



competition commission
south africa

ANNUAL PERFORMANCE PLAN 2020/21

BASED ON STRATEGIC PLAN 2020 – 2025

Re-submitted to the Department of Trade, Industry and Competition on 29 June 2020

MINISTER'S FOREWORD



Mr Ebrahim Patel - Minister of Trade, Industry and Competition

The Revised Annual Performance Plan 2020/21, is hereby submitted in accordance with the Revised Framework on Strategic and Annual Performance Plans.

MR EBRAHIM PATEL

MINISTER OF TRADE, INDUSTRY AND COMPETITION

ACCOUNTING OFFICER'S STATEMENT

Competition regulation in a post-Covid world

The 2020/21 financial year marks the first year of a new five-year strategy for the Commission. The Commission has developed this five-year strategy amid a global pandemic, known as the Covid19. The pandemic will have a significant effect on how the Commission carries out its mandate in the next five years: with the external economic environment severely altered, and the organization's internal operating environment facing constraints, the next five years will be a testing ground on the strength of the institution.

The Commission begins the new 5-year cycle with an enlarged mandate: the amendments of various provisions of the Competition Act were promulgated between February and July 2019. The aim of the new provisions are to open up the economy to small and medium enterprises and to Black South Africans. The amendments addresses 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 vision for the next five years remains that of a growing and inclusive economy, but also an economy that is deconcentrated.

The constraints on South Africa's fiscus have resulted in the reduction of budgets of many state entities by Government; with the Commission's grant allocation for 2020/21 having been reduced by 11%. We also anticipate a significant decline in fees arising from merger filings, the Commission's other source of revenue, up to -67%, as detailed further in this document.

The Auditor-General, has in previous reports of the Commission, expressed concern about the going-concern status of the Commission.

These latest budgetary cuts thus place the Commission in precarious position regarding its continued operations. These budget cuts come at a time when the amount and scope of work that the authority is dealing with has substantially increased. Within two months of the National Disaster declaration, the Commission has received over 1500 complaints- an unprecedented amount. With a staff complement that is unchanged, most of whom are working remotely, this may pose a resultant strain on the institution. Further, 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 investigation.

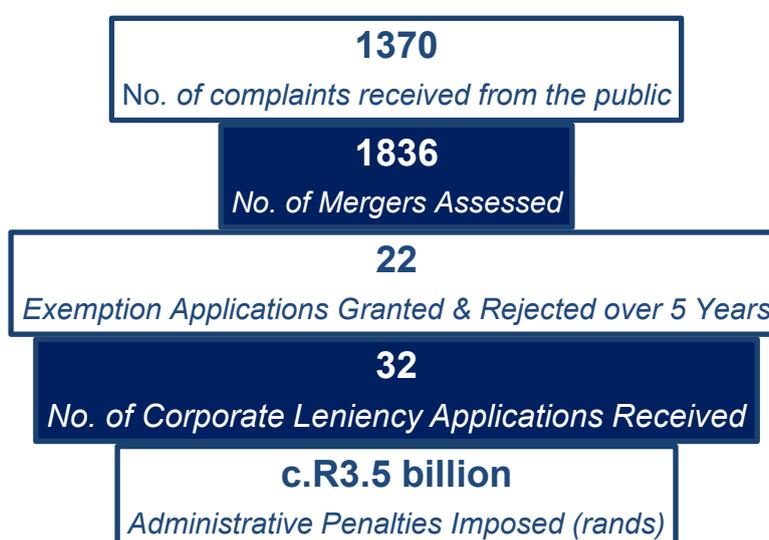
We have thus revised our work program downwards, with plans to undertake less enforcement investigations, advocacy work and market inquiries. Even with these pragmatic changes, captured in the 2020/21 Annual Performance Plan, the Commission is still faced with numerous existing cases

and appeals that it must defend and/or prosecute at the Competition Tribunal, Competition Appeal Court and Constitutional Court. These matters related to prohibited mergers, cartels, abuse of dominance against some of the largest firms nationally and globally.

With the sources of funding uncertain, the time is ripe for the funding model of the Commission to be reviewed.

As we chart a way forward into uncharted terrain, let me begin with a review of the past five years, highlighting key and significant moments in the delivery of strategy 2014/15 -2019/20. A cursory view of the volume and scope of the Commission's work in the five years between 2015/16 and 2019/20 is captured in the diagram below:

Figure 1: Key Commission Statistics Over 5 Years 2015/16 – 2019/20



The Commission initiated five (5) market inquiries in the previous strategic period with the aim of uncovering competition concerns in those markets and coming up with appropriate remedies to restore competition and inclusive growth. The Commission completed the market inquiries in Liquefied Petroleum Gas (LPG), Grocery Retail, Private Healthcare, Data Services Costs and Public Passenger Transport. The recommendations from these market inquiries aim to deconcentrate markets, enable participation of small businesses in the economy and reduce costs of products and services for consumers.

During the past five years, the authorities continued to build on its enforcement agenda with targeted abuse of dominance cases, as well as continued prioritisation of enforcement against cartels.

One of the seminal judgements of the past five years was passed by the Constitutional Court in February 2019, where the court made a final determination on the rights of respondents to the record

of the Commission's investigation.

