consideration for small and Black-owned businesses. Our efforts will be aimed at fostering job-creation, industrialization and export promotion whilst expanding the opportunities for SMMES and the participation of blacks, youth and women in the economy.

Outcome-Oriented Goals

1. Enforcing and regulating towards economic growth and enhanced economic participation.
2. Advocating for improved compliance and pro-competitive public policy outcomes.
3. A people-centric, high- performance organization.

In order to achieve the above goals, the Commission will pursue the following outcomes:

- 1) Efficient and effective merger regulation & enforcement
- 2) Competitive, Contestable and Deconcentrated Markets
- 3) Improved public interest outcomes
- 4) Improved compliance & awareness
- 5) Existing competitive small and large businesses remain in the market
- 6) Improved understanding of market dynamics in priority sectors
- 7) Improved co-ordination on the application of economic policy and competition policy
- 8) Increased importance of developmental perspectives in domestic and international competition law discourse
- 9) Sound Corporate Governance
- 10) Secure, harmonious and conducive working environment
- 11) Highly motivated, engaged and productive workforce
- 12) Responsive corporate services systems to support workforce during COVID-19 pandemic.

In fulfilling its mandate and vision, the Commission has defined forty-four (44) Performance Indicators which it seeks to achieve in the MTEF. This Annual Performance Plan for 2021/22 comprises three sections:

- a) Part A: Our Mandate – which deals with the mandate of the Commission as per the Competition Act and all other applicable legislation and policies.
- b) Part B: Situational Analysis- this section provides an analysis of developments in the external and internal operating environment, providing context to the conditions in which the strategy has been developed.
- c) Part C: MTEF Performance Plan - this section deals with the work program which the Commission has set for the next three years, along with the Budget and identified Risks.

PART A: OUR MANDATE

1. Relevant Legislative and Policy Mandates

1.1. The Competition Act

The Competition Commission is one of three institutions established in the Competition Act (Act No. 89 of 1998) (“Act”) alongside 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.

The Commission is empowered to investigate, control and evaluate restrictive business practices, abuse of dominant positions and mergers in order to achieve equity and efficiency in the South African economy. The stated purpose of the Competition Act is to promote and maintain competition in South Africa in order to achieve the following outcomes:

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

Section 21(1) of the Competition Act provides more detail on the responsibilities and mandate of the Commission. The Commission’s responsibility is to:

- Implement measures to increase market transparency;
- Implement measures to develop public awareness of the provisions of this Act.
- Investigate and evaluate alleged contraventions of Chapter 2;
- Grant or refuse applications for exemption in terms of Chapter 2;
- Authorize, with or without conditions, prohibit or refer mergers of which it receives notice in terms of Chapter 3;

- Negotiate and conclude consent orders in terms of section 63;
- Refer matters to the Competition Tribunal, and appear before the Tribunal, as required by this Act;
- Negotiate agreements with any regulatory authority to co-ordinate and harmonize the exercise of jurisdiction over competition matters within the relevant industry or sector, and to ensure the consistent application of the principles of this Act;
- Participate in the proceedings of any regulatory authority;
- Advise, and receive advice from, any regulatory authority;
- Over time, review legislation and public regulations, and report to the Minister concerning any provision that permits uncompetitive behaviour; and
- Deal with any other matter referred to it by the Tribunal.

1.2. 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. The amendments to the Competition Act have a direct impact on the Commission's operations.

Below is a summary of some of the key provisions in the amendments:

i. Price Discrimination

The new provision in section 9(1)(a)(ii) stipulates that *“an action by a dominant firm, as the seller of goods or services, is prohibited price discrimination, if it is likely to have the effect of impeding the ability of small and medium businesses or firms controlled or owned by historically disadvantaged persons, to participate effectively”*. Section 9(3) states that where the Commission has established a *prima facie* case of a contravention then *“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”*. There is also an avoidance provision in section 9(1A) which makes it a contravention for a dominant firm to refuse to sell to small and medium businesses or firms controlled or owned by historically disadvantaged persons in order to

circumvent the provisions in section 9(1)(a)(ii).

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*”.

ii. Excessive Pricing

The new provision in section 8(1)(a) states that: “*It is prohibited for a dominant firm to charge an excessive price to the detriment of consumers or customers*”, where section 8(3) sets out that “*Any person determining whether a price is an excessive price must ~~compare that price to a competitive price~~ determine if that price is higher than a competitive price and whether such difference is reasonable, determined by taking into account all relevant factors*”. Section 8(3) proceeds to provide a list of factors which include comparative prices, profitability measures and market structural features. Section 8(2) furthermore states that “*If there is a prima facie case of abuse of dominance because the dominant firm charged an excessive price ~~or required a supplier to sell at a price which impedes the ability of the supplier to participate effectively~~, the dominant firm must show that the price was reasonable.*”.

iii. Abuse of Buyer Power

The new provision of section 8(4) states that: “*It is prohibited for a dominant firm in a sector designated by the Minister in terms of paragraph (d) to directly or indirectly, require from or impose on a supplier that is a small and medium business or a firm controlled or owned by historically disadvantaged persons, unfair prices or other trading conditions*”. There is also an avoidance provision in section 8(4)(b) which makes it a contravention for a dominant firm to refuse to purchase from small and medium businesses or firms controlled or owned by historically disadvantaged persons in order to circumvent the provisions in section 8(4).

iv. Margin Squeeze and Predatory Pricing

The amendment in section 8(1)(d) states that: “*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 its Act:*

(iv) selling goods or services at predatory prices; (vi) engaging in a margin squeeze.” The definitions now include the following for clarity:

- 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.
- d. **“margin squeeze”** occurs when the price at which a vertically integrated firm, which is dominant in an input market, sells a downstream product, and the price at which it sells the key input to competitors, is too small to allow downstream competitors to participate effectively.”

v. Exemption Applications

The amendment in section 10(3)(b)(ii) states that: *“The 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 that: *“The Minister may, after consultation with the 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 a category of agreements or practices from the application of this Chapter”.*

vi. Merger Provisions

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

Section 12A(2) now adds to the list of factors that may be taken into account in the merger assessment as including:

- “(h) the extent of ownership by a party to the merger in another firm or other firms in related markets;
- (i) the extent to which a party to the merger is related to another firm or other firms in related markets, including through common members or directors; and
- (j) any other mergers engaged in by a party to the merger for such period as may be stipulated by the Competition Commission.”

The amendment to section 12A(3) now identifies the public interest grounds for assessment in merger control as including:

- “(c) the ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to effectively enter into, participate in and or expand within the market;*
- (e) the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market.”*

The amendment to section 17(1)(c) states that: *“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 Commission’s or Tribunal’s proceedings in terms of section 18 or on application for leave to appeal to the Competition Appeal Court”.*

vii. Market Inquiries

The amendments to 43A(3) read together with 43B(1), 43C(1) and (2) and with the powers in 43D(1) state that: *“The 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 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 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 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 Commission may, in relation to each adverse effect on competition, take action to remedy, mitigate or prevent the adverse effect on competition”.

viii. Administrative Penalties

The amendment to section 59(1) states that: *“The Competition Tribunal may impose an administrative penalty only for a prohibited practice”* and then proceeds to list all provisions in terms of sections 4,5,8 and 9. 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 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”.

ix. Regulations

The amendment to sections 4, 5, 8(4) and 9(1)(a)(ii) all require that: *“The Minister must make regulation in terms of section 78 regarding the application of this section”*. In terms of the new section 8(1)(a) and 8(3), the Minister may make regulations but is not required to do so.

1.3. Covid-19 Competition Regulations

The Consumer and Customer Protection and National Disaster Management Regulations and Directions (the "Regulations") were published in March 2020. The purpose of the regulations is to:-

*“Promote concerted conduct to prevent an escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster; and
Protect consumers and customers from unconscionable, unfair, unreasonable, unjust or improper commercial practices during the national disaster.”*

These Regulations specifically empower the Commission to intervene in circumstances where prices have increased materially without any associated cost justifications for the increase, or where the mark up on the relevant product increases above the average mark up in the three months prior to 1 March 2020. Alternatively, the National Consumer Commission may prosecute cases of unconscionable, unfair, unreasonable and unjust prices in terms of paragraph 5 of the Regulations.

The regulations on “price gouging” fall within the Competition Act’s provisions on excessive pricing and may be seen as a subset of factors listed under section 8(3). The economic test applicable under the regulations are that:

- a) A material price increase for an essential product listed in the regulations.
- b) The price increase is not substantiated by an equivalent cost increase (costs refer to costs incurred to create a product. These include labour, production materials and supplies and factory overhead); or
- c) which raises the net margin or markup above the average of the 3 months before 1 March 2020 for that product.

The Regulations *only apply to essential products* that are listed in Annexure A and B of the regulations. The Regulations are effective from 19 March 2020 and only apply to a price increase that occurs during the period of the national disaster. The *consequences for parties found to have contravened the regulations are:*

- A fine up to R1 000 000
- A fine of up to 10% of their turnover, and
- Imprisonment for up to 12 months.

1.4. Economic Reconstruction and Recovery Plan 2020

The Commission will support the Economic Reconstruction and Recovery Plan, 2020, and the seven new joint indicators which are the implementation plans aligned to the NDP. The Commission’s objectives are set out in the Competition Act. As an investigative body, the Commission can determine the outcomes of these objectives by aligning its investigations to meet the objectives of the NDP and the DTIC. The seven new joint indicators are:

- Joint Indicator 1: Integrated Support to Drive Industrialisation;
- Joint Indicator 2: Contribution to the development of an AfCFTA Export Plan;
- Joint Indicator 3: Investment Facilitation and Growth;
- Joint Indicator 4: Development Model and Spatial Equity;
- Joint Indicator 5: Actions to Promote Transformation;
- Joint Indicator 6: The Green Economy and Greening the Economy; and
- Joint Indicator 7: Strengthening and Building a Capable State.

The performance progress with regards to all seven new joint indicators have been aligned to

specific KPIs of the Commission and will be reported quarterly to the DTIC.

2. UPDATE TO RELEVANT COURT RULINGS

The table below summarizes significant cases that have contributed to jurisprudence in the last five financial years.

TABLE 1: KEY COURT RULINGS – 2014/15 -2020/21

| Item | Case | Contribution to Jurisprudence |
|--------------------|---|---|
| Abuse of dominance | | |
| 1. | Competition Commission v Media 24 | Average total cost (ATC) plus intention has no place in the scheme of section 8(c) of the Act. Average Avoidable Cost (AAC) may be regarded as an appropriate cost benchmark for a predation case based on section 8(c) of the Act |
| 2. | Competition Commission v Computicket | Likely foreclosure test, i.e. foreclosure may be actual or potential. |
| 3. | Sasol v Competition Commission | The test for excessive pricing involves, firstly, establishing the actual price, secondly, determining the economic value of the product (made up of capital and operational costs), evaluating whether the relationship between the actual price and economic value is reasonable, and assessing consumer detriment. |
| 4. | Uniplat v Competition Commission | The test of likely foreclosure also requires factual evidence of that likely foreclosure. |
| 5. | Competition Commission v Dis-Chem | A pandemic may confer market power where there is no dominance in ordinary circumstances. |
| 6. | Babelegi v Competition Commission | A pandemic may confer market power - "lucky monopolist theory". |
| | | |
| Cartel | | |
| 7. | Bank of America Merrill Lynch & Others v Competition Commission | South African competition authorities have jurisdiction to prosecute international cartels which have an effect within South Africa – qualified effects test (foreseeable, direct or immediate, and substantial effect in the Republic) and sufficient connecting factors to establish subject-matter jurisdiction and personal jurisdiction. |

| | | |
|------------------------|---|--|
| 8. | Competition Commission v Primedia (Pty) Ltd & Avusa Limited | Element of Implementation required for collusive agreements entered into before the Competition Act came into force. |
| 9. | Competition Commission v Omnico (Pty) Ltd & Coolheat Cycles Agencies | Passive participation in cartel conduct / publicly distancing oneself from conduct. |
| 10. | Competition Commission v Standard Bank; Competition Commission v Waco Africa Pty Ltd & others | A ruling on jurisdiction must precede other orders, including an order to disclose a record of investigation in a review. |
| 11. | CC v Pickfords Removals SA Pty Ltd | Section 67(1) is a procedural time bar, capable of condonation. Section 85(1)(c)(ii) includes the power of the Tribunal to condone non-compliance with section 67(1) on good cause shown. |
| 12. | Competition Commission v Stuttards Van Lines Gauteng Hub Pty Ltd and others | A “uniform approach” or uniform pricing among cartel members is required to establish consensus. The evidence must match the pleaded case in the referral and the Competition Tribunal cannot have regard to evidence outside of this. |
| Cartel – Initiation | | |
| 13. | Omnia Fertiliser Limited v Competition Commission | Restatement of Yara principles - valid referral of complaint on the basis of a tacit initiation. |
| 14. | Power Construction | Validity of industry wide initiation. Re-affirm the principles in Woodlands that it is permissible to add a firm to an existing complaint, and Yara/Omnia principles that an initiation does not require any formality. |
| 15. | Mondi Limited & Another v Competition Commission | Access to the record of the decision to initiate pending review. |
| 16. | Competition Commission v Beefcor Pty Ltd and another | CT8 withdrawal of a complaint initiated in terms of s49B(1) brings proceedings to an end and that complaint referral cannot be reinstated. |
| Leniency | | |
| 17. | Blinkwater Mill (Pty) Ltd v Competition Commission | Confirmation of Commission’s discretion in applying its Corporate Leniency Policy. |
| 18. | Competition Commission v Allens Meshco | A marker and leniency applications are separate and distinct from one another. |
| Single Economic Entity | | |
| 19. | Delatoy Investment v Competition Commission | A “group of firms” may constitute a “firm”. |
| 20. | Shoprite Checkers and | The question whether the doctrine of a “single |

| | | |
|--|---|---|
| | Computicket v Competition Commission | economic entity” applies to section 8 of the Act must be determined at trial stage not at exception stage. |
| Characterization | | |
| 21. | Dawn Consolidated Holdings (Pty) Ltd and Others v Competition Commission | Development of the principle of characterization. |
| | A’frica Pest Prevention CC v the Competition Commission | Characterization on the basis that an individual representing two different firms cannot collude with herself. |
| | Competition Commission v I & J | Characterisation of restraints in a manufacturing agreement as vertical and not horizontal. |
| Administrative Penalty/Settlement | | |
| 22. | Competition Commission and ArcelorMittal South Africa Limited | Highest penalty imposed on a single firm in a settlement agreement. |
| 23. | Competition Commission v Life Healthcare Group & Joint Medical Holdings Ltd | Highest penalty imposed for failure to notify and prior implementation of a merger. |
| 24. | School Uniforms | The Commission entered into settlement agreements with major school groups which undertook to conduct their school uniform procurement processes in a fair and competitive manner. |
| 25. | Competition Commission v Law Society of the Northern Provinces | Consent Agreement in terms of which the law society agreed to repeal its anti-competitive rules and guidelines. |
| 26. | Data Markey Inquiry Consent Agreements | Consent Agreements in terms of which Vodacom and MTN agreed to reduce its retail data prices, zero-rating public sites, provide access to free basic data and enhance data pricing transparency to its customers. |
| 27. | Competition Commission v Wesgrow Potatoes (Pty) Ltd and HZPC Holland B.V | Settlement Agreement provided a remedy in terms of which seed growers will be able to access the Mondial seed potato variety. |
| 28. | Competition Commission v Foskor (Pty) Ltd | Tribunal confirmed that a consent agreement may be amended by the Commission and a respondent due to changed market circumstances. However, such an amendment requires confirmation by the Tribunal. |
| | | |
| Merger Notification | | |
| 29. | Competition Commission v | Once a firm has acquired control over another firm in |

| | | |
|---------------------------------|---|--|
| | Hosken Consolidated Limited and Tsogo Sun Holdings Ltd | any of the instances contemplated by section 12(2)(a) – (g), the crossing of a further “bright line” does not result in the acquisition of control it did not have before. |
| 30. | SOS SABC & Multichoice v Competition Commission | Confirmation of Commission’s powers to investigate the notifiability of mergers. |
| 31. | MIH eCommerce Holdings (Pty) Ltd & We Buy Cars (Pty) Ltd v Competition Commission | The theory of harm related to potential entry is an historic exercise, not a counterfactual of likely entry if the merger is prohibited. |
| Merger control – conditions | | |
| 32. | Joyson/Takata merger | Merger control cannot be used to preserve the Commission’s ability to enforce its cartel prosecutorial functions, in unique circumstances such as when the target firm is likely to exit the market absent the merger. |
| 33. | Distell v Ab InBev | Approach to the interpretation of merger conditions – merger conditions must be interpreted consistently with the Tribunal’s reasons for its decision. |
| Mergers – Public interest | | |
| 34. | Sibanye / Lonmin merger | Assessment of merger specific retrenchments – confirmation of Momentum principles, in that a rational process has to be followed in order to determine the number of potential job losses. |
| Mergers – Analysis | | |
| 35. | Imerys SA (Pty) Ltd and Andalusite Resources (Pty) Ltd v Competition Commission | If a merger raises a substantial prevention or lessening of competition, the choice whether to prohibit or approve the merger with conditions is an exercise of true discretion by the Tribunal. |
| 36. | MIH eCommerce Holdings (Pty) Ltd & We Buy Cars (Pty) Ltd v Competition Commission | The theory of harm related to potential entry is an historic exercise, not a counterfactual of likely entry if the merger is prohibited. |
| Civil claims for loss or damage | | |
| 37. | Premier Foods (Pty) LTD v Norman Manoim NO, Competition Commission and Others | Victims of collusive conduct may obtain certificates to institute civil claims for loss or damage if relevant firm has been cited and there is an adverse finding against such firm. |

| Access to information | | |
|-----------------------|---|---|
| 38. | Group 5 v the Competition Commission | The term “any person” in Commission’s Rule 15 includes a litigant, and a litigant is entitled to access the Commission’s record, save for any documents that are restricted ¹ . |
| 39. | Competition Commission v Standard Bank (ZACC) | Commission Rule 15 which is a public access right does not apply to requests for documents in Tribunal proceedings, as such requests must be dealt with using Tribunal Rules. |
| Tribunal Rules | | |
| 40. | Goodyear v the Competition Commission | The Tribunal’s rules do not alter substantive law. They remain subordinate to the Act. Tribunal’s rules do not have the legislative standing to negate an agreement reached between the Commission and the complainant to extend the period of investigation in terms of the Act. |

¹ This has now changed, as Commission’s Rule 15 was amended on 25 January 2019.