The case began with a Commission referral to the Tribunal of a complaint against Standard Bank and various other banks for collusion in the foreign exchange market which involved the manipulation of the USD/ZAR currency pair on 15 February 2017. On a different case, the Commission also referred to the Tribunal on 6 February 2018 a complaint against Waco and other respondents for collusion in the ESKOM tender for provision of scaffolding services in its coal fired power stations. Standard Bank approached the Tribunal for an order to compel the Commission to produce its record of investigation in terms of Rule 15 of the Commission Rules. The Tribunal ruled in the Commission favour, however, on appeal, CAC ruled against the Commission. Subsequently, WACO also approached the Tribunal which, following CAC's precedent on Standard Bank, granted the order sought by Waco on Rule 15. The Commission appealed CAC's decisions to the Constitutional Court which upheld the Commission's appeal and set aside CAC order that compelled the Commission to handover its record of investigation. This judgment settled the law in as far as Rule 15 of the Commission Rules is concerned, Rule 15 is not available for any litigant that requires access to the Commission record of investigation in the same way members of the public do.

Another recent judgement of note relates to the Constitutional Court's ruling about the timeframe within which cartel investigations can be launched. In September 2015, the Commission referred 37 instances of collusive tendering against Pickfords to the Tribunal for prosecution. Pickfords filed an interlocutory application with the Tribunal. The Tribunal ruled in Pickfords' favour that the Commission could not investigate and prosecute the 14 cartel instances as these stopped three years before the Commission started its investigation on the matter. The Commission's appeal of the decision was dismissed by CAC. The Commission then approached the Constitutional Court for relief which 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.

The Commission referred a case against Rooibos Ltd to the Tribunal for prosecution. Rooibos Ltd, South Africa's largest processor of rooibos tea, had secured for itself significant volumes of the tea farmed out of South Africa's Cederberg region which is known worldwide for its production of the unique caffeine-free tea containing high levels of anti-oxidants. Rooibos Ltd did this by introducing exclusionary contracting strategies in its dealings with rooibos farmers for the period 2014-2018. Specifically, farmers were required to supply up to half of their production to Rooibos Ltd. The Commission found that Rooibos Ltd's conduct forcibly locked farmers into supplying Rooibos Ltd and prevented its rivals from accessing supplies of rooibos tea for processing. The Commission observed that since the introduction of the exclusionary agreements Rooibos Ltd's volumes of

rooibos tea purchased from farmers, which were in serious decline at the time, significantly escalated and its main rival's purchases of rooibos tea either declined or stagnated, thus threatening the competitive process in this market. This matter is yet to be finalized with the Tribunal.

During the period, the Commission has also saw its highest administrative penalty at R1.5 billion, which the Tribunal imposed on ArcelorMittal South Africa (ArcelorMittal) for contravening the Act. The settlement agreement with ArcelorMittal finalized four complaints of collusion, information exchange and excessive pricing against ArcelorMittal for conduct that took place in the long steel, scrap metal, flat steel and wire mesh markets from at least 2003 to the time of the settlement.

The Commission also referred SA Airlink (Pty) Ltd (SA Airlink), a privately controlled regional feeder airline, to the Tribunal for prosecution on charges of excessive and predatory pricing on the Johannesburg-Mthatha airline route. The Commission's investigation subsequently found that SA Airlink contravened the Act by abusing its dominance from September 2012 to August 2016 in that it charged excessive prices on the Johannesburg-Mthatha route to the detriment of consumers. The Commission concluded that consumers would have saved between R89 million and R108 million had SA Airlink not priced excessively on this route. The Commission believes that lower prices would also have resulted in more passengers travelling by air on the route, possibly contributing to the local economy of Mthatha.

Our investigation also found that the airline engaged in predatory pricing by pricing below its average variable costs and average avoidable costs for some of its flights on the route. In the Commission's view the predatory pricing conduct of SA Airlink contributed to the exit of Fly Blue Crane, their only competitor at the time on the Johannesburg-Mthatha route. The effect of the predation is also likely to deter future competition from other airlines on this route.

Another major referral was against Computicket (Pty) Ltd (Computicket) and Shoprite Checkers (Pty) Ltd (Shoprite Checkers), where the Commission found that the firms were engaged in anti-competitive practices by concluding exclusive agreements with inventory providers for the provision of outsourced ticket distribution services for the entertainment industry. This covers events such as sports, cinemas, theatres, festivals and live events.

This complaint was similar to the case against Computicket which the Commission referred to the Tribunal in 2010, where both the Tribunal and the Competition Appeal Court ruled in favour of the Commission. The allegations in the current Computicket matter are of a similar nature to the ones in the first Computicket matter. The Commission has asked the Tribunal to impose an administrative penalty of 10% of the annual turnovers of both Computicket and Shoprite Checkers.

With regards to cartel enforcement, the Commission filed a referral with the Tribunal against eighteen (18) banks in which the Commission alleged that traders related to the banks had colluded in the market for the exchange of currency, specifically between the US dollar and South African Rand. The Commission supplemented the referral and sought to join a further five banks to the referral.

All of the respondent banks thereafter filed applications raising exceptions to the referral. The grounds of exception were broadly that the Tribunal lacked jurisdiction over certain of the respondents, that the Commission had failed to plead sufficient facts in its referral to sustain a cause of action and that the joinder of the additional parties should not succeed.

The Tribunal identified three broad categories of respondent banks: local, local peregrini and pure peregrini. There were no issues of jurisdiction raised with regard to local banks. The pure peregrini banks were those international banks which had no presence in South Africa. The Tribunal found that it did not have jurisdiction to issue an order requiring the foreign banks (pure peregrini) to pay any administrative penalty. The Commission was also found to not have jurisdiction on pure peregrini banks.