PART B: SITUATIONAL ANALYSIS

3. EXTERNAL ENVIRONMENTAL ANALYSIS

3.1. Economic Outlook

South Africa's economy had already started contracting in the last quarter of 2019, before the onset of the global Covid-19 health crisis emerged in the first month of 2020. However, the Covid-19 pandemic has largely shaped the economic situation since then. The necessity to contain the spread of the virus globally and within nations led to widespread restrictions of the movement of people between nations and lockdowns of national economies. South Africa was no different, with a State of Disaster being declared on 15 March, followed by a five-week hard lockdown from 27 March which saw all but essential services cease operation. The result of the strict COVID-19 lockdown was observed in South Africa experiencing its largest recorded decline in economic output in the second quarter of 2020. Real GDP fell by 17.1% relative to the previous quarter with all major sectors declining (except for agriculture).

It is expected that South Africa will experience real economic growth of 3.3% in 2021 following an expected contraction of 7.8% in 2020. The main risks to the economic outlook include the state's precarious fiscal position, a failure to implement structural reforms in key investment sectors (energy and infrastructure), weaker-than-expected growth as well as a continued surge in COVID-19 infections accompanied by further restrictions on economic activity.

Globally, there are persistent economic risks associated with COVID-19 and rapid debt accumulation. The International Monetary Fund (IMF) forecasted global output to contract by 4.4.% in 2020 and rebound to 5.2% growth in 2021. In many countries, GDP growth was seen to recover more quickly, resurgent COVID-19 infections and additional lockdowns posed a serious risk to the economic outlook. It is expected for global monetary policy to continue supporting growth and liquidity. Financial market sentiment is however likely to remain volatile. This means continued bouts of risk aversion and lower global capital flows to developing countries like South Africa may be observed.

Initially, global spikes in demand for hygiene and healthcare products, needed to contain and treat the virus, far outstripped supply, resulting in widespread shortages. This has brought into focus the inadequacy of healthcare systems in many countries, and particularly the ability to produce essential medical supplies domestically as supply from other countries turned inwards. Panic-buying and hoarding of dry foodstuffs, along with export restrictions on essential foodstuffs in some countries saw

some initial food price inflation, worsened by Rand depreciation in South Africa. These factors provided the economic conditions for widespread price gouging, which has been the immediate challenge for the Commission in response to the crisis. It has also required an urgent coordinated response on healthcare and debt management, necessitating numerous exemptions from the Competition Act to facilitate this. Whilst some stability returned following the first wave, the second wave has resulted in similar issues emerging.

However, it is apparent that economic activity is likely to experience continued disruptions throughout 2021 as resurgent outbreaks rise and given the gradual roll out of vaccines, continued physical distancing measures are likely to continue to have a significant impact on economic recovery. Further, gaps in equitable access to effective vaccines globally are raising concerns that the continued spread of COVID-19 will further deepen global economic inequality with developing countries such as South Africa experiencing continued stagnation in their economic recovery. Rapid and effective vaccine rollout remains crucial for economic recovery and government prioritization of this is critical.

The impact of Covid-19 on different sectors of the economy has varied considerably, albeit that going forward all sectors will likely suffer from reduced demand due to the local and global contraction. Essential services such as healthcare, grocery retail and online access/services were more resilient in the early stages as they remained open and demand consistent. This included the upstream value chains in food & agro-processing, medical supplies and data infrastructure. Other sectors such as retail, non-essential manufacturing and mining have all suffered a liquidity shock from closure for a few months which will have pushed many into closure and have a lasting effect on others.

Finally, some sectors are likely to be impacted for a much longer period due to extended closures or curtailed operations and customers trying to limit their exposure to one another even after lockdown restrictions are lifted. These include air transport, tourism, restaurants and personal services. For instance, restaurants have seen reduced evening trade due to recurring curfews following the initial closures during hard lockdowns. The global and local recession also means that the impact will be felt on both inward and export focused sectors of the economy. In fact, travel and tourism is likely to feel the dual effect of reduced demand from local and global travelers.

Therefore, the economic conditions and its impacts on markets are likely to further shape competition law enforcement in particular ways going forward, beyond the initial response on price gouging and emergency exemptions.

The liquidity crisis created by hard lockdowns and emergence into a deep recession will result in considerable business failure. It is expected that SMEs are likely to bear the brunt of such failure given their lack of access to capital, but it is also likely that some large companies will collapse due to prior

weaknesses or in sectors particularly hard hit. Business rescue filings have increased across sectors with companies in the manufacturing, wholesale and retail, real estate, accommodation, food service activities and construction hardest hit. This is likely to result in increased concentration in the economy and distressed mergers aimed at consolidation. In general, merger activity has largely resumed to its pre-pandemic levels but with distressed mergers making up a much higher proportion.

The economic hardship created by the crisis is also likely to result in an escalation in the abuse of market power, both by dominant buyers and sellers, as dominant firms look to use that market power to shift hardship from themselves to their trading partners or consumers. This became evident in the early stages of the crisis as larger food processing companies looked to impose unilateral price reductions on their suppliers, and retailers used the crisis as a weapon in negotiations to contain cost escalations. The threat is mostly to SMEs and firms owned/controlled by historically disadvantaged persons which have less bargaining power and more tenuous relationships. A focus on abuse against these firms, especially around the new amendments will be essential to contain an even greater failure rate of such firms and higher levels of concentration in the economy.

The threat of widespread business failure and the need to rebuild the economy is also likely to see a continued focus on sectoral recovery plans from government. It is already evident that industries that are looking at this sectoral approach are contemplating forms of cooperation or coordination that would ordinarily fall foul of competition law. This will result in an escalation in the requests for exemptions to permit coordination which will require careful consideration as to whether coordination offers a better outcome than company failures, and how that can be contained without resulting in the emergence of cartel activity. In particular sectors, such as airlines or steel, this may require competition authorities to become intimately involved in sectoral restructuring efforts beyond simply the granting of exemptions. The focus of such efforts will be around how to achieve a more competitive industry in the rebuilding process rather than simply facilitating consolidation.

However, the same forces driving some sectoral recovery plans are also likely to incentivize greater cartel activity in many sectors as competitors seek to avoid price wars and consolidate capacity in order to mutually survive. Competition authorities will need to improve cartel detection if this threat is to be contained, as the usual leniency programme may not provide sufficient incentives for companies in a survivalist mode. The threat to consumers is substantial at a time when incomes and jobs are under pressure.

The shift to online commerce and services was given a huge impetus by lockdown which is likely to continue given the desire by consumers to retain social distancing and a new work-from-home culture. This step change in demand for online provides an opportunity for new entry and greater competition, but also the threat that entrenchment strategies of leading online firms may tip the markets in their

favour. This applies to both the infrastructure layer as well as the online eCommerce, platforms and service layer. Competition authorities will need to be far more proactive and rapid in their response to the online economy if they are to tip the balance in favour of greater competition and not less. This will require proactive enforcement on entrenchment strategies and removing entry barriers to new players. It will also require a broader engagement on other regulatory interventions such as data access that will complement enforcement and shift the balance to greater competition.

The response of different markets to the crisis also provided some indication of the health of different parts of the economy from a consumer access, participation, market resilience and competition perspective. For instance, the lack of domestic depth in medical supplies (incl. essential chemicals) has raised questions as to how these industries can be rebuilt. The lack of resilience of SMEs and the risk of 'too big to fail' firms in multiple industries has similarly raised questions around the market structure we have inherited and the need to alter that. Similarly, the fragility of infrastructure and the inequity of services to lower income households have exposed failures in markets such as transport and online access. In addition, further questions regarding price transparency of pharmaceutical products and COVID-19 vaccines have been raised together with the role competition authorities may play to curb the potential for excessive pricing to occur.

The cracks within the economy exposed by the crisis provide a starting point for proactive efforts by the competition authorities to improve competition and participation through for instance market inquiries but also advocacy efforts to improve regulation and legislation. This should be a priority if the economy is to become more equitable and resilient to future crises.

3.2. Prioritising Economic Recovery

The role of competition and the reduction in barriers to entry in promoting more inclusive growth is expressly recognized in the Economic Recovery and Reconstruction Plan ("Recovery Plan") pronounced by the President in late 2020. Specifically, the Recovery Plan cites the importance of lowering entry barriers to make it easier for businesses to start, grow and compete as well as creating greater levels of economic inclusion through addressing high economic concentration. In addition, the Recovery Plan identifies support for SMMEs, cooperatives and start-ups as a key enabler of the reform programme, with the objective of providing a supportive ecosystem to such firms.

Whilst the general work of the Commission directly delivers against the key structural reforms identified by the Recovery Plan, the Commission also engages in a process of prioritisation for the five-year period as well as each year. This prioritisation seeks to identify key themes for our enforcement activity over the medium term and also the issues across specific sectors which are likely to have a high impact on low-income consumers, greater inclusion in the economy and broader government programmes.

Following the amendments to the Act, the general themes receiving priority are the reduction in concentration and the increase in participation by SMEs and firms owned by historically disadvantaged persons, consistent with the Recovery plan's objective of structural reform and inclusive growth.

The Commission will continue to build on the responsive work it undertook in 2020/21 financial year. For the upcoming financial year, the Commission will similarly prioritise actions that will support the next phase of economic recovery. Such priorities are reflected in the budget allocation and APP targets set for the year. These include:

- Fast track exemption processes where cooperation amongst firms is required to support localization and export promotion, small businesses, or firms controlled or owned by historically disadvantaged persons whilst providing sufficient safeguards against harmful collusive conduct;
- Continued resource allocation to investigating price gouging and monitoring essential food prices as the country experiences subsequent waves of infections;
- A strong emphasis on implementing key amendments to the Act which promote inclusion and the reduction in concentration levels. This includes the issuing of Guidelines setting out what conduct is seen to contravene the amended Act to and ensuring compliance across the business community. It also includes prioritising market conduct enforcement generally, and more specifically of the new provisions in the Act;
- Greater use of market inquiries to promote more competitive and inclusive markets in key sectors that may support economic recovery. The Commission has identified digital markets as one such sector along with essential food value chains. Inquiries will seek to unlock barriers to greater participation and the competitive expansion of these markets;
- General prioritization of digital markets and communications infrastructure as the pandemic accelerates the shift online where lower data costs and fair access to online trading platforms is essential for South African businesses generally, and SMEs and historically disadvantaged person owned firms more specifically, to benefit from the fourth industrial revolution;
- In terms of other sectors, the Commission has recently gone through a reprioritisation exercise which sought to align our priority sectors to the Re-imagined Industrial Policy. This prioritisation exercise was then further adjusted in June 2020 to align with the priorities emerging from the Covid-19 Pandemic. Those adjustments have a neat fit with the focal areas identified in the Recovery Plan.

3.3. Impact of Covid-19 pandemic on Merger Activity

The Covid-19 pandemic was expected to have a significant impact on both the pace of merger activity as well as the types of transactions that will be prevalent in the 2021/22 financial year. The pace of merger activity was initially slow during the first six months of the lockdown, and subsequently picked up as the economy was re-opened in the latter part of 2020. Merger filings decreased by over 50% from 68 in the first quarter of 2019/20 financial year to 30 filings in the same period in 2020/21. The trend continued in the second quarter of 2020/21 where 69 mergers were notified, compared to 88 in the previous financial year. Quarter 3 revealed a different story with 95 merger filings, compared to 80 filings in the same period in the previous financial year.

As a consequence of the Covid-19 crisis, many firms might find themselves in financial distress and forced to exit the market or to merge. The Commission, like many competition authorities, will have to adapt its merger review approach, particularly considering possible failing firms, rapid change in market conditions and balancing competition implications with public interest considerations.

The likely increased number of mergers will also place increased demands on the Commission's resources as firms in financial difficulty usually request expedited investigations to stave off business rescue. In situations where these investigations raise competition concerns, they can be complex, requiring a rapid assessment of less anticompetitive alternatives and balancing this against public interest benefits, such as saving jobs and retaining productive capacity in the economy.

Internationally, competition authorities have also indicated that they expect an increase in foreign acquisitions as well-capitalized international firms look to acquire firms that may be in short-term financial distress but have good fundamentals and solid long-term growth prospects. The European Commission (EC) recognized early on that the pervasive economic effect of the pandemic may place industrial and corporate assets under stress, making them vulnerable to foreign and even hostile takeovers. In response, the EC introduced a regulation on the screening of foreign direct investment aimed at preserving EU assets particularly in areas such as health, medical research, biotechnology and infrastructure that is essential to security and public order.² In April 2020, India also amended its foreign direct investment policy to increase scrutiny of all FDI deals from neighbouring nations, extending the scope of these protections to all sectors and now including acquisitions from Chinese

² European Commission. 25 March 2020. *Guidance to the Member States concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe's strategic assets, ahead of the application of Regulation (EU) 2019/452 (FDI Screening Regulation)*. Available at https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc_158676.pdf

firms.³ Internationally, there is thus an indication of greater scrutiny of international acquisitions for competition (including future competition) and national security reasons. The South African Commission may see a similar trend of increased international acquirers as firms look for value in emerging markets more broadly.

Lastly, with respect to merger conditions monitoring, the Commission expects an increase in conditions-related investigations, particularly on potential breaches of employment and supply commitments made conditional to the approval of mergers. With respect to employment conditions in particular, the merits of each case will have to be considered carefully to assess whether the retrenchments have taken place for justifiable operational reasons and whether firms could have taken reasonable steps to avoid job losses, including taking advantage of the various support and relief mechanisms put in place by government.

3.4. The Economic Policy Framework

Although South Africa has, over the past decade, adopted a wide range of policy initiatives aimed at boosting economic growth and addressing the country's structural challenges, the country has seen very limited progress emanating from these initiatives and their implementation. This has partly been due to high levels of political uncertainty related to the so-called state capture phenomenon across various levels of government and State-Owned Enterprises (SOEs) as well as uncertainty about the country's economic policies including those related to mining and land. This uncertainty has greatly contributed to poor economic outcomes over the past few years, which has delayed the country from making significant progress towards attaining its long-term growth objectives as set out in the National Development Plan (NDP). Government has, since 2018 and under the leadership of President Cyril Ramaphosa, undertaken to address issues around state capture, to provide clarity around the country's economic policies and has accelerated its structural reform agenda in order to reverse the country's weak growth trajectory and to accelerate its long-term growth objectives in order to move the country towards its 2030 vision of eliminating poverty and reducing inequality.

In September 2018 President Cyril Ramaphosa announced an economic stimulus and recovery plan aimed at igniting economic activity, restoring investor confidence, preventing further job losses and creating new jobs, and addressing some urgent challenges affecting the conditions faced by vulnerable groups. The measures announced in the plan give priority to areas of economic activity that will have the greatest impact on youth, women and small businesses and that will speedily unlock the country's short and long-term growth prospects. The five broad areas set out by the plan

³ Parkin, B. 18 April 2020. *India moves to curb Chinese corporate takeovers*. Financial Times. Available at <https://www.ft.com/content/ad3f84b0-fb75-4588-97e8-4a657ad67883>

are: 1) implementation of growth enhancing economic reforms; 2) reprioritization of public spending to support job creation; 3) the establishment of an Infrastructure Fund; 4) addressing urgent and pressing measures in education and health; and 5) investing in municipal infrastructure improvement.⁴

A few interventions announced in the stimulus and recovery plan that may be relevant for the Competition Commission are to:

- reduce the cost of doing business, to boost exports and to make South African industry more competitive by reviewing various administered prices, starting with electricity, port and rail tariffs;
- expand procurement from small businesses and cooperatives, as well as using trade measures within WTO rules to protect poultry and other sensitive sectors and as well as a vigorous crackdown on illegal imports;
- provide a stimulus package to support black commercial farmers with the aim of increasing their entry into food value chains through access to infrastructure like abattoirs and feedlots; and
- initiate the process for the allocation of high demand radio spectrum to enable licensing and unlock significant value in the telecommunication sector, increase competition, promote investment, and reduce data costs which will provide relief for poor households. Progress has been made in this regard, with the July 2019 release of the policy directive for spectrum licensing⁵ being followed by the release of the Information Memorandum by the Independent Communications Authority of South Africa (ICASA) during November 2019, providing an overview on the licensing process for the assignment of high demand spectrum.⁶

The aforementioned interventions align with some of the NDP objectives over which the Commission can have an impact on, such as increasing trade and export opportunities; promoting competition in regulated markets and advancing sectors with high growth potential; as well as addressing issues related to abuse-of-dominance and restrictive business practices, amongst others. The National Development Plan Five Year Implementation Plan provides a medium-term roadmap which will guide the realization of the 2030 NDP objectives. It will also form the basis for developing five-year institutional plans that align with the NDP goals.⁷

⁴ <https://www.gov.za/speeches/president-cyril-ramaphosa-economic-stimulus-and-recovery-plan-21-sep-2018-0000>

⁵ <https://www.gov.za/speeches/president-cyril-ramaphosa-economic-stimulus-and-recovery-plan-21-sep-2018-0000>

⁶ ICASA. 2019. *ICASA is ready to engage stakeholders on the process leading up to the licensing of high demand spectrum*

⁷ Department of Planning, Monitoring and Evaluation, Revised Framework for Strategic Plans and Annual Performance Plans and Concept Note on the NDP Five Year Implementation Plan, October 2018

In August 2019, the National Treasury released a discussion document concerning the country's economic reform agenda titled "Economic Transformation, Inclusive Growth, and Competitiveness: Towards an Economic Strategy for South Africa". The paper identifies key growth reforms that can contribute towards economic transformation, inclusive growth, and competitiveness. These reforms, which align to the Commission's focus on competition, are organized around five broad themes, which are drawn from the priorities identified in the NDP, namely:

- modernising network industries such as transport, energy, water, and communication in order to promote competitiveness and inclusive growth;
- enhancing competition as a lever for inclusive growth and economic transformation by encouraging the growth of smaller firms, the entry of new firms, and growth in innovation and productivity. This requires reducing anti-competitive practices and barriers to entry in order to facilitate the entry of Small, Medium and Micro Enterprises (SMMEs) and improve competition amongst incumbent firms;
- adopting deliberate policy measures and interventions that can bias economic growth towards employment-intensive sectors such as agriculture and services sectors such as construction, retail, and tourism;
- implementing focused and flexible industrial and trade policy to promote competitiveness and facilitate long-run growth; and
- growing exports and improving export competitiveness, which requires better integration into global and regional value chains.

Following the announcement of the government's national budget in February 2019, the MTBPS was tabled in October 2019 detailing government's fiscal goals and projections for the economy, as well as setting out measures to boost the economy, narrow the fiscal deficit and raise the quality of spending, particularly on large infrastructure projects. The MTBPS covers a package of economic reforms largely focused around balancing the budget, promoting investment and economic growth, stabilizing SOEs and improving spending efficiency and reducing waste.⁸

As a first step, government is focused on stabilizing the public finances which involves the reduction of the revenue deficit via decreases to departmental baselines and slower spending growth in the outer year of the medium-term expenditure framework (MTEF). These reductions, however, require additional measures to narrow the deficit and improve the composition of spending. Government has proposed a fiscal target of achieving a main budget primary balance by 2022/23 which will involve adjustments exceeding R150 billion in total over the medium term. Critical elements to

⁸ National Treasury. 2019. Medium Term Budget Policy Statement, 30 October 2019, page 3 -7.

achieving the fiscal target include the reduction in the growth of the public-service wage bill, increasing tax collection via the consideration of additional tax measures and following a sustainable plan for SOEs.

For government to promote investment and growth, the MTBPS includes both short-term reforms, which do not require significant resources, and medium-term reforms. The short-term growth reforms include supporting tourism, diversifying power generation, expanding telecommunications services and reducing the cost of doing business in South Africa. Medium-term improvements are to be prioritized in transport, water, telecommunications, and industrial and trade policy. In terms of public-sector infrastructure projects, the 2019 MTPBS allocated R3.4 billion over a three-year period for these projects, including school facilities, student housing and health infrastructure.

The MTBPS acknowledges that several large State-Owned Enterprises (SOEs) are struggling due to governance failures, poor operational performance and unsustainable debt levels. While government is on board to assist these entities, as it has increased spending to meet its obligations for guaranteed debt, a program of reforms is being carried out to strengthen their governance and operations. In terms of managing the Eskom risk and ensuring a financially viable electricity utility, the MTBPS states that faster progress is required to effect separation of Eskom into three entities, while the reduction of Eskom's debt burden will only be considered once it cuts costs and starts unbundling. Government has made provisional support of R49 billion available in 2019/20, R56 billion in 2020/21 and R33 billion in 2021/22. Other SOEs, including South African Airways (SAA), the South African Broadcasting Corporation (SABC), Denel and South African Express, have further added to spending pressure on government where these entities have amounted to an expenditure of R10.8 billion in 2019.

The MTBPS outlines some funding shifts and measures to improve efficiency and reduce wasteful expenditure. In order to improve efforts to combat corruption and enhance revenue collection, government will provide an additional R1.3 billion to the National Prosecuting Authority and an additional R1 billion to the South African Revenue Service for the period 2019/20 to 2022/23. Further reforms include the consolidation of overlapping agencies, the disposal of unused land and other assets, and the acceleration of the new Road Accident Benefit Scheme.

In conclusion, the South African economy faces many challenges with regards to poverty, inequality and rising unemployment which has resulted in declining economic growth. For South Africa to see a turnaround in its medium-term economic outlook and an improvement in expected long-run growth, the MTBPS states that an increase in state capacity and economic competitiveness is required. The policy statement acknowledges that both macroeconomic and microeconomic policy have a role to play in

ensuring the structure of the economy promotes competition and facilitates access. Low inflation and sustainable fiscal policy serve to lower the cost of borrowing and support investment, while microeconomic policy ensures an efficient, well-regulated business environment that facilitates investment, innovation and the creation of new businesses. The Commission is therefore well-placed to drive the economy forward and play an active role in the formulation of economic policy, particularly in relation to creating an environment of inclusive economic growth.

3.5. Global and Regional Competition Policy Developments

At both a global and regional level, there is an impetus towards harmonization of competition policy and greater cooperation between competition authorities with regards to cross-border mergers and cartel investigations. A memorandum of understanding (MOU) signed in May 2016, between the competition authorities of all BRICS member states, has paved the way for deepened cooperation and coordination and has contributed to a diversification of perspectives and voices on competition policy, given the increasing importance of these emerging economies to the global economy.

The Commission actively participates in the BRICS Working Groups on pharmaceuticals, food value chains, automotive and digital markets, where research is undertaken collaboratively from a developing economy perspective. The digital markets working group, provides an opportunity for authorities to strengthen their understanding of these new markets, which are poised as the markets of the future. It is evident that regulators need to adapt their capacity and tools in order to better respond to merger and enforcement cases which arise in these markets.

The establishment of a BRICS Competition Research Centre is underway. The BRICS Competition Research Centre is a partnership between the BRICS competition authorities to promote the study of competition policy, law and enforcement to advance a perspective relevant both to the interests and concerns of the BRICS countries as well as to the developing economies. The work of the BRICS Competition Research Centre should advance a developmental discourse on competition policy, regulation and enforcement, with the aim of supporting the attainment of inclusive economic growth and innovative competition regulation and enforcement which address developmental economic needs. A further aim of the BRICS Competition Research Centre is to strengthen collaboration in respect of enforcement, information exchange and capacity building.

At the regional level, South Africa signed the Tripartite Free Trade Area (TFTA) in July 2017. Negotiations followed to create an African Continental Free Trade Area (ACFTA) by 2017 where it was intended that all 54 African Union states will become members of the free trade area. The operational phase of the ACFTA was subsequently launched during the 12th Extraordinary Session

of the Assembly of the African Union in Niamey, Niger on 7 July 2019.

Trading under the African Continental Free Trade Area (AfCFTA) started on 1 January 2021. South Africa is one of the countries that is prepared to start trading under the AfCFTA. The main objectives of the ACFTA are to create a single continental market for goods and services, with free movement of businesspersons and investments, and thus pave the way for accelerating the establishment of the Customs Union. It will also expand intra-African trade through better harmonization and coordination of trade liberalization and facilitation and instruments across the RECs and across Africa in general. The ACFTA is also expected to enhance competitiveness at the industry and enterprise level through exploitation of opportunities for scale production, continental market access and better reallocation of resources. The ACFTA is governed by five operational instruments, i.e. the Rules of Origin; the online negotiating forum; the monitoring and elimination of non-tariff barriers; a digital payments system and the African Trade Observatory.

Phase 2 of the TFTA negotiations, which include policies of investment, competition and intellectual property rights is still ongoing.

In the SADC region, there are now 11 functioning competition authorities out of 15 member states. Lesotho and Angola have draft competition laws, while Mozambique has a law but no functioning institution. The Democratic Republic of Congo has neither a law nor an institution. There is an increase in the enforcement of competition laws throughout the SADC region, accompanied by higher levels of cooperation and coordination between authorities. The Commission has signed (Memorandum of Understanding) MOUs with three of its fellow SADC authorities (Seychelles, Namibia and Mauritius) and an MOU with Swaziland is pending.

The Commission signed a MOU on cooperation between SADC competition authorities in May 2016. SADC competition authorities meet at least once a year in the SADC Competition and Consumer Law and Policy Committee. The Committee's Working Groups on Mergers (led by Botswana), Cartels (led by Zambia and South Africa) and Research (led by the African Competition Forum) have undertaken a program of work since its establishment in 2016 and continue to cooperate especially on cross-border cartel investigations. Detailed cooperation frameworks for merger review and cartel investigations were adopted in December 2016. Research undertaken by the Cartels Working Group shows the need for better harmonization of legislation relating to cartel investigations within SADC member states.

We foresee that International Relations in the times of the Covid-19 pandemic will be taking a different format for the foreseeable future, with webinars and teleconferences already replacing physical

conferences and meetings. Further, continued competition enforcement and collaboration with other authorities at the regional and international level to tackle challenges is crucial, particularly under crisis. During times of the Covid-19 crisis, and also the post crisis, there is an increasing need for competition authorities to reinforce advocacy efforts and law enforcement, which call for closer relationships with other authorities.

3.6. Digitization and Implementation of the Competition Act

Like all governments and authorities across the world, the Commission has been grappling with how to regulate competition in an increasingly digitised world. The dynamics of digital markets bring a threat of more complex potential anticompetitive conduct and outcomes, including:

- a) Merger control – challenges include possible under-enforcement, jurisdiction over international platforms, notification of mergers involving international platforms, notification of mergers involving international platforms without assets and turnover in South Africa and establishing appropriate theories of harm.
- b) Cartel Conduct - digital markets present new forms of collusion and new challenges for the Commission to detect and investigate coo-ordinated conduct.
- c) Abuse of dominance and vertical restraints – increased dominance and unilateral conduct; the global reach of digital markets means that conduct found to be anticompetitive in one jurisdiction could be considered anticompetitive in other jurisdictions.

The Commission has thus published a strategy paper titled *Competition in Digital Economy* which outlines how it intends to apply competition law to achieve equitable outcomes in the digital economy in South Africa. Specifically, the Commission will focus its programs and resources to strengthen its regulation within this rapidly evolving landscape. Some of these interventions, including undertaking a market inquiry and strengthening cartel enforcement and merger investigations, are noted in the sections below pertaining to the internal environment.

4. INTERNAL ENVIRONMENTAL ANALYSIS

An assessment of the key internal factors in the organizational environment which contribute to the Commission's performance is articulated below. The section outlines interventions aimed at developing an enabling environment that effectively supports the performance of the Commission.

4.1. Case Pipeline Management

Complaints-Handling: Enforcement

During the previous financial year, the Commission's case management system was adapted to respond to the deluge of price-gouging complaints received (over 1500). The fast-track mechanisms which were established enabled the speedy conclusion of these investigations. These fast-track mechanism for Covid-19 complaints will remain in place in 2021/22 financial year, particularly if further waves of infection arise and/or the conduct of retailers contravenes the current regulations.

The volume of price gouging complaints eventually subsided significantly between September and December 2020 and instead the Commission began to receive a steady volume of complaints that were not related to price-gouging regulations. The Commission will continue to screen and investigate these matters expeditiously, as per its case pipeline process. However, with a second wave of infections affecting South Africa in early 2021 and the country reverting back to stricter levels of lockdowns, the Commission observed a spike in price gouging complaints once again, particularly related to ginger and garlic. When the volumes of complaints spike, sometime with over 50-70 complaints received per day for consecutive days, resources are redeployed from other functions to focus on the speedy and often urgent resolution of some matters. The nature of the pandemic thus requires a constant adjustment to case management.

Further to managing case load arising from complaints, the Commission intends to initiate multiple abuse of dominance investigations in the upcoming year, enabled by the recent amended provisions related to Buyer Power and Price Discrimination in the Competition Act.

Cartel Enforcement

The Commission initiated several cartel investigations during the 2020/21 financial year, in relation to pandemic-related public procurement. These are investigations which arose from the Commission's cooperation with other law-enforcement agencies. It is expected that these investigations will continue in the upcoming financial year.

As companies continue to work remotely due to the pandemic, the importance of updating cartel enforcement tools, from physical to virtual/ digital, has become urgent. Cartel detection in a digitized world requires an investment in appropriate and relevant detection tools and mechanisms. These include preparing appropriate spaces for conducting interrogations (interviews), establishing efficient systems for whistleblowing, building relevant ICT tools and developing internal capabilities for digital and forensic analysis. The additional budget allocation will enable the Commission to invest in such

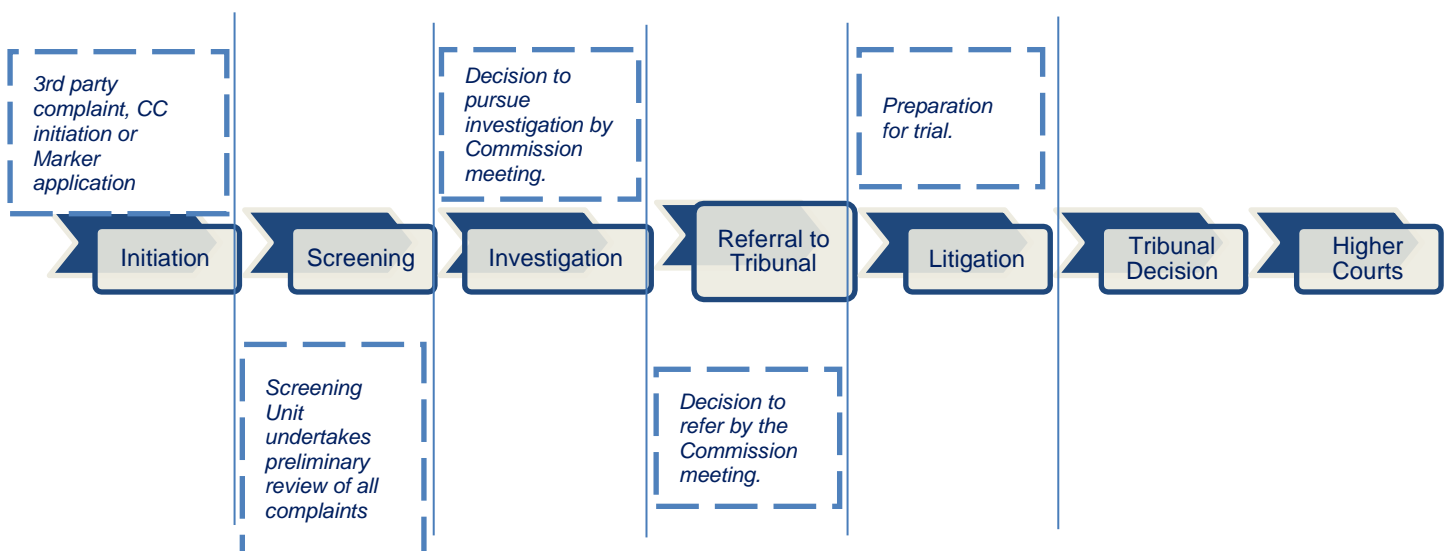
interventions, thus strengthening its cartel enforcement function.

Litigation

Various hearings were held at the Tribunal in 2020/21- all held online The Commission will continue to refer matters to the Tribunal expeditiously in the 2021/22 financial year.

However, one of the major challenges (and risk) arising is the indefinite postponement of trials by the Competition Tribunal and the courts, due to the Covid-19 pandemic. The inability for courts to convene for physical trials, where witnesses and counsel must appear in person, has resulted in a major backlog. With the pandemic ongoing in 2021, this constraint remains a risk to the resolution of long-standing and important matters on the court's roll. It is unclear what the implications of the growing backlog will be on the resources of the Commission, the Tribunal and the CAC in the latter years of the MTEF, assuming the pandemic to then be over.

FIGURE 2: CASE PIPELINE PROCESS- ENFORCEMENT



4.2. Corporate Services

The Commission's staff have been largely operating remotely since the declaration of the National Disaster and lockdown. There has been in this regard, a serious impact on increased IT bandwidth requirements for remote connectivity to the network, communications systems, and human resource management to adjust to the new reality. There are inherent risks in managing investigations remotely,

with the use of cellphones, laptops and documents in the personal spaces of employees. As such the Commission must adjust the operations of the Corporate Services Division to ensure swift responses to strengthen internal organizational policies, IT and Communication systems, that business continues remotely.

The Commission has finalized the process of implementing an institutional remote working model, which includes the development of a Remote Working Policy to enable and manage business productivity virtually. The policy is to be supported with new case investigation protocols, investments in electronic case filing and document management systems, an overall upgrade in the IT and communication system and intensified digitalization of our processes. Employees have also been supported to minimize the impact of working remotely, through once-off taxable subsidies, which would enable creation of home offices during this period. Provision has also been made in the policy to enable access to the offices for essential services that cannot be performed remotely in line with health and safety regulations prescribed by government. The Commission's response in this regard, has also been integrated with the DTIC's broader campus safety regulations and related matters.