The Tribunal however found that the Commission has jurisdiction over local peregrini banks, that the Commission could seek to extract an administrative penalty, but only to the extent that such a penalty was calculated on the turnover of the representative in the country. Various banks appealed the Tribunal decision to CAC and the Commission cross appealed. The CAC ruled in Commission favour that it has jurisdiction to investigate and prosecute banks that do not have local presence. The CAC ordered the Commission to file new complaint referral demonstrating how the banks conduct of manipulating the ZAR/USD currency pair affected the South African consumers and the economy.

Furthermore, following a cross country dawn raid, the Commission referred a complaint against fresh produce market agents (FPMA's), who acted as intermediaries between farmers and buyers of fresh produce, to the Tribunal alleging that they had engaged in collusion. The complaint against the fresh produce agents was brought to the Commission by the Department of Agriculture Forestry and Fisheries (DAFF) in July 2015.

The Commission found evidence that the FPMAs also agreed and/ or engaged in a concerted practice to fix the commission charged to farmers. The Commission found that the FPMAs charge farmers the same commission of 5% to 6% for potatoes and onions, 7.5% commission on all fruits and vegetables and up to 9.5% for fruits and vegetables without pallets. An estimated 80% of FPMAs in South Africa were members of an association known as the Institute of Market Agents South Africa (IMASA), which was used as a platform to discuss the commission charged and other strategic issues pertaining to the functioning of the fresh produce markets.

The Commission has also been robust in its advocacy activities to ensure broader awareness of the role of the Commission and compliance with the Competition Act. Most importantly, through advocacy efforts the Commission was able to provide inputs into crucial laws and policies such as the National Health Insurance (NHI), ICASA's Sports Broadcasting regulations and the Department of Agriculture, Forestry and Fisheries' (DAFF) draft policies for the allocation and transfer of fishing rights.

The investigation and advocacy into anti-competitive behaviour by school uniform suppliers was undertaken in the previous strategic period. The probe established that a number of schools still had exclusive contracts with one supplier. These contracts didn't go through a competitive and transparent bidding process. Despite finding that the anti-competitive behaviour was rampant, the Commission was reluctant to drag these schools through protracted litigation and distract them from their main function, namely education. We engaged all stakeholders including private schools, suppliers, governing bodies and the government. We agreed on the implementation of school uniform guidelines which would lead to competition in the supply of school uniforms and lead to lower prices. The Commission also entered into agreements with some schools and uniform suppliers. This work will continue to be the focus of the Commission until there is full compliance.

In the past five year, the Commission has analysed an average of 370 mergers each year. During the previous strategic period the Commission had an opportunity to consider the largest merger transaction between Anheuser-Busch InBev SA/NV (AB Inbev) and SABMiller Plc (SABMiller). This was a large global transaction, which raised a number of competition and public interest concerns for the South African market. The merger was subsequently approved subject to conditions addressing a wide range of public interest issues, including AB Inbev's divestiture of its shareholding in Distell and a commitment to make available, over a five-year period, an aggregate amount of R1 billion for investments in South Africa, focusing on agricultural outputs for barley, hops and maize, as well as to promote entry and growth of emerging and black farmers in South Africa.

The Commission also reviewed and recommended the approval, subject to conditions, of a merger in terms of which Sibanye Gold Limited t/a Sibanye-Stillwater (Sibanye) intended to acquire sole control of Lonmin Plc (Lonmin). Sibanye was a holder of mineral reserves and assets allowing it to produce gold and uranium, as well as small amounts of silver as a by-product from its gold production. Sibanye also held reserves and assets allowing it to produce concentrate containing certain Platinum Group Metals (PGMs). Sibanye's main operative PGM mining operations comprised the Kroondal Mine, the Rustenburg Mines, the Stillwater Mining located in the United States of America, and a 50% joint venture indirect interest in the Mimosa Mine located in Zimbabwe. Lonmin also owned various PGM mines/shafts and PGM reserves, various PGM exploration projects, tailings dams, concentrators, a smelting complex and PGM refining facilities, the majority of which were

located in South Africa.

The transaction presented both horizontal and vertical overlaps. All in all, the Commission's investigation found that the proposed merger was unlikely to result in a substantial lessening or prevention of competition in any of the PGM markets affected. However, there were numerous public interest concerns arising from the proposed merger. Some of the public interest concerns were raised by other third parties such as the Association of Mineworkers and Construction Union (AMCU), Solidarity, United Association of South Africa (UASA), Mining Forum of South Africa (MFSA) and the Bapo ba Mogale Community, among others. The concerns arising were varied and included concerns about the negative impact of the merger on employment, concerns relating to procurement from historically disadvantaged persons, honouring existing arrangements with the Bapo ba Mogale Community and honouring of Social and Labour Plans. There were also concerns raised by third parties relating to the operations of Lonmin, that Sibanye does not seem to have an interest in investing in the Lonmin operations that have the potential to be mined and thereby preserve employment. The merger was approved subject to conditions remedying public interest concerns.

The Commission also brought certainty to the application of public interest considerations in merger regulation. The merger review process requires the Commission to take into account not only the impact a merger is likely to have on competition in the market, but also if it can be justified on public interest grounds in accordance with the Competition Act. The Commission published Public Interest guidelines which include the effect of the merger on a particular industrial sector or region; employment; the ability of small businesses, or firms controlled or owned by historically disadvantaged persons to become competitive; and the ability of national industries to compete in international markets. These guidelines aim to make the application of public interest considerations transparent and promote predictability in the analysis thereof.