Some of these interventions undertaken in 2020 may have to be scaled-up and/or repeated in the 2021/22 financial year, as the pandemic situation subsists. A significant portion of the corporate services (HR and IT) budget will thus be directed at ensuring the continued (largely virtual) operations of the organization.

The Commission also developed an enhanced Mental Health and Employee Welfare policy, to mitigate and manage the risks and psycho-social challenges arising due to the impact of Covid-19. In this regard, the mental well-being of staff will continue to be supported through relevant programs and activities which the Commission will undertake in 2021/22. Such programs include the necessary employee training and reskilling in relation to the above is being undertaken, in an effort to balance the productivity needs of the organization, and the overall welfare and safety of the employees.

4.3. Information Communication Technology (ICT) Environment

A comprehensive review of the Commission's ICT environment was completed in the 2016/17 financial year. The aim of the review was to make proposals for the modernization of the Commission's IT infrastructure and services to effectively enable the work of the organization. The review focused on assessing the adequacy and effectiveness of the current ICT, specifically the Infrastructure Architecture, the Platforms/Software Infrastructure and Internal Security. The review found that the Commission's ICT

environment consists of disparate systems that are not integrated; the core business system does not support the business vision and strategic objectives; does not support the people nor the process; the CSD is inadequately capacitated; and IT Governance needs to be improved. The implementation of a fully integrated, efficient and adequate ICT environment was recommended that:

- embodies standardization, ensuring work can be conducted uniformly, but efficiently;
- ensures business processes are integrated, ensuring that duplication is removed;
- supports continuous improvement as part of the transformation journey;
- embeds workflow to ensure that documents flow through the authorizations hierarchy as defined by the user ensures audit and facilitates electronic processing thereof to ensure efficiency; and
- provides robust, up-to-date security and audit trail capabilities.

The first phase of implementation was scheduled for commencement in the 2016/17 financial year and subsequent phases were due to be completed during 2019/20, to give effect to the recommendations. The project was not implemented due to financial constraints.

The additional budget allocation of the MTEF will enable the Commission to implement the systems upgrade intended. Given the virtual operations of the organization, the implementation of an efficient ICT system is particularly urgent, to mitigate risks related to case and document management.

4.4. Organizational Structure

The Commission will in this current financial year review the design of its organizational structure, to ensure alignment with its strategy and to consider amendments to the Competition Act. The following considerations will be taken into account when reviewing the structure:

- Capacitating the organization to effectively perform market enquiries under the expanded mandate.
- Increase capacity for the litigation of cases internally, to reduce the outsourcing of core functions.
- Increase the capacity for provision of economic expertise.
- Increasing capacity investigation of abuse of dominance and restrictive practices under the expanded mandate.
- Increasing capacity investigation of cartel conduct. This is to ensure the efficient and timely resolution of cases.
- Capacitate end-support functions in relation to Advocacy (education, awareness) and

corporate services (Registry, IT, Finance and HR).

PART C: MTEF PERFORMANCE PLAN

5. FINANCE

Below are the Competition Commission's budgetary estimates (MTEF) for the next three-year period of its Strategic Plan. These estimates are drawn from the intended work programs of the Commission for the period, as per the 2020-2025 Strategic Plan and Annual Performance Plan.

5.1. Expenditure Analysis

The maintenance of the administrative activities of the Competition Commission is human resource based. This is evident from the high financial requirements for human resources and administrative activities. The implementation of the Commission's policy on strategic priority sectors and prioritization will further require substantial input during this period. The following table summarizes the projected estimates by strategic objectives:

TABLE 2: EXPENDITURE PER STRATEGIC OBJECTIVE

| EXPENDITURE PER STRATEGIC OBJECTIVE | 2021/22 ANNUAL BUDGET | 2022/23 ANNUAL BUDGET | 2023/24 ANNUAL BUDGET |
|--|-----------------------|-----------------------|-----------------------|
| Goal 1: Enforcing and Regulating towards economic growth and enhanced economic participation | 339,102,651 | 347,440,404 | 349,868,795 |
| Goal 2: Advocating for improved compliance and pro-competitive public policy outcomes | 21,835,119 | 22,041,124 | 22,714,775 |
| Goal 3: A people-centric and high-performance organization | 118,900,230 | 120,324,472 | 120,989,430 |
| TOTAL | 479,838,000 | 489,806,000 | 493,573,000 |

The Mergers & Acquisitions, Market Conduct, Cartels, Legal Services, Economic Research Bureau and Advocacy are the core programs directly involved with the implementation of the Competition Act. Nonetheless, support activities such as Administration spend more than 80% of their resources offering support to the core activities. The following table summarizes the projected expenditure per division. The financial resources have been allocated to ensure that the Commission focuses on the identified strategic areas. As customary, financial revisions are done during the financial year, and any adjustments are effected accordingly.

TABLE 3: TOTAL EXPENDITURE PER MAIN ITEM

| TOTAL EXPENDITURE PER MAIN ITEM | 2021/22 ANNUAL BUDGET | 2022/23 ANNUAL BUDGET | 2023/24 ANNUAL BUDGET |
|---------------------------------|-----------------------|-----------------------|-----------------------|
| Human Resources | 251,821,516 | 255,723,539 | 258,025,557 |
| Premises & Equipment | 20,635,493 | 22,699,042 | 24,968,946 |
| Other Operational | 6,455,476 | 7,795,024 | 6,000,000 |
| Research & Information | 2,953,283 | 3,014,055 | 3,037,373 |
| IT and system Development | 10,975,542 | 11,201,394 | 11,288,052 |
| Educational Awareness | 4,383,982 | 4,474,193 | 4,508,807 |
| Case Related Costs | 53,042,096 | 54,133,580 | 54,552,377 |
| Capital Expenditure | 7,576,196 | 7,732,097 | 7,791,915 |
| Depreciation | 7,498,636 | 7,652,941 | 7,712,147 |
| Other Programme Costs | 114,495,780 | 115,380,136 | 115,687,826 |
| TOTAL | 479,838,000 | 489,806,000 | 493,573,000 |

TABLE 4: REVENUE

| REVENUE | 2021/22 ANNUAL BUDGET | 2022/23 ANNUAL BUDGET | 2023/24 ANNUAL BUDGET |
|--------------------------|-----------------------|-----------------------|-----------------------|
| Mergers and Acquisitions | 38,288,000 | 38,288,000 | 38,288,000 |
| Government Grant | 2,000,000 | 2,000,000 | 2,090,000 |
| Interest Received | 439,550,000 | 449,518,000 | 453,195,000 |
| TOTAL | 479,838,000 | 489,806,000 | 493,573,000 |

Materiality Framework

Due to the nature of the business of the Competition Commission (it is not a capital-intensive business) the best indicator regarding business activity is expenditure. There is lower risk on revenue as 80% of the revenue is made up of voted funds. For this reason, we have selected 0.50% of expenditure with regard to this framework. The implications, based on the estimated expenditure, are summarized as follows:

TABLE 5: MATERIALITY

| MATERIALITY | % | 2021/22 | 2022/23 | 2023/24 |
|-------------|-------|-------------|-------------|-------------|
| Expenditure | | 479,838,000 | 489,806,000 | 493,573,000 |
| Materiality | 0.50% | 2,399,190 | 2,449,030 | 2,467,865 |

6. PRIORITY SECTORS

The Commission's priority sectors for the 2020 – 2025 Strategic Planning period are summarized in the table below. The priority sectors are identified for enforcement action or advocacy or market inquires or for other tools such as impact assessments. A brief rationale on the identified sector is provided, with an indication of the potential sub-sectors which the Commission may focus on. The sub-sectors identified take into account the shifts in markets, identified earlier, arising from Covid-19.

TABLE 6: PRIORITY SECTORS

| Sector | Rationale | Sub-sectors |
|---|---|--|
| 1. Agriculture, Food & Agro-processing | The sector continues to be a priority due to its significance on the lives of South Africans, particularly the impact of high prices on the poor. The sector has huge potential for job creation and SME participation but is characterized by developing and legacy competition concerns. The Commission intends to address issues of access (entry) and participation in the value chain, with a focus on fresh produce markets, retail and processing levels. The issue of land (agriculture) and economic participation will also be a focus area. The Commission's work in this sector will be through enforcement and advocacy tools (including research and impact assessments) but considers the sector as suitable for market inquiries as well. | <ul style="list-style-type: none"> • Meat (red meat, poultry, fish) • Fresh Produce (Fruits & vegetables) • Dairy value chain • Breads and cereals • Basic food products and/or other "essential" foods |
| 2. ICT & Digital Markets | Digital markets entail technology-driven businesses, including platform-based business models. These are typically multi-sided markets with high network effects and economies of scale of such size that it renders competition issues more complex. Digital markets are characterized by high rates of investment and innovation, which lead to rapid technological progress in the sector, and to increased disruptive innovation, in many other markets that adopt to technological changes. The increasing prominence of the digital economy requires competition authorities to devote more time in understanding the dynamics emerging, and to regulate in a manner that | <ul style="list-style-type: none"> • ICT infrastructure • Data • Broadcasting • Platforms, Big Tech, FinTech & E-commerce • Infant industries |

| Sector | Rationale | Sub-sectors |
|--------------------------------------|--|--|
| | <p>strikes a balance between supporting the efficiencies and consumer benefits often arising whilst addressing anti-competitive outcomes such as concentration and abuse of dominance. The competition issues arising in digital markets intersect with other regulations (e.g. privacy laws, intellectual property, financial regulation, tax, labour etc.) and thus require a coordinated approach among regulators. The Commission will be contributing to the policy discourse in regulating these markets whilst also monitoring for anti-competitive conduct. A market inquiry may be an ideal tool to use to probe this sub-sector.</p> <p>South Africa's ICT market is highly concentrated, both at the wholesale and retail levels. The Commission has established that data (connectivity) prices are very high, particularly for mobile prepaid data. There is also lack of competition in subscription television broadcasting services, with one dominant player in the market. The market remains concentrated, even after issuing of various licenses by the sector regulator. As such, the Commission will continue its focus on the ICT sector.</p> | |
| 3. Energy | <p>The South African energy sector is highly regulated and is currently the subject of policy reforms in most of its sub-sectors. The Commission will be monitoring the unbundling of Eskom and the effect of the restructuring on the market. Competition issues of focus will also include the ability of IPPs to access the grid and distribution channels, the relationships between Eskom, Independent Power Producers and municipalities. Further, pricing dynamics in the electricity market/value chain will be monitored.</p> <p>Other areas within the energy sector the Commission is prioritizing is Gas, including ensuring implementation of LPG market inquiry recommendations.</p> | <ul style="list-style-type: none"> • Renewables/ IPPs • Electricity IPPs • Gas (LPG, Natural Gas) |
| 4. Transport & Automotive | <p>A well-integrated and efficiently functioning transport system is key to enabling and unlocking economic growth, and an important mechanism in fighting poverty, given its financial significance on poor households. The South African transport system (roads, railway and ports)</p> | <ul style="list-style-type: none"> • Automotive Aftermarkets: services & repairs, short-term insurance • Automotive Components |

| Sector | Rationale | Sub-sectors |
|--|---|--|
| | <p>is diverse and largely regulated by SOEs, national, provincial and local governments. The sector is characterized by inefficiencies due to apparent lack of coordination between different spheres of government. The recommendations arising from the market inquiry into Public Passenger Transport will be important in addressing some of the challenges in the transport network.</p> <p>Ongoing investigations into Ports and Rail will also continue, with the aim of addressing behavioural and legacy issues arising in these sub-sectors.</p> <p>The Commission will also continue its enforcement work in the automotive sector during the strategy period, with an emphasis on enforcement action in automotive aftermarkets. The work in automotive aftermarkets work is a result of more than a decade of complaints from the public regarding parts distribution, retail and service/repairs of vehicles. Component manufacturing will also remain a focus area.</p> | <ul style="list-style-type: none"> • Ports & Rail • Public Passenger Transport |
| 5. Construction services, Property & Infrastructure | <p>In the recent past, the Commission undertook extensive work in the construction sector in relation to anti-competitive conduct that manifested prior to 2010 FIFA world cup construction projects. The Commission has succeeded in prosecuting firms for their anti-competitive conduct in this sector. The government also prioritized this sector and has successfully reached pro-transformation settlement agreements with various market participants. However, competition problems persist, with the Commission still receiving complaints relating to conduct in the various sub-sectors of construction services. The Commission also continues to investigate several bid-rigging complaints, and this continues to be a focus for advocacy and enforcement action.</p> <p>During this period, the Commission will also pay attention to Built Environment professionals: their role in construction projects and the role of the Councils with regards to promoting entry</p> | <ul style="list-style-type: none"> • Construction services • Residential estates • Property finance • Built Environment Professionals • Bid-rigging |

| Sector | Rationale | Sub-sectors |
|--|--|--|
| | <p>and participation.</p> <p>Another area of focus will be residential estates with regards to the rules and practices of role-players, which may have competition implications.</p> | |
| 6. Banking & Financial Services | <p>The banking and finance sector have the potential to contribute towards greater inclusion of historically marginalized groups – by extending access to banking and insurance services, by helping to promote and mobilize household savings, and by easing broader access to credit. The sector also has a crucial role as a provider of potentially dynamic intermediate services. The Commission will continue its enforcement focus in addressing contraventions of the Act which arise, including the banking cartel relating to foreign exchange market.</p> <p>The Commission will also follow policy reforms in the national payments system to identify competition issues which can be advocated for. Equally, reforms that are underway in the Audit Profession which have a competition element will be monitored.</p> | <ul style="list-style-type: none"> • Banking • Property finance • Insurance • Audit Profession |
| 7. Manufacturing | <p>The manufacturing sector is important for the South African economy given its contribution towards the GDP and the number of employees that the sector absorbs. Manufacturing includes Intermediate Industrial Inputs (IIP) used to manufacture different outputs in various sectors. The Commission's study into concentrated markets revealed that the sector is highly concentrated. During this strategy period, greater focus would be in the value chains of various industries in the broader manufacturing sector, particularly where there is high concentration. A market inquiry may be an ideal tool to use to probe into these value chains.</p> | <ul style="list-style-type: none"> • Chemicals, pesticides and agrochemicals • Forestry/paper/pulp/corrugated packaging • Steel/ fabricated metals • Plastic |
| 8. Healthcare | <p>The healthcare sector is undergoing major policy reforms with the proposal of a National Health Insurance. Commission will be advocating for the recommendations arising in the Market Inquiry on Private Healthcare, which are crucial to the achievement of an efficient universal healthcare system as proposed in the NHI. Equally, mergers in this sector, will be monitored to prevent further concentration, particularly in relation to facilities.</p> | <ul style="list-style-type: none"> • Facilities • Pharmaceuticals, particularly drugs related to the treatment of Covid-19 • Medical Equipment, particularly related to the treatment of Covid-19 |

| Sector | Rationale | Sub-sectors |
|--------|---|---|
| | The investigation into various pharmaceutical drugs will continue in this period. | <ul style="list-style-type: none"> • PPE and related products and services • Medical and hygiene supplies at retail level |

7. PERFORMANCE PROGRAMS

The Commission undertakes its work through the following main programs or divisions:

7.1. Mergers & Acquisitions Division

The Mergers & Acquisitions (M&A) division is tasked with ensuring that merger transactions do not lead to a substantial prevention or lessening of competition or to significant public interest concerns in terms of Chapter 3 of the Competition Act. The Commission has the authority to approve, conditionally approve, or prohibit intermediate mergers, while recommendations are made to the Tribunal in respect of large mergers. Small mergers may be notified to the Commission on a voluntary basis although the Commission may in certain circumstances require that the small merger be notified.

It is difficult to predict merger activity with certainty since merger activity is an outcome of market conditions and firm activity. The Commission has over the years set targets with regards to the key outputs of mergers approved, mergers approved with conditions and mergers prohibited against the total number of mergers notified based on observed trends. These assumptions have sometimes been incorrect, as they are largely outside of the control of the Commission. The Commission has thus developed performance indicators that are within its control, and thus has set merger targets in relation to turnaround times.

Merger regulation plays an important role in preventing anti-competitive structures in the economy. The Commission will continue to monitor the compliance of firms against merger remedies and conditions imposed, during this period. Compliance monitoring is an important step in ensuring that public interest and competition outcomes are realized in the economy. The M&A program also analyses mergers in priority sectors as an input into the enforcement work of the Commission. Further, with the support of Legal Services, the program also supports the Commission's litigation on mergers that are challenged at the Tribunal and the courts. The Commission will continue to meet service standards in assessing merger applications, with due considerations in assessing mergers involving distressed firms. The monitoring of conditions that have been previously imposed will also continue in the strategy cycle.

7.2. Cartels Division

The Cartels Division focuses on investigating and prosecuting cartel activities in terms of Section 4(1)(b) of the Competition Act. Cartel conduct includes price fixing, market allocation and collusive tendering or bid rigging.

In anticipation of higher prevalence of anti-competitive conduct due to the constrained economic environment, the Commission will continue its efforts on cartel detection. The Commission will complete 10 investigations in the 2021/22 financial year. This is in addition to Covid-19 investigations undertaken, both in relation to price gouging and Covid-19 public procurement.

Working with Market Conduct, the Cartels function will also work in the expedited analysis of exemption applications related to Covid-19, with a target of a 3-months turnaround.

Finally, the Cartels and Legal Services programs are responsible for prosecution activities in the Tribunal and the Courts; a performance target of achieving a minimum 75% success rate has been set in this regard.

7.3. Market Conduct Division

The Market Conduct Division program focuses on restrictive vertical practices and the abuse of dominant positions. Abuse of dominance includes excessive pricing, price discrimination, refusal to deal with competitors and predatory pricing. In addition, market inquiries are now located here.

During 2021/22, the Market Conduct program will continue its focus on establishing a more proactive approach to investigating abuse of dominance cases in terms of Section 8 and 9 of the Competition Act. The division will initiate and complete several of these in prioritized sectors. The conducting of Market Inquiries will be a strategic tool to enable the division to probe and gain insights into complex markets which have a high impact on the economy and consumers at large.

The Commission will prioritize investigations and prosecution of Covid-19 excessive pricing cases in the 2021/22 financial year. The program will also pay attention to the conduct of dominant firms and thus have set a target to initiate 5 abuse of dominance cases in the year, under the provisions in the amended Act. Efficiency targets pertaining to the completion of cases have also been set, with the intention to complete 75% of investigations within 18 months.

Having identified digital economy as a priority, the Commission intends to initiate a market inquiry into digital markets.

7.4. Legal Services Division

The Legal Services Division (LSD) is responsible for managing all the Commission's litigation before the Tribunal, Competition Appeal Court (CAC), High Court, Supreme Court of Appeal (SCA) and the Constitutional Court. The division represents the Commission in courts, in briefing attorneys and

counsel, and directing and managing the Commission's strategy in respect of litigation. Legal support is also provided to analyzing merger applications. The division defends the Commission's recommendation of large mergers to the Competition Tribunal and merger decisions which are appealed. The division is also responsible for negotiating and concluding settlement agreements, with the input of other divisions. The settlement process enables the Commission to conclude cases speedily and in the least costly manner.

In 2021/22, the Legal Services division will continue its focus on improving its level of success in the courts. Successful prosecution or settlement of cases is an important indicator of success for the Commission, and minimum targets have been set in this regard.

7.5. Economic Research Division

The Economic Research Bureau provides economics support for complex cases and policy issues. The division helps the Commission evaluate the economic impact of the Commission's actions by undertaking impact assessment studies. The key operational responsibilities of the division are to ensure economic research on sectors and policy issues identified by the Commission as priority areas; perform sound economic analysis for enforcement cases, merger cases and market inquiries.

The Commission will undertake one impact assessment study in the year, led by ERB. The Commission also want to be a thought leader in competition matters hence the target to provide research and thought leadership insights. ERB will continue to support investigations with expert economic advice and testimonies.

7.6. Advocacy Division

The Advocacy Division is responsible for undertaking preliminary investigations of complaints received from the public. The division also advances strategic cases, which could not be resolved through enforcement, through advocacy initiatives. Another function of the Advocacy Division is Policy Analysis; that is to contribute to Government policy and regulations in order to promote competitive outcome. The division also generates sector-based research on competition issues in order to analyze trends which will inform the Commission's approach.

One of the functions of the division is Stakeholder Relations, aimed at fostering collaborative relationships with the Commission's stakeholders. The Commission will continue to maintain relations with stakeholders during 2021/22 while focusing on key constituencies including Women and Black Business associations.

The Commission will continue its Advocacy work in prioritized sectors, with the intention to complete on-going work in Automotive Aftermarkets, School Uniform procurement, Construction services and Emerging Farmers (agriculture). Education and outreach initiatives with consumers, big and small businesses will remain critical in the year, thus several activities are planned for the year.

Providing input into key legislation, regulations and policies will remain an important part of the Commission's work in the strategy period and targets have been set in this regard.

7.7. Corporate Services Division

The Corporate Services Division (CSD) CSD comprises Human Capital, IT, Registry, the Resource Centre, and Security and Facilities.

The Human Capital department plays a critical role in ensuring that staff are motivated and committed to the Commission through its recruitment and selection processes, employee wellbeing, remuneration, learning and development, labour relations and strategic interventions. Performance targets have been set in relation to Learning & Development and employee retention.

The IT department will be central in ensuring the efficient operation of the Commission during 2021/22, and supporting staff with appropriate tools of trade, as many continue to work remotely. The department will lead the implementation of an integrated business system, phased over 3 years- focused on knowledge management, cases management, finance applications.

The Security and Facilities unit is responsible for ensuring a safe and secure environment for all the Commission staff and visitors. The unit oversees security enabling and guarding services, including access control, within the proper guidelines and procedural responsibilities that will ensure a secure physical environment. The department will continue to source appropriate office space that is OHS compliant and to relocate staff during this period. The Resource Centre forms part of the Commission's knowledge management strategy, while Registry) is responsible for document management.

7.8. Finance

The Finance Division provides financial management, supply chain management and asset management support services. The key financial management services include budget development, implementation and monitoring, effective financial management, procurement, management of

resources, financial reporting, and performance management.

Emphasis is placed on continuously improving the budgeting process in a manner that reflects the strategic priorities of the Commission, cash flow management, timely financial reporting and ensuring that policies and activities comply with regulatory frameworks and guidelines. Compliance with statutory and regulatory frameworks remains an important focus as well as improving the data analysis and reporting functions. In its continuous pursuit to maintain a clean audit, the Finance department has set a target for a clean audit for the entire strategic period.

7.9. Office of the Commissioner

The primary role of the Office of the Commissioner (OTC) is oversight on the implementation of the Commission's strategic goals and objectives. In addition to crafting and setting the strategic direction of the Commission and providing necessary insight and guidance, the Office of the Commissioner will ensure that appropriate processes, procedures and structures are in place to enable all programs to achieve against its stated objectives. The primary mechanism to achieve this is the continued operation of the corporate governance program, which enables and supports sound corporate governance within the institutions.

In addition to the above, the International Relations department is also located within the Office of the Commissioner. The Commission will continue with its participation in regional and international forums during 2021/22. The Office of the Commissioner also houses the Communications function, which has the aim of creating public awareness about the Commission's work and advocating and advancing competition.

8. MTEF Outcomes, Outputs, Performance Indicators & Targets

| Outcome | Outputs | Accountable Program | No. | Annual Targets | | | | | | | |
|--|---------------------------------------|---------------------|-----|---|-----------------------------|----------|----------|--------------------------------|-------------|------------|------------|
| | | | | KEY PERFORMANCE INDICATORS | Audited/ Actual performance | | | Estimated performance 2020/ 21 | MTEF Period | | |
| | | | | | 2017/18 | 2018/19 | 2019/20 | | 2021/22 | 2022/23 | 2023/24 |
| STRATEGIC GOAL 1: ENFORCING AND REGULATING TOWARDS ECONOMIC GROWTH AND ENHANCED ECONOMIC PARTICIPATION | | | | | | | | | | | |
| 1. Efficient and effective merger regulation & enforcement | a) Mergers and Acquisitions decisions | M&A | 1. | Average turnaround time for Phase 1 merger investigations. | 20 days | 17 days | 18 days | ≤ 20 days | ≤ 20 days | ≤ 20 days | ≤ 20 days |
| | | M&A | 2. | Average turnaround time for Phase 2 merger investigations. | 45 days | 41 days | 40 days | ≤ 45 days | ≤ 45 days | ≤ 45 days | ≤ 45 days |
| | | M&A | 3. | Average turnaround time for Phase 3 intermediate and small merger investigations. | 58 days | 57 days | 57 days | ≤ 60 days | ≤ 60 days | ≤ 60 days | ≤ 60 days |
| | | M&A | 4. | Average turnaround time for 90% of Phase 3 large merger | 153 days | 119 days | 119 days | ≤ 120 days | ≤ 120 days | ≤ 120 days | ≤ 120 days |

| Outcome | Outputs | Accountable Program | No. | Annual Targets | | | | | | | |
|---------|--|-------------------------|-----|--|-----------------------------|---------|---------|--------------------------------|-------------|---------|---------|
| | | | | KEY PERFORMANCE INDICATORS | Audited/ Actual performance | | | Estimated performance 2020/ 21 | MTEF Period | | |
| | | | | | 2017/18 | 2018/19 | 2019/20 | | 2021/22 | 2022/23 | 2023/24 |
| | | | | investigations. | | | | | | | |
| | b) Compliance monitoring for merger conditions | M&A | 5. | % of imposed merger remedies and conditions monitored. | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| | c) Covid-19 investigations | Advocacy, Cartels & MCD | 6. | % of Covid-19 investigations completed within 12 months. | N/A | N/A | N/A | 1500 | 100% | 100% | 0 |
| | | LSD | 7. | % of Covid-19 cases won at the Tribunal. | N/A | N/A | N/A | 90% | 90% | 90% | 90% |
| | | LSD | 8. | % of Covid-19 cases won at the courts. | N/A | N/A | N/A | 90% | 90% | 90% | 90% |
| | | MCD | 9. | No. of abuse of dominance and restrictive cases initiated related to Covid-19. | N/A | N/A | N/A | N/A | 10 | 0 | 0 |
| | | MCD & Cartels | 10. | % of Covid-19 exemption applications completed within 3 | N/A | N/A | N/A | 100% | 100% | 100% | 100% |

| Outcome | Outputs | Accountable Program | No. | Annual Targets | | | | | | | |
|--|---|---------------------|-----|---|-----------------------------|---------|---------|--------------------------------|-------------|---------|---------|
| | | | | KEY PERFORMANCE INDICATORS | Audited/ Actual performance | | | Estimated performance 2020/ 21 | MTEF Period | | |
| | | | | | 2017/18 | 2018/19 | 2019/20 | | 2021/22 | 2022/23 | 2023/24 |
| | | | | months. | | | | | | | |
| | | ERB | 11. | No of Reports on Food Prices. | N/A | N/A | N/A | 4 | 2 | 2 | 2 |
| 2. Competitive, Contestable and Deconcentrated Markets + 3. Improved public interest outcomes | a) Abuse of dominance and restrictive case investigations | MCD | 12. | No. of abuse of dominance and restrictive cases initiated in prioritized sectors. | 5 | 1 | 2 | 5 | 5 | 5 | 5 |
| | | MCD & Advocacy | 13. | % of market conduct investigations completed within 18 months. | 93% | ≥75% | ≥75% | ≥60% | ≥75% | ≥75% | ≥75% |
| | b) Exemption application decisions | MCD | 14. | % of exemption applications completed within 12 months. | 0% | ≥75% | ≥75% | ≥75% | ≥100% | ≥100% | ≥100% |
| | c) Cartel Investigations | Cartels | 15. | No. of cartel investigations completed. | 28 | 3 | 15 | 5 | 10 | 15 | 15 |
| | d) Cartel prosecutions | Cartels & LSD | 16. | % of cartel cases won at the Tribunal. | 85% | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% |

| Outcome | Outputs | Accountable Program | No. | Annual Targets | | | | | | | |
|---------|--|---------------------|-----|--|-----------------------------|---------|---------|--------------------------------|-------------|---------|---------|
| | | | | KEY PERFORMANCE INDICATORS | Audited/ Actual performance | | | Estimated performance 2020/ 21 | MTEF Period | | |
| | | | | | 2017/18 | 2018/19 | 2019/20 | | 2021/22 | 2022/23 | 2023/24 |
| | | Cartels & LSD | 17. | % of cartel cases won at the courts. | 85% | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% |
| | e) Prosecution of Abuse of dominance and restrictive practices | LSD | 18. | % of market conduct cases won at the Tribunal in relation to abuse of dominance, restrictive practices and exemption litigation. | 100% | ≥70% | ≥70% | ≥70% | ≥70% | ≥70% | ≥70% |
| | | LSD | 19. | % of market conduct cases won at the courts in relation to abuse of dominance, restrictive practices and exemption litigation. | 100% | ≥70% | ≥70% | ≥70% | ≥70% | ≥70% | ≥70% |
| | f) Merger litigation g) | LSD | 20. | % of merger decisions upheld by the Tribunal. | 92% | 67% | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% |
| | | LSD | 21. | % of merger decisions upheld by the courts. | 92% | 67% | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% |

| Outcome | Outputs | Accountable Program | No. | Annual Targets | | | | | | | |
|---|--|---------------------|-----|---|-----------------------------|---------|---------|--------------------------------|-------------|---------|---------|
| | | | | KEY PERFORMANCE INDICATORS | Audited/ Actual performance | | | Estimated performance 2020/ 21 | MTEF Period | | |
| | | | | | 2017/18 | 2018/19 | 2019/20 | | 2021/22 | 2022/23 | 2023/24 |
| STRATEGIC GOAL 2: ADVOCATING FOR IMPROVED COMPLIANCE AND PRO-COMPETITIVE PUBLIC POLICY OUTCOMES | | | | | | | | | | | |
| 4. Improved compliance & awareness | a) Domestic outreach initiatives | Advocacy | 22. | No. of education, training and outreach initiatives conducted on the Competition Act. | 5 | 4 | 2 | 2 | 2 | 4 | 4 |
| | | Advocacy & OTC | 23. | No. of awareness publications on the Competition Act. | N/A | N/A | N/A | 4 | 6 | 4 | 4 |
| | b) External Guidelines on the application of the Act | LSD & ERB | 24. | No. of Guidelines on the application of the Act issued to stakeholders. | 0 | 1 | 1 | 2 | 2 | 2 | 2 |
| | c) Advisory Opinions | LSD | 25. | % of advisory opinions issued within 60 days. | N/A | N/A | N/A | ≥90% | ≥90% | ≥90% | ≥90% |
| 5. Improved understanding of market dynamics in | a) Market inquiries | MCD | 26. | No. of market inquiries initiated. | 2 | 0 | 0 | 1 | 1 | 2 | 2 |
| | | MCD | 27. | No. of market | 0 | 0 | 4 | 1 | 0 | 1 | 1 |

| Outcome | Outputs | Accountable Program | No. | Annual Targets | | | | | | | |
|---|---|---------------------|-----|---|-----------------------------|---------|---------|--------------------------------|-------------|---------|---------|
| | | | | KEY PERFORMANCE INDICATORS | Audited/ Actual performance | | | Estimated performance 2020/ 21 | MTEF Period | | |
| | | | | | 2017/18 | 2018/19 | 2019/20 | | 2021/22 | 2022/23 | 2023/24 |
| priority sectors | | | | inquiries completed. | | | | | | | |
| | b) Industry Scoping Studies | ERB | 28. | No. of industry scoping studies conducted in prioritized sectors. | 0 | 0 | 1 | 0 | 1 | 1 | 1 |
| | c) Impact assessments on Commission decisions or competition policy | ERB | 29. | No. of impact assessment studies completed. | 4 | 1 | 1 | 1 | 1 | 1 | 1 |
| | d) Advocacy in priority sectors | Advocacy | 30. | No. of advocacy cases completed in priority sectors. | N/A | N/A | N/A | 4 | 2 | 4 | 4 |
| 6. Improved co-ordination on the application of economic and competition policy | a) Strategic Partnerships with relevant stakeholders | Advocacy | 31. | No. of workshops or seminars on competition, trade, industrial policy and/or regulatory matters hosted. | 6 | 4 | 2 | 4 | 2 | 4 | 4 |
| | | Advocacy | 32. | No. of outreach activities undertaken in collaboration with Women/Black Business | N/A | N/A | N/A | N/A | 1 | 2 | 2 |

| Outcome | Outputs | Accountable Program | No. | Annual Targets | | | | | | | |
|--|---|---------------------|-----|---|-----------------------------|---------|---------|--------------------------------|-------------|---------|---------|
| | | | | KEY PERFORMANCE INDICATORS | Audited/ Actual performance | | | Estimated performance 2020/ 21 | MTEF Period | | |
| | | | | | 2017/18 | 2018/19 | 2019/20 | | 2021/22 | 2022/23 | 2023/24 |
| | | | | Associations. | | | | | | | |
| | | OTC & ERB | 33. | No. of Annual Conferences hosted. | 1 | 1 | 0 | 1 | 1 | 1 | 1 |
| | Policy Responses | Advocacy | 34. | No. of submissions or responses to policy or regulation. | 6 | 4 | 4 | 4 | 4 | 4 | 4 |
| | Research & Thought Leadership | ERB | 35. | No. of research and thought leadership insights published. | N/A | N/A | N/A | 2 | 4 | 4 | 4 |
| 7. Increased importance of developmental perspectives in domestic and international competition law discourse | a) Collaboration with regional and international partners | OTC | 36. | No. of research projects and/or publications undertaken with African, BRICS and international partners. | 8 | 4 | 4 | 0 | 8 | 8 | 8 |

| Outcome | Outputs | Accountable Program | No. | Annual Targets | | | | | | | |
|--|--|-------------------------|-----|--|-----------------------------|--------------------------------|-------------|--------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| | | | | KEY PERFORMANCE INDICATORS | Audited/ Actual performance | | | Estimated performance 2020/ 21 | MTEF Period | | |
| | | | | | 2017/18 | 2018/19 | 2019/20 | | 2021/22 | 2022/23 | 2023/24 |
| STRATEGIC GOAL 3: A PEOPLE-CENTRIC AND HIGH-PERFORMANCE ORGANIZATION | | | | | | | | | | | |
| 8. Sound Corporate Governance | a) Audit Outcome | Finance | 37. | Audit Opinion. | Clean audit | Unqualified Audit | Clean Audit | Clean Audit | Clean Audit | Clean Audit | Clean Audit |
| | b) Organizational Structure Review | Advocacy, CSD & Finance | 38. | Review of Organizational Structure. | N/A | Draft Organizational Structure | N/A | N/A | Report on Organisational Structure. | N/A | N/A |
| 9. Secure, harmonious, and conducive working environment | a) Conducive Facilities & Efficient Security | CSD & Finance | 39. | Implementation of Phase 1 of integrated business system. | N/A | N/A | N/A | N/A | Report on completed implementation. | Report on completed implementation. | Report on completed implementation. |
| | | CSD & Finance | 40. | Relocate staff to appropriate office space. | N/A | N/A | N/A | 0 | Report on completed implementation. | 0 | 0 |
| | | CSD | 41. | Reports on implementation of the OHS compliance plan. | N/A | N/A | N/A | 100% | 4 | 4 | 4 |
| 10.Highly engaged, | a) Talent Management | CSD & OTC | 42. | % of HR spend in learning and | N/A | 1.5% | 1% | 0.5% | 1% | 1% | 1% |

| Outcome | Outputs | Accountable Program | No. | Annual Targets | | | | | | | |
|------------------------------------|---------|---------------------|-----|--|-----------------------------|---------|---------|--------------------------------|-------------|---------|---------|
| | | | | KEY PERFORMANCE INDICATORS | Audited/ Actual performance | | | Estimated performance 2020/ 21 | MTEF Period | | |
| | | | | | 2017/18 | 2018/19 | 2019/20 | | 2021/22 | 2022/23 | 2023/24 |
| motivated and productive workforce | | | | development. | | | | | | | |
| | | CSD | 43. | % retention rate of staff complement. | 98% | ≥98% | ≥90% | ≥90% | ≥90% | ≥90% | ≥90% |
| | | OTC | 44. | % of staff reached through training academy initiatives. | N/A | N/A | N/A | ≥50% | ≥60% | ≥65% | ≥70% |