In conclusion, it is indeed our commitment to ensure that our plans for the next five years 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 Impact, Outcomes and Outputs which the Competition Commission will endeavour to achieve over the period 2020 – 2025.

Signature:  _____

Mr. Amos Moledi, Chief Financial Officer

Date: 29/06/2020 _____


Signature: _____

Mr. Tembinkosi Bonakele, Commissioner

Date: 29/06/2020 _____

Signature: _____

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

Date: _____

Abbreviations

Abbreviation	Full title
ACF	African Competition Forum
BRICS	Brazil, Russia, India, China and South Africa
Commission	Competition Commission South Africa
CSD	Corporate Services Division
CSR	Communications & Stakeholder Relations
DTI	Department of Trade and Industry
EDD	Economic Development Department
EXCO	Executive Committee
GDP	Gross Domestic Product
HMI	Health Market Inquiry
ICN	International Competition Network
IPAP	Industrial Policy Action Plan
ICT	Information and Communication Technology
KMS	Knowledge Management System
LSD	Legal Services Division
MOU	Memorandum of Understanding
MANCOM	Management Committee (Divisional Managers, Principals, Heads of Department)
MCD	Market Conduct Division
M&A	Mergers and Acquisitions
MSA	Medical Schemes Act
MTEF	Medium Term Expenditure Framework
NDP	National Development Plan
NEDLAC	National Economic Development and Labour Council
NGP	New Growth Path
OECD	Organization for Economic Cooperation and Development P&R Policy and Research
OTC	Office of the Commissioner
Tribunal	Competition Tribunal South Africa

Table of Contents

MINISTER'S FOREWORD	2
ACCOUNTING OFFICER'S STATEMENT	3
INTRODUCTION.....	14
PART A: OUR MANDATE.....	17
1. RELEVANT LEGISLATIVE AND POLICY MANDATES	17
1.1. THE COMPETITION ACT.....	17
1.2. AMENDMENTS TO THE COMPETITION ACT.....	18
1.3. COVID-19 COMPETITION REGULATIONS	22
2. UPDATE TO RELEVANT COURT RULINGS.....	24
PART B: SITUATIONAL ANALYSIS	27
3. EXTERNAL ENVIRONMENTAL ANALYSIS	27
3.1. ECONOMIC OUTLOOK	27
3.2. IMPACT OF COVID-19 PANDEMIC ON MERGER ACTIVITY.....	30
3.3. THE ECONOMIC POLICY FRAMEWORK	32
3.4. GLOBAL AND REGIONAL COMPETITION POLICY DEVELOPMENTS	36
4. INTERNAL ENVIRONMENTAL ANALYSIS	38
4.1. CASE PIPELINE MANAGEMENT	38
4.2. IMPACT OF COVID-19 ON CORPORATE SERVICES.....	40
4.3. INFORMATION COMMUNICATION TECHNOLOGY (ICT) ENVIRONMENT.....	41
4.4. ORGANIZATIONAL STRUCTURE	41
PART C: MTEF PERFORMANCE PLAN.....	42
5. FINANCE	42
5.1. EXPENDITURE ANALYSIS	42
5.2. MATERIALITY FRAMEWORK.....	44
6. PRIORITY SECTORS.....	45
7. PERFORMANCE PROGRAMS.....	49
7.1. MERGERS & ACQUISITIONS DIVISION	49
7.2. CARTELS DIVISION	49
7.3. MARKET CONDUCT DIVISION	50
7.4. LEGAL SERVICES DIVISION.....	50
7.5. ECONOMIC RESEARCH DIVISION	51
7.6. ADVOCACY DIVISION.....	52
7.7. CORPORATE SERVICES DIVISION	52
7.8. FINANCE	53

7.9. OFFICE OF THE COMMISSIONER	53
8. MTEF OUTCOMES, OUTPUTS, PERFORMANCE INDICATORS & TARGETS	55
9. ANNUAL INDICATORS AND QUARTERLY TARGETS - 2020/21.....	62
10. STRATEGIC RISKS	68

List of Tables

TABLE 1: KEY COURT RULINGS - 2014-2019.....	24
TABLE 2: EXPENDITURE ANALYSIS AND ESTIMATES	43
TABLE 3: EXPENDITURE PER MAIN ITEM.....	43
TABLE 4: REVENUE	44

List of Figures

Figure 1: Key Commission Statistics Over 5 Years 2015/16 – 2019/20.....	4
Figure 1: Commission’s Vision, Mission & Goals	15
Figure 3: Case Pipeline Process- Enforcement.....	39

INTRODUCTION

The Commission has developed this Annual Performance Plan (APP) based on the 2020/21 – 2024/25 Strategic Plan. 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 Commission begins its new five-year strategy amid a global pandemic, known as Coronavirus Disease 2019' (Covid-19), which has impacted all spheres of life across the globe. The impact of the national state of disaster and the nationwide lockdown, in response to the pandemic, has necessitated the need a review the Commission's 2020-2025 Strategic Plan and 2020/21 Annual Performance Plan to ensure that both plans respond to the Covid-19 pandemic and continued service delivery in the current financial year. The current national response to Covid-19 has impacted the Commission's operating environment significantly, hence the need to revise the Strategic Plan and the Annual Performance Plans.

Furthermore, given the recent amendments to the Competition Act it became necessary that the Commission incorporates some of the new objectives in its planning. In this regard, the Commission has defined three broad Strategic Outcome-Oriented goals together with 12 Outcomes.

The Commission has defined 41 Performance Indicators which it seeks to achieve in the MTEF; some of these activities will not be pursued in the 2020/21 financial year due to resource constraints.

This Annual Performance Plan for 2020/21 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 a context in which 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 five years, along with the Budget and identified Risks.

Below is the vision, mission and the three goals, that the Commission will pursue in the next five years:

Figure 2: 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

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 consumer 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.

2. UPDATE TO RELEVANT COURT RULINGS

The table below summarizes key cases that have contributed to jurisprudence over the last 5 years.

Table 1: Key Court Rulings – 2014/15 -2019/20

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	A price that is significantly less than the economic value falls short of being an excessive price.
4.	Uniplate v Competition Commission	The test of likely foreclosure also requires factual evidence of that likely foreclosure.
Cartel		
5.	Bank of America Merrill Lynch & Others v Competition Commission	The Competition Appeal Court confirmed that South African competition authorities have jurisdiction to prosecute international cartels which have an effect within South Africa
6.	Competition Commission v Primedia (Pty) Ltd & Avusa Limited	Element of Implementation required for collusive agreements entered into before the Competition Act came into force.
7.	Competition Commission v Omnico (Pty) Ltd & Coolheat Cycles Agencies	Passive participation in cartel conduct / distancing oneself from conduct.
Cartel - Initiation		
8.	Omnia Fertiliser Limited v Competition Commission	Restatement of Yara principles - valid referral of complaint on the basis of a tacit initiation.
9.	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.

10.	Mondi Limited & Another v Competition Commission	Access to the record of the decision to initiate pending review.
Leniency		
11.	Blinkwater Mill (Pty) Ltd v Competition Commission	Confirmation of Commission's discretion in applying its Corporate Leniency Policy.
12.	Competition Commission v Allens Meshco	A marker and leniency applications are separate and distinct from one another.
Single Economic Entity		
13.	Delatoy Investment v Competition Commission	A "group of firms" may constitute a "firm".
Characterization		
14.	Dawn Consolidated Holdings (Pty) Ltd and Others v Competition Commission	Development of the principle of characterization.
	Africa Pest Prevention CC v the Competition Commission	Characterization on the basis that an individual representing two different firms cannot collude with herself.
Administrative Penalty/Settlement		
15.	Competition Commission and ArcelorMittal South Africa Limited	Highest penalty imposed on a single firm in a settlement agreement.
16.	Competition Commission v Life Healthcare Group & Joint Medical Holdings Ltd	Highest penalty imposed for failure to notify and prior implementation of a merger.
17.	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.
18.	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.
19.	Competition Commission v Vodacom	Consent Agreement in terms of which Vodacom agrees to reduce its retail data prices, zero-rating public sites, provide access to free basic data and enhance data pricing transparency to its customers.
20.	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.

21.	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		
22.	Competition Commission v Hosken Consolidated Limited and Tsogo Sun Holdings Ltd	Once a firm has acquired control over another firm in 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.
23.	SOS SABC & Multichoice v Competition Commission	Confirmation of Commission’s powers to investigate the notifiability of mergers.
Merger control – conditions		
24.	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.
Mergers – Public interest		
25.	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		
26.	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.
Civil claims for loss or damage		
27.	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		
28.	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 .
29.	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		
30.	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.

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. The necessity to contain the spread of the virus globally and within nations has led to widespread restrictions of the movement of people between nations and lockdowns of national economies. South Africa has been 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 is that global demand has collapsed, pushing the world into a global recession where the current IMF expectation is that global GDP will shrink in the order of 5% in 2020. Forecasts for South Africa are being continually revised, but a contraction in the region of 7% is expected, with a potential to put 1.5m people out of work.

The initial panic and uncertainty saw stock markets collapse and a large depreciation in emerging market currencies as investors fled to secure more secure assets. The Rand depreciated by circa 30% from the end of February through to late April. Global spikes in demand for hygiene and healthcare

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

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.

Gradually more stability has returned to markets as greater certainty has emerged about the virus itself and its likely economic impact. This has seen stock markets recover, more stability in food prices and some reversal in the fortunes of the Rand. Price gouging has become less of a concern, with a shift now to rebuilding the economy. That process has begun with economies starting to emerge from hard lockdowns, allowing much more economic activity to resume whilst trying to contain the health risks. However, it is apparent that economic activity is likely to see disruptions throughout 2020 as outbreaks close commercial operations and individuals go into quarantine. The drop in local and global demand will see contraction in 2020 and most likely 2021, with full recovery to growth expected only in 2022. Most governments including our own have resorted to stimulus packages to try contain widespread company failures and large job losses. This in turn will see increasing government debt levels, exacerbated by lower revenue receipts. The slow growth in the South African economy pre-COVID and existing government debt challenges has limited the size and scope of a stimulus package domestically.

The impact of COVID-19 on different sectors of the economy has varied considerably, albeit that going forward all sectors will 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 once-off liquidity shock from closure for a few months which will have pushed many into closure and have a lasting effect on others. The liquidity crisis was contained to some extent by payment holidays, debt forgiveness and rental reductions facilitated through the exemptions to banks & retail property owners. Finally, some sectors are likely to be impacted for a much longer period due to extended closures and customers trying to limit their exposure to one another even after lockdown restrictions are lifted. These include air transport, tourism and personal services. 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 travellers.