9. Annual Indicators and Quarterly Targets - 2021/22

| Outcome | Outputs | Accountable Program | No. | Performance Indicator | Annual Target | Q1 | Q2 | Q3 | Q4 |
|---|---------------------------------------|-------------------------|-----|---|---------------|------------|------------|------------|------------|
| STRATEGIC GOAL 1: ENFORCING AND REGULATING TOWARDS ECONOMIC GROWTH AND ENHANCED ECONOMIC PARTICIPATION | | | | | | | | | |
| 1. Efficient and effective merger regulation & enforcement | a) Mergers and Acquisitions decisions | M&A | 1. | Average turnaround time for Phase 1 merger investigations. | ≤ 20 days | ≤ 20 days | ≤ 20 days | ≤ 20 days | ≤ 20 days |
| | | M&A | 2. | Average turnaround time for Phase 2 merger investigations. | ≤ 45 days | ≤ 45 days | ≤ 45 days | ≤ 45 days | ≤ 45 days |
| | | M&A | 3. | Average turnaround time for Phase 3 intermediate and small merger investigations. | ≤ 60 days | ≤ 60 days | ≤ 60 days | ≤ 60 days | ≤ 60 days |
| | | M&A | 4. | Average turnaround time for 90% of Phase 3 large merger investigations. | ≤ 120 days | ≤ 120 days | ≤ 120 days | ≤ 120 days | ≤ 120 days |
| | | M&A | 5. | % of imposed merger remedies and conditions monitored. | 100% | 100% | 100% | 100% | 100% |
| | b) Covid-19 investigations | Advocacy, Cartels & MCD | 6. | % of Covid-19 investigations completed within 12 months. | 100% | 100% | 100% | 100% | 100% |
| | | LSD | 7. | % of Covid-19 cases won at the Tribunal. | 90% | 90% | 90% | 90% | 90% |

| Outcome | Outputs | Accountable Program | No. | Performance Indicator | Annual Target | Q1 | Q2 | Q3 | Q4 |
|--|--|---------------------|-----|---|---------------|-------|-------|-------|-------|
| | | LSD | 8. | % of Covid-19 cases won at the courts. | 90% | 90% | 90% | 90% | 90% |
| | | MCD | 9. | No. of abuse of dominance and restrictive cases initiated related to Covid-19. | 10 | 5 | 5 | 0 | 0 |
| | | MCD & Cartels | 10. | % of Covid-19 exemption applications completed within 3 months. | 100% | 100% | 100% | 100% | 100% |
| | | ERB | 11. | No. of Reports on Food Prices. | 2 | 0 | 1 | 0 | 1 |
| 2. Competitive, Contestable and Deconcentrated Markets + 3. Improved public interest outcomes | a) Investigation of Abuse of dominance and restrictive practices | Market Conduct | 12. | No. of abuse of dominance and restrictive cases initiated in prioritized sectors. | 5 | 0 | 2 | 2 | 1 |
| | | MCD & Advocacy | 13. | % of market conduct investigations completed within 18 months. | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% |
| | b) Exemption application decisions | MCD | 14. | % of exemption applications completed within 12 months. | ≥100% | ≥100% | ≥100% | ≥100% | ≥100% |
| | c) Cartel investigations | Cartels | 15. | No. of cartel investigations completed. | 10 | 2 | 3 | 2 | 3 |

| Outcome | Outputs | Accountable Program | No. | Performance Indicator | Annual Target | Q1 | Q2 | Q3 | Q4 |
|---|--|---------------------|-----|--|---------------|------|------|------|------|
| | d) Cartel prosecutions | Cartels & LSD | 16. | % of cartel cases won at the Tribunal. | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% |
| | | Cartels & LSD | 17. | % of cartel cases won at the courts. | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% |
| | e) Prosecution of Abuse of dominance and restrictive practices | LSD | 18. | % of market conduct cases won at the Tribunal in relation to abuse of dominance, restrictive practices and exemption litigation. | ≥70% | ≥70% | ≥70% | ≥70% | ≥70% |
| | | LSD | 19. | % of market conduct cases won at the courts in relation to abuse of dominance, restrictive practices and exemption litigation. | ≥70% | ≥70% | ≥70% | ≥70% | ≥70% |
| | f) Merger litigation | LSD | 20. | % of merger decisions upheld by the Tribunal. | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% |
| | | LSD | 21. | % of merger decisions upheld by the courts. | ≥75% | ≥75% | ≥75% | ≥75% | ≥75% |
| STRATEGIC GOAL 2: ADVOCATING FOR IMPROVED COMPLIANCE AND PRO-COMPETITIVE PUBLIC POLICY OUTCOMES | | | | | | | | | |
| 4. Improved compliance & awareness | a) Domestic outreach initiatives | Advocacy | 22. | No. of education, training and outreach initiatives conducted on Competition Act. | 2 | 0 | 1 | 1 | 0 |

| Outcome | Outputs | Accountable Program | No. | Performance Indicator | Annual Target | Q1 | Q2 | Q3 | Q4 |
|---|---|---------------------|-----|---|---------------|-----|-----|-----|-----|
| | | Advocacy & OTC | 23. | Number of awareness publications on the Competition Act. | 6 | 1 | 2 | 2 | 1 |
| | b) External Guidelines on the application of the Act | LSD & ERB | 24. | No. of Guidelines on the application of the Act issued to stakeholders. | 2 | 0 | 1 | 0 | 1 |
| | c) Advisory Opinions | LSD | 25. | % of advisory opinions issued within 60 days. | 90% | 90% | 90% | 90% | 90% |
| 5. Improved understanding of market dynamics in priority sectors | a) Market inquiries | MCD | 26. | No. of market inquiries initiated. | 1 | 0 | 0 | 0 | 1 |
| | | MCD | 27. | No. of market inquiries completed. | 0 | 0 | 0 | 0 | 0 |
| | b) Industry Scoping Studies | ERB | 28. | No. of industry scoping studies conducted in prioritized sectors. | 1 | 0 | 0 | 1 | 0 |
| | c) Impact assessments on Commission decisions or competition policy | ERB | 29. | No. of impact assessment studies completed. | 1 | 0 | 0 | 0 | 1 |
| | d) Advocacy in priority sectors | Advocacy | 30. | No. of advocacy cases completed in priority sectors. | 2 | 0 | 0 | 1 | 1 |
| 6. Improved co- | a) Strategic | Advocacy | 31. | No. of workshops or seminars on | 2 | 0 | 1 | 1 | 0 |

| Outcome | Outputs | Accountable Program | No. | Performance Indicator | Annual Target | Q1 | Q2 | Q3 | Q4 |
|--|---|---------------------|-----|---|---------------|-----|-----|-------------|-----|
| ordination on the application of economic policy and competition policy | Partnerships with relevant stakeholders | | | competition, trade, industrial policy and/or regulatory matters hosted. | | | | | |
| | | Advocacy | 32. | No. of outreach activities undertaken in collaboration with Black Business & Women Associations. | 1 | 0 | 0 | 1 | 0 |
| | | OTC & ERB | 33. | No. of Annual Conferences hosted. | 1 | 0 | 0 | 1 | 0 |
| | b) Policy Responses | Advocacy | 34. | No. of submissions or responses to policy or regulation. | 4 | 1 | 1 | 1 | 1 |
| | c) Research & Thought Leadership | ERB | 35. | No. of research and thought leadership insights published. | 4 | 1 | 1 | 1 | 1 |
| 7. Increased importance of developmental perspectives in domestic and international competition law discourse | d) Collaboration with Regional & International partners | OTC | 36. | No. of research projects and/or publications undertaken with African, BRICS and international partners. | 8 | 2 | 2 | 2 | 2 |
| STRATEGIC GOAL 3: A PEOPLE-CENTRIC AND HIGH-PERFORMANCE ORGANIZATION | | | | | | | | | |
| 8. Sound Corporate Governance | a) Audit Outcome | Finance | 37. | Audit Opinion. | Clean Audit | N/A | N/A | Clean Audit | N/A |

| Outcome | Outputs | Accountable Program | No. | Performance Indicator | Annual Target | Q1 | Q2 | Q3 | Q4 |
|--|--|-------------------------|-----|--|-------------------------------------|------|--------------|------|-------------------------------------|
| | | | | | | | | | |
| 9. Secure, harmonious and conducive working environment | a) Organizational Structure Review | Advocacy, CSD & Finance | 38. | Review of Organisational Structure. | Report on Organisational Structure. | N/A | Final Report | N/A | N/A |
| | b) Conducive Facilities & Efficient Security | CSD & Finance | 39. | Implementation of Phase 1 of integrated business system. | Report on completed implementation. | N/A | N/A | N/A | Report on completed implementation. |
| | | CSD & Finance | 40. | Relocate staff to appropriate office space. | Report on completed implementation. | 0 | 0 | 0 | Report on completed implementation. |
| | | CSD | 41 | Reports on implementation of the OHS compliance plan. | 4 | 1 | 1 | 1 | 1 |
| 10.Highly engaged, motivated and productive workforce | a) Talent Management | CSD & OTC | 42 | % of HR spend in learning and development. | 1% | n/a | n/a | n/a | 1% |
| | | CSD | 43. | % retention rate of staff complement. | ≥90% | ≥90% | ≥90% | ≥90% | ≥90% |
| | | OTC | 44. | % of staff reached through training academy initiatives. | ≥60% | 0 | 0 | 0 | ≥60% |

10. Strategic Risks

| Risk | Risk Mitigation |
|--|---|
| 1. Loss or collapse of cases | <ul style="list-style-type: none"> • Pleading (insist on pleading where cause of action is disclosed sufficiently) • Default application (proceed with default application where respondent does not have good reasons for not responding) • Establishment of partnerships with criminal law enforcement agencies / Memoranda e.g. NPA / SAPS • Performance management system and training • Continuous improvement of case management processes i.e. cases are subjected to the Commission's internal decision-making process • Knowledge management system (KMS) • Assessment of legal strategy in order to fast-track cases |
| 2. Non-compliance with legislation and regulations | <ul style="list-style-type: none"> • Develop and/or implement policies and procedures with compliance framework • Establish sound Governance structures • An internal risk management system has been developed by Commission IT. • Develop a compliance universe • Monitoring and reporting on compliance risks to the Risk and Governance (quarterly), EXCO (monthly) and Audit and Risk Committee (quarterly) |
| 3. Inadequate capacity to perform our functions (both human and tools & equipment) | <ul style="list-style-type: none"> • Approval of organizational structure • Review of HR policies and procedures • Review, finalization and implementation of learning and development strategy • Procurement of appropriate IT tools and software. |
| 4. Fraud and corruption | <ul style="list-style-type: none"> • Annual declaration of conflict of interest from all staff members |

| Risk | Risk Mitigation |
|--|--|
| | <ul style="list-style-type: none"> • Delegation of authority and segregation of duties • Toll-free Fraud and Corruption Hotline • Fraud and risk awareness drive to staff and the public including consequence management (bi-annual) • Bi-annual review of declarations of interests and gifts, and reporting to Risk and Governance and Audit & Risk Committees • Reviews strengthening and implementation of policies and procedures |
| 5. Inadequate information security | <ul style="list-style-type: none"> • Mirroring of all documents/files in the document management system • Encryption of data on laptops • Intrusion, detection and prevention systems (Firewalls) • Attack monitoring system • Regular backups including off-site back- ups and information storage • Surveillance cameras and access controls to information storage areas • SLA on issues of access, vetting with service providers • Policies and procedures (development, review, implementation and monitoring) • Compliance monitoring with legislation (e.g. National Archives and Record Services Act, Promotion to Access of Information Act, Competition Act etc.) • Access control • Delegation of Authority (segregation of duties) |
| 6. Inadequate business continuity management | <ul style="list-style-type: none"> • Daily and weekly back-ups (backup tapes are stored offsite and three sets of backups is available at any given point of time). • Incremental backups are made on case, financial and HR systems every hour to ensure that data is not lost. • Evacuation drills are conducted. • Consideration of the recommendations from the business continuity needs assessment reports. • Creating awareness regarding the business continuity risk (quarterly) |
| 7. Inadequate and non-compliant office space | <ul style="list-style-type: none"> • Sourcing of appropriate office space • Implementation of the OHS Plan |

| Risk | Risk Mitigation |
|---|--|
| 8. Inadequate tools and resources for remote working | <ul style="list-style-type: none"> • Purchase appropriate tools for all affected staff • Ensure secure and reliable connectivity for all affected staff |
| 9. Unavailability of critical staff to perform Commission functions or alternately staff burnout due to irregular working hours | <ul style="list-style-type: none"> • Provide psychosocial support to all employees as they might be infected or affected by Covid19 • Consider cross training and movement of staff across the Divisions to improve their depth of understanding of the Commission functions • Commission to advocate and create awareness on a structured mechanism of remote working |
| 10. Collapse of the Commission IT Systems due to large traffic volumes | <ul style="list-style-type: none"> • Stabilisation of the Commission IT systems to cater for the remote working • Enforcement of the IT Capacity of the Commission to deal with any threats to its systems |
| 11. Inadequate revenue to support enforcement efforts across the range of priority sectors due to deep budget cuts and merger revenue reduction | <ul style="list-style-type: none"> • Government review of funding model of the Commission • Review and potential revision of merger filing fees • Identification of operational savings and efficiencies • Prioritisation around the use of external attorneys & counsel • Continued promotion of organisational in-sourcing policy on economic and financial experts, litigation counsel |
| 12. Failure to prosecute due to inability of Tribunal to conduct trials (in-person) due to Covid-19 pandemic | <ul style="list-style-type: none"> • Defer matters |