The economic conditions and its impacts on markets are likely to 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. This is likely to result in increased concentration in the economy and distressed mergers aimed at consolidation. However, merger activity in general is likely to initially reduce as fewer companies may have the cash and appetite for acquisitions.

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 a 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 such as to not result 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. 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. Impact of Covid-19 pandemic on Merger Activity

The COVID-19 pandemic is 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 2020/21 financial year. The pace of merger activity has slowed significantly since the start of the 'hard lockdown' on 27 March 2020.

Merger filings have decreased by 60% from 66 in the first quarter of 2019/20 financial year to 26 at 26 June 2020.² The trend is expected to persist for the rest of the financial year due the continued

² The calculation is based on the number of merger filings as at 26 June 2019 compared to the filings to date (26 June 2020) and therefore does not account for the full first quarter to end June.

uncertainty associated with the effect of COVID-19 on economic activity.

The Commission also expects to see an increase in 'distressed' or failing firm mergers due to the significant negative effect of the COVID-19 pandemic on demand and the disruptions to global supply chains. In the first quarter, the Commission has already assessed four mergers in which firms have claimed financial distressed worsened by the COVID pandemic. The Commission also understands that there has been a significant rise in the number of business rescue applications.

As at 02 June 2020, CIPC already reported 20% more business rescue applications than in the entire 2019 calendar year.³ The upsurge in failing firm 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 savings 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.⁴ 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 firms.⁵ 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. In the first quarter of 2020, the

³ Communication with CIPC. 02 June 2020.

⁴ European Commission. 25 March 2020. *Guidance to 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

⁵ 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>

Commission has commenced investigations into four firms that have ostensibly effected retrenchments in response to the COVID-19 pandemic. The Commission is also evaluating the changing circumstances of a national retailer that entered into supply commitments with an upstream manufacturer which it is unable to honour ostensibly due to increased financial precarity as a result of lockdown trading restrictions. With respect to employment conditions in particular, the merits of each case will have to be considered carefully in order 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.

3.3. 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 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 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.⁶

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 licensing⁷ 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.⁸

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.⁹

In August 2019, the National Treasury released a discussion document around the country's economic reform agenda titled "Economic Transformation, Inclusive Growth, and Competitiveness:

⁶ <https://www.gov.za/speeches/president-cyril-ramaphosa-economic-stimulus-and-recovery-plan-21-sep-2018-0000>

⁷ <https://www.gov.za/speeches/president-cyril-ramaphosa-economic-stimulus-and-recovery-plan-21-sep-2018-0000>

⁸ ICASA. 2019. *ICASA is ready to engage stakeholders on the process leading up to the licensing of high demand spectrum*

⁹ 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

Towards and 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 in South Africa, 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 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 SOE’s and improving spending efficiency and reducing waste.¹⁰

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 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.

¹⁰ National Treasury. 2019. Medium Term Budget Policy Statement, 30 October 2019, page 3 -7.

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 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 SOE's, 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.

More recently, on 24 June 2020, Minister Tito Mboweni delivered a revised national budget, which outlines some of government's plans to cope with the impact of the Covid-19 crisis. There have been significant adjustments to align 2020/21 spending plans and the division of revenue with core health and economic relief priorities. This special-adjustment budget revises government's spending plans for 2020/21 in line with the fiscal relief package announced in April 2020. Consolidated government spending for 2020/21 has been revised from R1.95 trillion as tabled in February to R2.04 trillion, mainly due to additional funding of R145 billion allocated for government's COVID-19 response. Net in-year suspensions of spending amounting to R100.9 billion have been implemented for national departments, provinces and local government.

The minister emphasized that Covid-19 pandemic underlines the urgent need for broad-based reforms at state-owned companies so that they can become efficient and financially sustainable. These reforms include rationalisation, equity partnerships, and stronger policy certainty and implementation. Furthermore, government will pilot zero-based budgeting where every year the budget will be started from scratch.

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.

3.4. 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 hoped 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.

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 will be 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.

The Commission has noted the development in the TFTA and the ACFTA as it has implications on competition policy in the regional environment.

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.

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. It should be noted that the interventions aimed at developing an enabling environment that effectively supports the performance of the Commission has been impacted by the organization's funding constraints. A key decision taken by the Commission to address its constrained funding environment is that initiatives that require sourcing of external expertise (outsourcing) will be limited to mission-critical interventions during 2019/20.

The Covid-19 pandemic has had a profound impact on the Commission's operations, as detailed below:

4.1. Case Pipeline Management

Within two months of the declaration of the National Disaster in mid-March 2020, the Commission received over 1500 complaints from the public. In response to the high volume of complaints that were coming in daily, the Commission established a "hotline number" to which members of the public could send complaints via sms. This necessitated a re-organisation of our work, including suspending all investigations that were not related to Covid 19 (except Mergers & Acquisition applications) and creating a singular investigation team comprising all core staff for the period. The Commission also developed

internal guidelines for investigators to use in order to fast-track investigations, and establish a new standard in the investigation and prosecution of these types of cases.