11. TECHNICAL INDICATORS DESCRIPTIONS 2021/22

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--|-----------------------------------|-----|---|--|---------------------|
| STRATEGIC GOAL 1: ENFORCING AND REGULATING TOWARDS ECONOMIC GROWTH AND GREATER ECONOMIC PARTICIPATION | | | | | |
| 1. Efficient and effective merger regulation & enforcement | a) Merger & acquisition decisions | 1. | Average turnaround time for Phase 1 merger investigations. | Definition: <ul style="list-style-type: none"> The Commission classifies merger notifications into 'phases', according to the complexity of the cases. Phase 1 investigations are non-complex. Phase 2 investigations require slightly more complex analysis and are unlikely to raise serious competition concerns. Phase 3 investigations require complex analysis, either because of the complex nature of the products and markets, the structure of the relevant markets or the public interest issues the transaction gives rise to. Indicators 1-3 refer to the amount of time the Commission takes to make a decision in a merger review process. Indicator 4 refers to the amount of time the Commission takes to make a decision in 90% of Phase 3 (L) merger cases. Indicator 3 includes both small and intermediate mergers. The Average Turnaround time for indicators 1- 3 is calculated by adding the time taken for decisions on all cases and dividing the total by the total number of cases decided. | M&A |
| | | 2. | Average turnaround time for Phase 2 merger investigations. | | M&A |
| | | 3. | Average turnaround time for Phase 3 intermediate merger investigations. | | M&A |
| | | 4. | Average turnaround time for 90% of Phase 3 large merger investigations. | | M&A |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|----------------------------------|-----|--|--|---------------------|
| | | | | <ul style="list-style-type: none"> To calculate the Average Turnaround time for indicator 4, Phase 3 (L) merger cases must be sorted by turnaround time, the top 10% of cases must be excluded and the Average calculated for the remaining 90% of cases. The target is met if the outcome is less than or equal to the service standard. <p>Purpose/Importance:</p> <ul style="list-style-type: none"> The indicator is a measure of process efficiency. Efficient merger review is important for service-delivery, particularly given the financial and economic implications of mergers. <p>Collection of Data/Method of Calculation:</p> <ul style="list-style-type: none"> Turnaround times are determined by calculating the number of business days following the day of notification until the decision date. The average is calculated by the total number of days divided by the number of transactions. The Mergers divisions has a database of cases generated as and when filed with the Commission. If a Notice of Incomplete merger filing (Form CC13(2)) is issued the turnaround times are calculated from the business day following the receipt of a Complete Filing. | |
| | Compliance monitoring for merger | 5. | % of imposed merger remedies and conditions monitored. | <p>Definition:</p> <ul style="list-style-type: none"> The Commission can approve mergers subject to certain | M&A |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|----------------------------|-----|--|---|-------------------------|
| | conditions | | | <p>conditions being met by the merging parties; or can impose remedies which the merging parties must fulfil. The indicator refers to the monitoring of the implementation of such conditions or remedies.</p> <p>Purpose/ Importance:</p> <ul style="list-style-type: none"> The effectiveness of merger remedies imposed is only evident in their application. Remedies are also legally binding to the parties. It is thus important that the Commission monitors the compliance of the parties thereto. <p>Collection of Data/Method of Calculation:</p> <ul style="list-style-type: none"> All cases approved with conditions or remedies are collected on a divisional database. <p>Reports are received when due from the merging parties.</p> | |
| | b) Covid-19 investigations | 6. | % of Covid-19 investigations completed within 12 months. | <p>Definition:</p> <ul style="list-style-type: none"> The target refers to Covid-19 (price gouging and public procurement) cases which the Commission has decided to refer to the Tribunal for prosecution, 2) cases which the Commission has decided to non-refer. <p>Purpose/Importance:</p> <ul style="list-style-type: none"> Completing the investigation of cases ensures that those parties whom the Commissions alleges to be engaged in Covid-19 related transgression can respond to the charges before the Tribunal, in fulfilment of the mandate of the competition Act. | Advocacy, Cartels & MCD |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|--------------------------|-----|--|--|---------------------|
| | | | | Collection of Data/Method of Calculation: <ul style="list-style-type: none"> The achievement of the target is evidenced by minutes of the CC meeting to refer or non-refer cases to the Tribunal. | |
| | c) Covid-19 prosecutions | 7. | % of Covid-19 cases won at the Tribunal. | Definition: <ul style="list-style-type: none"> Winning means, the relief sought by the Commission is upheld partially or in full or variation thereof by the Tribunal or the courts. The percentage of Covid-19 cases, where a final decision of the Tribunal and or the Courts has been attained, which the Commission wins within the reporting period. The target is not met if the Commission's case is dismissed by the higher court in its entirety. Where the Commission case is partially upheld by the Tribunal or other courts this target is met. This definition excludes cases which are under appeal or review at the courts at the time of reporting. The indicator includes all Covid-19 cases completed through settlement agreements, pre and post referral. The indicator denotes percentage of achievement greater than, | LSD |
| | | 8. | % of Covid-19 cases won at the courts. | | |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|----------------------------|-----|--|---|---------------------|
| | | | | <p>or equal to the target.</p> <p>Purpose/ Importance:</p> <ul style="list-style-type: none"> It is the Commission's goal to successfully prosecute Covid-19 cases. Success at the Tribunal and Courts confirms the rigour applied by the Commission and the correctness of its decisions. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The indicator is determined from orders of the Tribunal and/or the Courts where Covid-19 cases are under litigation. Orders of the Tribunal/courts are accessible to the general public and the Commission keeps records thereof. The annual result must denote <i>actual wins/losses</i> as at year- end for the FY, and not as a cumulative result of the quarterly performance. The data is stored on a shared database on the KMS. The data is captured on the divisional DCT, which indicates the date of the judgement and whether the judgement is in favour of not in favour of the Commission. | |
| | d) Covid-19 investigations | 9. | No. of abuse of dominance and restrictive cases initiated related to Covid-19. | <p>Definition:</p> <ul style="list-style-type: none"> The KPI refers to the number of Covid-19 investigations initiated, including, but not limited to price gouging complaints. | MCD |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|---------|-----|---|---|---------------------|
| | | | | <p>Purpose/Importance:</p> <ul style="list-style-type: none"> Abuse of dominance and restrictive vertical practices have a stifling effect on the economy, particularly in critical times like the national disaster. The Commission would like to be pro-active in identifying Covid-19 related cases for investigation and prosecution. The initiation of a case is the first step towards the prosecution of the conduct- a core business of the Commission. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The Commission initiates investigation on the basis of its own research and intelligence or on the basis of complaints or information received from members of the public. The initiation of a case is evidenced minutes of the CC meeting's decision to initiate a complaint. A list of initiated cases is kept in the Data Compilation Template (DCT) of the division. | |
| | e) | 10. | % of Covid-19 exemption applications completed within 3 months. | <p>Definition</p> <ul style="list-style-type: none"> An exemption application is 'completed' once the Commission meeting has taken a decision to grant or not to grant an exemption to applicants. The Commission Meetings' decision is then published in the Government Gazette. <p>Purpose/ Importance</p> <ul style="list-style-type: none"> The Competition Act provides for firms to apply to the Commission for exemption of compliance to the Act, under | MCD & Cartels |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|---------|-----|-------------------------------|---|---------------------|
| | | | | <p>specific circumstances.</p> <ul style="list-style-type: none"> The Commission anticipate to receive Covid-19 exemption application mainly for the purposes of economic recovery granting exemptions arising from Covid-19 circumstances may facilitate recovery of several sectors in the economy. It is important that decisions on applications are taken judiciously. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The 12 months is calculated from date in which the application is received by the Commission's Registry department, to the date of the CC meeting decision. The achievement of the target is evidenced by minutes of the CC meeting, which indicate the CC's decision to either grant or refuse to grant an exemption. The Commission reports on the time it has taken to process exemption applications which it has taken a decision on. This number may differ from the pool of applications received in the quarter, some of which may not be decided upon at quarter-end. | |
| | f) | 11. | No of Reports on Food Prices. | <p>Definition:</p> <ul style="list-style-type: none"> A report on food prices is a report which comprises an economic study of a market or industry, largely to identify potential competition issues which the Commission can further probe. <p>Purpose/ Importance:</p> | ERB |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--|---|-----|--|--|---------------------|
| | | | | <ul style="list-style-type: none"> The Commission undertakes food price studies to assess markets for potential anti-competitive conduct including price gauging. This work assists the Commission in identifying Covid-19 cases to be initiated. <p>Collection of Data/ Method of Calculation: The achievement of this indicator is evidenced by a report of food prices noted at the CC or Exco Meeting.</p> | |
| 2. Competitive, Contestable and Deconcentrated Markets + 3. Improved public interest outcomes | a) Abuse of dominance and restrictive case investigations | 12. | No. of cases initiated in prioritized sectors. | <p>Definition:</p> <ul style="list-style-type: none"> The KPI refers to the number of Market Conduct investigations initiated, which fall within the Commission's pre-determined priority sectors (see section on Prioritisation within the APP). <p>Purpose/Importance:</p> <ul style="list-style-type: none"> Abuse of dominance and restrictive vertical practices have a stifling effect on the economy, particularly in critical sectors. The initiation of a case is the first step towards the prosecution of the conduct- a core business of the Commission. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The Commission initiates investigation on the basis of its own research and intelligence or on the basis of complaints received from members of the public. The initiation of a case is evidenced minutes of the CC meeting's decision to initiate. | MCD |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|----------------------------------|-----|--|--|---------------------|
| | | | | <ul style="list-style-type: none"> A list of initiated cases is kept in the Data Compilation Template (DCT) of the division. | |
| | b) Market Conduct Investigations | 13. | % of market conduct investigations completed within 18 months. | <p>Definition:</p> <ul style="list-style-type: none"> The 'completion' of a case refers to Commission's decision to refer the case to the Tribunal for prosecution or the decision to non-refer the case (i.e. not to pursue the case further), including cases completed by the screening unit. 'Completed' cases include cases concluded at the 'screening' stage. Market conduct investigations include section 5, 8 and 9 cases, and exclude cartel cases. The indicator excludes cases that are placed on hold. The indicator denotes percentage of achievement greater than, or equal to the target. <p>Purpose/ Importance:</p> <ul style="list-style-type: none"> The Competition Act stipulates a time frame of 12 months within which the investigation of a complaint from members of the public must be finalised. However, it does not stipulate time limits within which to complete investigations initiated by the Commission. Due to the complex nature of investigations, certain matters may take longer than 12 months to finalise. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The target is calculated as follows: "Of the cases completed in the quarter/year, what percentage was completed within 18 | MCD & Advocacy |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|------------------------------------|-----|---|--|---------------------|
| | | | | <p>months?”</p> <ul style="list-style-type: none"> • The 18 months include the time taken by the screening unit to screen the case. • Minutes of the CC meeting will denote the decision for referral or non-referral of the investigations. • The baseline for the calculation of third-party complaints is the actual date of receipt of the complaint by the Commission's Registry. • For Commission's own initiation, the baseline for calculation is the completed and signed CC1 form. | |
| | c) Exemption application decisions | 14. | % of exemption applications completed within 12 months. | <p>Definition</p> <ul style="list-style-type: none"> • An exemption application is 'completed' once the Commission Meeting has taken a decision to grant or not to grant an exemption to applicants. The Commission Meeting's decision is then published in the Government Gazette. • The indicator denotes percentage of achievement greater than, or equal to the target. <p>Purpose/ Importance</p> <ul style="list-style-type: none"> • The Competition Act provides for firms to apply to the Commission for exemption of compliance to the Act, under specific circumstances. • The granting of exemptions can facilitate exports, bring about stability or growth in key industries or promote the participation of | MCD |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|--------------------------|-----|---|--|---------------------|
| | | | | <p>historically disadvantaged groups. It is important that decisions on applications are taken judiciously.</p> <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The 12 months is calculated from date in which the application is received by the Commission's Registry department, to the date of the CC meeting decision. The achievement of the target is evidenced by minutes of the CC meeting, which indicate the CC's decision to either grant or refuse to grant an exemption. The Commission reports on the time it has taken to process exemption applications which it has taken a decision on. This number may differ from the pool of applications received in the quarter, some of which may not be decided upon at quarter-end. | |
| | d) Cartel Investigations | 15. | No. of cartel investigations completed. | <p>Definition:</p> <ul style="list-style-type: none"> The target refers to cartel 1) cases which the Commission has decided to refer to the Tribunal for prosecution, 2) cases which the Commission has decided to non-refer. <p>Purpose/Importance:</p> <ul style="list-style-type: none"> Completing the investigation of cases ensures that those parties whom the Commissions alleges to be engaged in cartel activities can respond to the charges before the Tribunal, in fulfilment of the mandate of the competition Act. | Cartels |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|------------------------|-----|--|---|---------------------|
| | | | | Collection of Data/Method of Calculation: The achievement of the target is evidenced by minutes of the CC meeting to refer or non-refer cartel cases to the Tribunal. | |
| | e) Cartel Prosecutions | 16. | % of cartel cases won at the Tribunal. | Definition: <ul style="list-style-type: none"> Winning means, the relief sought by the Commission is upheld partially or in full or variation thereof by the Tribunal or the courts. The percentage of cartel cases, where a final decision of the Tribunal and or the courts has been attained, which the Commission wins within the reporting period. The target is not met if the Commission's case is dismissed by the Tribunal or the courts in its entirety. Where the Commission case is partially upheld by the Tribunal or other courts this target is met. This definition excludes cases which are under appeal or review at the courts at the time of reporting. The indicator includes cartel cases completed through settlement agreements, pre and post referral. The indicator denotes percentage of achievement greater than, or equal to the target. Purpose/ Importance: <ul style="list-style-type: none"> It is the Commission's goal to successfully prosecute cartelists. Success at the Tribunal and Courts confirms the rigour applied by the Commission and the correctness of its decisions. | LSD & Cartels |
| | | 17. | % of cartel cases won at the courts. | | |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|---|-----|--|--|---------------------|
| | | | | <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The indicator is determined from orders of the Tribunal and/or the Courts where cartel cases are under litigation. Orders of the Tribunal/courts are accessible to the general public and the Commission keeps records thereof. Quarterly results must denote actual wins/losses as at the end of the quarter calculated as a percentage. The annual result must denote <i>actual wins/losses</i> as at year- end for the FY, and not as a cumulative result of the quarterly performance. The data is captured on the divisional DCT, which indicates the date of the judgement and whether the judgement is in favour of not in favour of the Commission. Orders/ decisions of the Tribunal and/or the Courts are accessible to the general public and the Commission keeps records thereof. | |
| | f) Prosecution of Abuse of dominance , restrictive practices and exemption applications | 18. | % of market conduct cases won at the Tribunal in relation to abuse of dominance, restrictive practices and exemption litigation. | <p>Definition:</p> <ul style="list-style-type: none"> Winning means, the relief sought by the Commission is upheld partially or in full or variation thereof by the Tribunal or the courts. The percentage of cases, where a final decision of the Tribunal and or the courts has been attained, which the Commission wins within the financial year. This definition excludes cases which are under appeal or review at the time of reporting, i.e. a Tribunal or other court decisions in favour or against the Commission cannot be counted if it is under appeal or review at the time or reporting). | LSD |
| | | 19. | % of market conduct cases won at the courts in relation to abuse of dominance, restrictive practices and exemption litigation. | | |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|---------|-----|----------------------------|--|---------------------|
| | | | | <ul style="list-style-type: none"> Where the Commission case is partially upheld by the Tribunal or other courts this target is met. The indicator includes enforcement cases (excluding cartels and market inquiries) completed through settlement agreements, both pre- and post- referral. The indicator denotes percentage of achievement greater than, or equal to the target. <p>Purpose/Importance:</p> <ul style="list-style-type: none"> It is the Commission's goal to successfully prosecute contraveners and to ensure that market conduct remedies and exemption decisions are upheld by the Tribunal and the courts. Success at the courts confirms the rigour applied by the Commission and the correctness of its decisions. <p>Collection of Data: Method of Calculation</p> <ul style="list-style-type: none"> The indicator is determined from the number of final Tribunal or court orders issued (excluding cases under appeal or review at the time of reporting) where enforcement cases were under litigation. Orders of the Tribunal/courts are accessible to the general public and the Commission keeps records thereof. Quarterly results must denote actual wins/losses as at the end of the quarter calculated as a percentage. The annual result must denote actual wins/losses as at year- end for | |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|----------------------|-----|---|--|---------------------|
| | | | | <p>the FY, and not as a cumulative result of the quarterly performance.</p> <ul style="list-style-type: none"> The data is captured on the divisional DCT, which indicates the date of the judgement and whether the judgement is in favour of not in favour of the Commission. Orders/ decisions of the Tribunal and/or the Courts are accessible to the general public and the Commission keeps records thereof. | |
| | g) Merger Litigation | 20. | % of merger decisions upheld by Tribunal. | <p>Definition:</p> <ul style="list-style-type: none"> The percentage of the Commission's decisions on contested Large Mergers, reconsideration applications, prior implementation cases and merger reviews which are upheld at the Tribunal and at the courts. This definition excludes cases which are under appeal or review in the courts at the end of the reporting period. i.e. a Tribunal or CAC decision in favour or against the Commission cannot be counted if it is under appeal or review at the time of reporting. This definition includes cases where the Commission recommendation/decision is subsequently amended through (a) negotiations between the Commission and parties and ultimately approved by the Tribunal, and (b) amended through a decision by the Tribunal or the courts. The indicator includes cases completed through settlement agreements, pre and post referral. Where the Commission case is partially upheld by the Tribunal or other courts this target is met. The indicator denotes percentage of achievement greater than, or | LSD |
| | | 21. | % of merger decisions upheld by the courts. | | |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--|----------------------------------|-----|---|---|---------------------|
| | | | | <p>equal to the target.</p> <p>Purpose/Importance:</p> <ul style="list-style-type: none"> The rationality of Commission's decisions is best tested by the Tribunal and the Courts. Decisions upheld by the Tribunal and the Courts confirm the rigour applied by the Commission and the correctness of its decisions. <p>Collection of Data/Method of Calculation:</p> <ul style="list-style-type: none"> The achievement of the indicator is evidenced by the decision of the Tribunal and/or the Courts which pertain to mergers taken within the reporting period. Quarterly results must denote actual wins/losses as at the end of the quarter calculated as a percentage. The annual result must denote actual wins/losses as at year- end for the FY, and not as a cumulative result of the quarterly performance. Orders/ decisions of the Tribunal and/or the Courts are accessible to the general public and the Commission keeps records thereof. | |