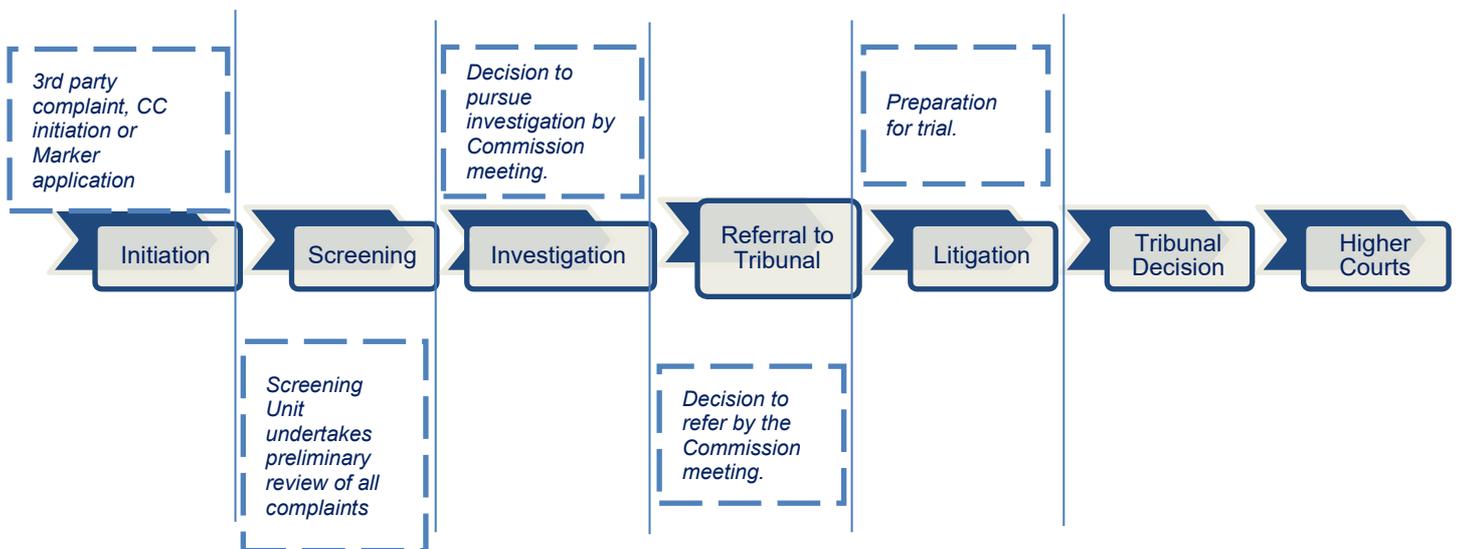
Following preliminary investigations (screening), it was established that over half of the complaints received were not related to Covid19 price hikes or to the regulations, but rather, often, general enquiries about the lockdown. Of the balance of relevant cases, the Commission’s investigation and prosecutorial teams have worked excessively long hours to resolve the matters. This resulted in successful prosecutions at the Competition Tribunal, with some precedent-setting orders emerging.

With the easing of lockdown rules by the Government, the Commission has resumed its full operations. The resumption of Cartel enforcement, the continuation of Market Inquiries and Advocacy work, the initiation of market conduct investigations, the undertaking of Merger inquiries in May/June 2019 is thus with the added workload of the balance of Covid19 cases that are yet to be completed. With such large volumes of cases, coupled with a static resource pool, there is a risk of “bottlenecks” arising in the case pipeline, with matters likely taking longer to conclude.

Table 2: Covid19 Complaints Received Since declaration of National Disaster

Cases Received	21 April 2020	28 April 2020	01 May 2020	04 May 2020	06 May 2020	08 May 2020	15 May 2020	22 May 2020	29 May 2020	5 June 2020	12 June 2020	19 June 2020	25 June 2020
Relevant (Related to Covid-19 regulations)	272	473	546	598	649	683	709	742	749	775	781	791	800
Irrelevant (Not related to regulations)	442	516	523	585	615	628	664	715	722	744	753	765	771
To be determined (screening)	93	55	0	0	0	0	29	10	10	0	4	0	0
Total	996	1044	1069	1183	1264	1311	1402	1467	1481	1519	1538	1556	1571

Figure 3: Case Pipeline Process- Enforcement



4.2. Impact of Covid-19 on 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 thus commenced 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, should also be integrated with the DTIC's broader campus safety regulations and related matters.

The Commission has also commenced the development of an enhanced Mental Health and Employee Welfare policy, to mitigate and manage the risks and psycho-social challenges due to the impact of

Covid-19. Lastly, all 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, in order to give effect to the recommendations. The project was not implemented to financial constraints. Considering such constraints, the approach that will be adopted by the Commission is to focus on providing basic tools-of-trade to support the ICT environment and implement upgrades on some of the current dated systems in a phased approach depending on resource availability.

4.4. Organizational Structure

The Commission has reviewed the design of its organization structure, to ensure alignment with its strategy and to consider amendments to the Competition Act. The following considerations have been

made in 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, restrictive practices and 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).

The impact of the Covid-19 pandemic on the Commission's workforce and on its workload necessitates that the revision of the organizational structure receives urgent attention. The proposed organizational structure is with the Ministry for decision.