| STRATEGIC GOAL 2: ADVOCATING FOR IMPROVED COMPLIANCE AND PRO-COMPETITIVE PUBLIC POLICY OUTCOMES | | | | | |
| 4. Improved compliance & awareness | a) Domestic outreach initiatives | 22. | No. of education, training and outreach initiatives conducted on Competition Act. | <p>Definition:</p> <ul style="list-style-type: none"> Stakeholders refers to government officials, trade unions/ federations, organizations representing business and consumers and the general public. Education, training and Outreach programs refers to educations initiatives which aim to improve stakeholder understanding of the Competition Act, and therefore promoting compliance. | Advocacy |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|---------|-----|--|---|---------------------|
| | | | | <ul style="list-style-type: none"> Workshops or outreach programs conducted refer to those initiated by the Commission. <p>Purpose/ Importance:</p> <ul style="list-style-type: none"> Stakeholder education and awareness on competition law and policy is an advocacy mandate of the Commission. Stakeholders are taught about how to effectively participate in the Commission's processes. The Commission engages in outreach programmes as part of reaching members of the public and publicizing its work and to promote compliance. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The achievement of this indicator is evidenced by a post- event report noted at the CC Meeting. | |
| | | 23. | Number of awareness publications on the Competition Act. | <p>Definition:</p> <ul style="list-style-type: none"> Publications refers to training material including pamphlets, presentations, newsletters, booklets, reports etc. which are used in the process of improving stakeholders' understanding of the competition act <p>Purpose/ Importance:</p> <ul style="list-style-type: none"> Stakeholder education and training on competition law and policy is an advocacy mandate of the Commission. Stakeholders are taught about how to effectively participate in the Commission's processes. | Advocacy & OTC |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|--|-----|---|---|---------------------|
| | | | | <ul style="list-style-type: none"> The Commission engages in education and training and publications as part of reaching members of the public and publicizing its work and to promote compliance. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The achievement of this indicator is evidenced by a Commission Meeting approved publication being uploaded on the Commission's website of distributed to the public. | |
| | b) External Guidelines on the application of the Act | 24. | No. of Guidelines on the application of the Act issued to stakeholders. | <p>Definition:</p> <ul style="list-style-type: none"> Guidelines are detailed explanatory directives on the Commission's policy approach to any aspect of the Competition Act. <p>Purpose/ Importance:</p> <ul style="list-style-type: none"> As the custodian of the Competition Act, the Commission issues Guidelines to stakeholders to guide them on the application of the Act in particular circumstances. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The attainment of the target is denoted by approval of the Guidelines at the Commission Meeting or EXCO. The achievement of this indicator is evidenced by report/guidelines noted at the CC Meeting or EXCO. Details of timelines will be on divisional DCT. | LSD & ERB |
| | c) Training | 25. | % of advisory opinions issued within 60 days. | <p>Definition:</p> <ul style="list-style-type: none"> Non-binding advisory opinion is a written guidance issued by the | LSD |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|---|---------------------|-----|------------------------------------|---|---------------------|
| | | | | <p>Commission.</p> <p>Purpose/ Importance:</p> <ul style="list-style-type: none"> The purpose of the advisory Opinion is to assist the requestor to comply with the provisions of the Act. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The number of advisory opinions issued by the Commission in the relevant reporting period within the service standard. The turnaround time for issuing the advisory opinion will only begin to run from the date that all the relevant information required by the Commission has been submitted. If all the relevant information required by the Commission has not been submitted, the turnaround time will not commence. The achievement of this indicator is evidenced by an advisory opinion noted at the CC Meeting. | |
| 5. Improved understanding of market dynamics in priority sectors. | a) Market inquiries | 26. | No. of market inquiries initiated. | <p>Definition:</p> <ul style="list-style-type: none"> Market Inquiries are a general inquiry into the state of competition in a market, which the Commission undertakes under provisions in the Act. The Initiation of a market inquiry refers to the publication of final Terms of Reference in the Government Gazette. <p>Purpose/ Importance:</p> <ul style="list-style-type: none"> A market inquiry allows the Commission to undertake an in- depth probe of a market in order to understand competition dynamics, without initiating an investigation into particular conduct. | MCD |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|-----------------------------|-----|---|--|---------------------|
| | | | | Collection of Data/ Method of Calculation: <ul style="list-style-type: none"> The achievement of the indicator is determined by the decision of the Commission Meeting to initiate the Market Inquiry. | |
| | | 27. | No. of market inquiries completed. | Definition: <ul style="list-style-type: none"> The 'completion' of a market inquiry refers to the submission of a Final Report on the inquiry to the Commission Meeting. Purpose/ Importance: <ul style="list-style-type: none"> The Final Report of a market inquiry can have actionable recommendations, which have an impact on the public, on Government or on the market. Collection of Data/ Method of Calculation: <ul style="list-style-type: none"> The achievement of the indicator is denoted by the approval of the final market inquiry report by the CC meeting. | MCD |
| | b) Industry scoping studies | 28. | No. of industry scoping studies conducted in prioritised sectors. | Definition: <ul style="list-style-type: none"> A scoping study is a report which comprises an economic study of a market or industry, largely to identify potential competition issues which the Commission can further probe. Purpose/ Importance: <ul style="list-style-type: none"> The Commission undertakes scoping studies to assess markets for potential anti-competitive conduct. This work assists the Commission in identifying not only cases to be initiated but also | ERB |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|--|-----|--|--|---------------------|
| | | | | <p>informs potential market inquiries to be initiated.</p> <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The achievement of this indicator is evidenced by a scoping study report noted at the CC Meeting. | |
| | c) Impact assessments on Commission decisions or competition policy. | 29. | No. of impact assessment studies completed. | <p>Definition:</p> <ul style="list-style-type: none"> 'Impact Assessment Studies are economic studies which have been undertaken by the Commission to measure the impact of its work on markets or regulation. 'Completed' refers to impact assessment studies which have served at the CC meeting. <p>Purpose/ Importance:</p> <ul style="list-style-type: none"> The Commission seeks to qualitatively and quantitatively measure the impact of its decisions in particular sectors on consumers and the economy, to ensure its effectiveness. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The achievement of the indicator is denoted by an impact assessment report which has been approved/ noted at the CC meeting. | ERB |
| | d) Advocacy in priority sectors | 30. | No. of advocacy cases completed in priority sectors. | <p>Definition:</p> <ul style="list-style-type: none"> The KPI refers to the number of advocacy case undertaken which fall within the Commission's pre-determined priority sectors. Advocacy cases refers to those cases or projects initiated by the Commission or resulting from a complaint in which the competition or regulatory issue is to be addressed through non-enforcement, but | Advocacy |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--|---|-----|---|---|---------------------|
| | | | | <p>through advocacy processes.</p> <p>Purpose/Importance:</p> <ul style="list-style-type: none"> Anti-competitive conduct has a stifling effect on the economy, particularly in critical sectors. The completion of an advocacy case seeks to address competition concerns even where the Commission does not seek the prosecution of the conduct. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The completion of an advocacy case is evidenced by minutes of a Commission Meeting decisions to conclude advocacy work on the case. The case is regarded as completed if a phase/part of it is concluded, even if new work is still to be done on the same broader case. A list of completed advocacy cases is kept in the Data Compilation Template (DCT) of the division. | |
| 6. Improved co-ordination on the application of economic policy and competition policy. | a) Strategic Partnerships with relevant stakeholders. | 31. | No. of workshops or seminars on competition, trade, industrial policy and/or regulatory matters hosted. | <p>Definition:</p> <ul style="list-style-type: none"> Workshops or seminars which have been hosted by the Commission within the themes competition, trade industrial policy and/or regulatory matters. <p>Purpose/ Importance:</p> <ul style="list-style-type: none"> The Commission will partner with other economic role- players on competition, trade and industrial policy matters. This work will | Advocacy |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|---------|-----|--|---|---------------------|
| | | | | <p>result in the sharing of ideas, alignment of priority sectors, alignment of policy actions, understanding of each other's priorities, amongst others.</p> <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The achievement of this indicator is evidenced by a post-workshop/seminar memorandum noted at the CC meeting. The workshop/ seminar must have transpired within the reporting period, even if it is noted by the CC meeting in a subsequent reporting period. | |
| | | 32. | No. of outreach activities undertaken in collaboration with Black Business & Women Associations. | <p>Definition:</p> <ul style="list-style-type: none"> The KPI relates to the Commission's initiated collaboration with Black Business & Women Associations on competition law and policy matters. These includes undertaking collaborative research projects, workshops and seminars with Black Business & Women Associations. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The decision on which Black Business & Woman Associations the Commission partners with at a point in time will be in the Commission meeting minutes. The achievement of the target is evidenced by minutes of the CC meeting, noting a report which reflects joint activities undertaken with Black Business & Woman Associations. | Advocacy |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|---------------------|-----|--|---|---------------------|
| | | 33. | No. of Annual Conferences hosted. | Definition: <ul style="list-style-type: none"> The Annual Competition Conference is an event/ meeting of local and international stakeholders, where stakeholders share their research and experiences on common subjects. Collection of Data/ Method of Calculation: <ul style="list-style-type: none"> The achievement of this indicator is evidenced by a post-Conference memorandum noted at the CC meeting. The workshop/ seminar must have transpired within the reporting period, even if it is noted by the CC meeting in a subsequent reporting period. | OTC & ERB |
| | b) Policy Responses | 34. | No. of submissions or responses to policy or regulation. | Definition: <ul style="list-style-type: none"> The KPI relates to written input which reflects the views of the Commission on a particular policy or regulatory matter. Purpose/ Importance: <ul style="list-style-type: none"> The Commission undertakes competition assessment of policy and regulation, according to s.21 of the Act. In addition to informing the Minister of anti-competitive legislation, the Commission submits written responses to the relevant policymakers. Responding to policy or regulatory matters can lead to the promotion of competition which is a core mandate of the Commission. | Advocacy |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|----------------------------------|-----|--|---|---------------------|
| | | | | Collection of Data/ Method of Calculation: <ul style="list-style-type: none"> The achievement of this indicator is evidenced by an approval of a written submissions or policy responses by the CC meeting, within the reporting period. | |
| | c) Research & Thought Leadership | 35. | No. of research and thought leadership insights published. | Definition: <ul style="list-style-type: none"> Research and thought leadership insights are economic studies undertaken by the Commission on current and emerging issues related to competition policy (incl. the state and role of competition) and competition law enforcement (incl. toolkits and techniques). 'Published' refers to research and thought leadership studies which have been published by the Commission (including platforms such as Commission books and working papers published on the Commission's website), published by an international organization or university, published by leading industry online publications (CLI, GCR, CPI), conference papers, book chapters and academic journal articles. Purpose/ Importance: <ul style="list-style-type: none"> The Commission undertakes research into competition policy and law enforcement issues in order to develop a deeper, evidence-based understanding of current / emerging debates in these fields in order to develop informed positions on these issues. The Commission also aspires to take a thought leadership role in | ERB |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--|--|-----|--|---|---------------------|
| | | | | <p>shaping some of the debates in these fields, both locally and internationally. This includes bringing a development perspective to the competition policy field.</p> <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The achievement of the indicator is the publishing of the research or thought leadership insight as defined. | |
| 7.Increased importance of developmental perspectives in domestic and international competition law discourse. | a) Collaboration with regional and international partners. | 36. | No. of collaborative research and/or other projects undertaken with African, BRICS and international partners. | <p>Definition:</p> <ul style="list-style-type: none"> The indicator refers to the Commission undertaking collaborative research projects or other forms of collaboration with African, BRICS and international partners. Research and “Projects refers to joint research on competition issues; capacity building workshops; joint publication of papers, newsletters; participation in surveys and questionnaires; signing of MOUs; management of working groups and case information exchange; participation in and coordination of conferences, engagements and forums. African partners pertain to bilateral partnerships and multilateral/regional bodies such as the African Competition Forum, COMESA and AfCFTA. ‘BRICS’ partners pertain to the BRICS member states. International partners pertain organizations such as OECD, UNCTAD, ICN, | OTC |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|---|------------------|-----|----------------------------|---|---------------------|
| | | | | Purpose/ Importance: <ul style="list-style-type: none"> Through practical collaboration with its African, BRICS and international counterparts, cooperation is deepened, and advances made in increasing developmental perspectives in domestic and international competition law discourse. Collection of Data/ Method of Calculation: <ul style="list-style-type: none"> The achievement of this indicator is evidenced by reports or memos noted at CC meeting. | |
| STRATEGIC GOAL 3: A PEOPLE-CENTRIC HIGH-PERFORMANCE ORGANIZATION | | | | | |
| 8.Sound Corporate Governance | a) Audit Outcome | 37. | Audit opinion. | Definition: <ul style="list-style-type: none"> The target refers to audit outcomes where all areas are unqualified, with no material reportable matters. Purpose/ Importance: <ul style="list-style-type: none"> The Commission seeks to achieve a clean audit in the financial year, as a demonstration of effective resource management. Collection of Data/ Method of Calculation: <ul style="list-style-type: none"> The achievement of this indicator is denoted by a clean audit opinion from the Auditor General Report regarding the financial period under review. The target is measured annually. | Finance |
| | b) Organizatio | 38. | Review of Organisational | Definition: | Advocacy, CSD |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|---|--|-----|--|--|---------------------|
| 9. Secure, harmonious and conducive working environment | nal Structure Review | | Structure. | <ul style="list-style-type: none"> The KPI entails reviewing the current structure and functions of the Commission and developing/designing a revised structure in line with the current mandate of the institution. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The achievement of this indicator is denoted by Report on the new proposed Organisational Design noted at the Commission Meeting or Exco. | & Finance |
| | c) Conducive Facilities & Efficient Security | 39. | Implementation of Phase 1 of integrated business system. | <p>Definition:</p> <ul style="list-style-type: none"> The KPI entails the procurements of the integrated business system, to provide solution for the Commission's IT, Finance and HR. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The achievement of this indicator is denoted by a report on completed implementation noted at the Commission Meeting or Exco. | CSD & Finance |
| | | 40. | Relocate staff to appropriate Commission office space. | <p>Definition:</p> <ul style="list-style-type: none"> Appropriate office space means office building and infrastructure that complies with Occupational Health and Safety (OHS) laws. Target is met when a report denoting that the Commission's employees have been moved to an appropriate office building which complies with the OHS laws has been approved at EXCO. | CSD & Finance |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|---------|-----|---|--|---------------------|
| | | | | <p>Purpose/ Importance:</p> <ul style="list-style-type: none"> To ensure that the Commission staff is working in an appropriate working environment. <p>Collection of Data/ Method of Calculation</p> <ul style="list-style-type: none"> New lease agreement between the Commission and the lessor of the new office space Minutes of EXCO or the CC meeting noting the new or additional office building. | |
| | | 41. | Reports on implementation of the OHS compliance plan. | <p>Definition:</p> <ul style="list-style-type: none"> Anticipation, recognition, evaluation and control of hazards arising in the Commission offices that could impair the health and wellbeing of our employees and visitors. The Commission has an annual OHS compliance plan which denotes quarterly compliance plan (internal & legislated). <p>Purpose/ Importance:</p> <ul style="list-style-type: none"> The purpose of the indicator is to ensure that the Commission offices comply with the occupational health and safety laws. <p>Collection of Data/ Method of Calculation</p> <ul style="list-style-type: none"> The indicator will be reported to EXCO on a quarterly basis and the cumulative total will be reported at the end of the financial year. A quarterly report is issues to report on progress against legislation | CSD |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--|----------------------|-----|--|--|---------------------|
| | | | | <p>and/or the OHS Compliance Plan.</p> <ul style="list-style-type: none"> Achievement of this target is denoted by the report on instances of compliance with the OHS Act and the internal OHS compliance plan for the Commission. | |
| 10. Highly engaged, motivated and productive workforce | a) Talent management | 42. | % of HR spend on Learning and Development. | <p>Definition:</p> <ul style="list-style-type: none"> The Commission aims to spend overall 1% of its human resources costs on learning and development initiatives per annum. <p>The purpose:</p> <ul style="list-style-type: none"> The purpose of the indicator is to ensure that the Commission supports the development of its employees and is able to build an internal talent pipeline. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The indicator will be reported to EXCO on a quarterly basis and the cumulative total will be reported at the end of the financial year. The reason for not setting a quarterly target is because learning and development is cyclical. | CSD &OTC |
| | | 43. | % retention rate of staff complement. | <p>Definition:</p> <ul style="list-style-type: none"> The Commission is instituting programs to maintain high staff-retention levels. The indicator denotes percentage of achievement greater than, or equal to the target. | CSD |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|---------|-----|--|--|---------------------|
| | | | | <p>Purpose/Importance:</p> <ul style="list-style-type: none"> The Commission seeks to ensure sustainable delivery and impact by retaining its employees. <p>Collection of Data/ Method of Calculation:</p> <ul style="list-style-type: none"> The baseline from which this indicator is measured is the Total Staff Complement at the beginning of the Quarter. The indicator <i>excludes</i> graduate trainees. <p>Quarterly performance is measured as follows: Baseline (i.e. staff complement as beginning of Quarter) <i>minus</i> number of staff who have left in the Quarter <i>divided by</i> Baseline <i>multiply by</i> 100.</p> <p>Annual performance is measured as the average of the four quarters (i.e. (Q1+Q2+Q3+Q4) / 400 x 100.</p> | |
| | | 44. | % of staff reached through training academy initiatives. | <p>Definition:</p> <ul style="list-style-type: none"> The KPI measures the percentage of staff, out of the total staff complement, that trained through the academy over the year. <p>Purpose:</p> <ul style="list-style-type: none"> The purpose of the indicator is to ensure that the Commission supports the development of its employees and is able to build internal talent. | OTC |

| STRATEGIC OUTCOMES | OUTPUTS | No. | KEY PERFORMANCE INDICATORS | TECHNICAL INDICATOR DEFINITION | ACCOUNTABLE PROGRAM |
|--------------------|---------|-----|----------------------------|---|---------------------|
| | | | | <p>Method of Calculation</p> <ul style="list-style-type: none"> • The indicator is calculated as a total number of employees who have attended training offered through the Commission's Academy. No double counting of repeat attendees. • The achievement of the target is measured as follows: total staff trained / total staff complement as at end of Q4 x 100. <p>Collection of Data/Evidence</p> <ul style="list-style-type: none"> • The achievement of the target is denoted by a final report at EXCO in Q4 reporting on training attendance over the year, in relation to the target set. • Evidence includes attendance registers signed by each employee who attended the training or evidence of attendance in case of virtual training. | |