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 3: Expenditure Analysis and Estimates

EXPENDITURE PER STRATEGIC OBJECTIVE	2020/21 ANNUAL BUDGET	2021/22 ANNUAL BUDGET	2022/23 ANNUAL BUDGET
Goal 1: Enforcing and Regulating towards economic growth and enhanced economic participation	190 784 679	231 110 267	237 550 030
Goal 2: Advocating for improved compliance and pro-competitive public policy outcomes	17 650 454	24 358 000	25 376 900
Goal 3: A people-centric and high-performance organization	118 587 460	124 516 833	130 742 675
TOTAL	327 022 593	379 985 100	393 669 605

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 4: Expenditure per Main Item

TOTAL EXPENDITURE PER MAIN ITEM	2020/21 ANNUAL BUDGET	2021/22 ANNUAL BUDGET	2022/23 ANNUAL BUDGET
Human Resources	223 974 143	254 764 501	259 862 210
Premises & Equipment	23 118 937	44 719 289	49 191 218
Other Operational	5 708 744	10 307 814	10 823 205
Research & Information	2 101 167	2 225 379	2 358 902
IT and Systems Development	7 808 750	2 974 791	3 153 278
Educational Awareness	3 119 063	7 005 799	7 356 089
Case Related Costs	39 999 982	42 242 288	44 354 402
Capital Expenditure	6 890 223	2 504 989	2 668 038
Depreciation	5 335 042	3 825 381	4 016 650

Other Program Costs		8 966 542		9 414 869		9 885 613
TOTAL		327 022 593		379 985 100		393 669 605

- The staff complement is expected to increase by an additional 4% above inflation from 2022/23, occasioned by the additional mandate arising from the new amendments.
- Other program costs will decrease as the Health Market Inquiry reaches its conclusion.

Table 5: Revenue

Revenue	2020/21 Annual Budget	202/22 Annual Budget	2022/23 Annual Budget
Mergers and Acquisitions*	27 895 333	29 290 100	30 754 605
Government Grant	294 093 000	348 695 000	360 915 000
Interest Received	5 034 260	2 000 000	2 000 000
TOTAL	327 022 593	379 985 100	393 669 605

- We have provided an estimate of merger fees based on the current trend of filing.
- In the 2020/21 financial year the Commission's budgeted revenue amount was revised from R417,2 million to R327 million. This resulted in a decrease of 22% from the original budget.
- The budget for the 2019/20 financial year was R376,7 million. This resulted in a 13,2% decrease from the 2019/20 to 2020/21.
- The decrease in revenue is due to low Mergers and Acquisitions fee income and the reduction of the Government Grant baseline due to the change in the public spending priorities.
- The government grant was reduced by 11% as a result of the impact of Covid-19.

5.2. Materiality Framework

Due to the nature of the business of the Competition Commission (it is not a capital intensive business) the best indicator with regard to 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 0.5% of expenditure with regard to this framework. The implications, based on the estimated expenditure, are summarized as follows:

	%	2020/21	2021/22	2022/23
EXPENDITURE	0,5%	327 022 593	379 985 100	393 669 605
Materiality		1 635 113	1 899 926	1 968 348

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	<p>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.</p>	<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	<p>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 strikes a balance between supporting the efficiencies and consumer benefits often arising whilst addressing</p>	<ul style="list-style-type: none"> • ICT infrastructure • Data • Broadcasting • Platforms, Big Tech, FinTech & E-commerce • Infant industries

Sector	Rationale	Sub-sectors
	<p>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) 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</p>	<ul style="list-style-type: none"> • Automotive Aftermarkets: services & repairs, short-term insurance • Automotive Components • Ports & Rail

Sector	Rationale	Sub-sectors
	<p>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"> • Public Passenger Transport
<p>5. Construction services, Property & Infrastructure</p>	<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 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>	<ul style="list-style-type: none"> • Construction services • Residential estates • Property finance • Built Environment Professionals • Bid-rigging
<p>6. Banking & Financial Services</p>	<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</p>	<ul style="list-style-type: none"> • Banking • Property finance • Insurance • Audit Profession

Sector	Rationale	Sub-sectors
	element will be monitored.	
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/co rrugated 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. The investigation into various pharmaceutical drugs will continue in this period.</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 • 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 lessening of competition to the detriment of consumers and the public interest 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. Despite the trends noted in merger activity, 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 and administers the Commission's Corporate Leniency Program. Cartel conduct includes price fixing, market allocation and collusive tendering or bid rigging.

The Commission has had significant successes with uncovering cartel conduct through its Corporate Leniency Program. The Fast Track Construction Settlement Project, for example, provided the Cartels Division with the necessary experience to manage large scale interventions into cartel activity in priority sectors.

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 has reduced the targets for cartel investigations due to resource constraints and will instead direct resources to litigating select key cases in the courts. In response to anticipated large-scale procurement by Government in response to Covid-19, public procurement will remain a particular focus, both for cartel enforcement and advocacy action.

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 2019/20, 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 2020/21 financial year. Due to the Covid-19 state of the markets, we will also pay attention to the conduct of dominant firms and thus have set a target to initiate 4 cases in the year. The high volume of these cases will impact the turnaround time take to complete investigations, and as such, we have extended this from 12 to 18 months.

Having identified digital economy as a priority, the Commission intends to initiate a market inquiry into e-commerce platforms in the fourth quarter, with a particular focus on SMEs on such platforms. The market inquiry into Public Passenger Transport will also be completed in the financial year.

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 serves as the exit point for the 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 2020/21, 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.

In prosecuting Covid-19 cases, the Commission aims to refer matters to the Tribunal within 10 days of deciding. The aim is to ensure the speedy resolution of matters and to bring necessary relief to parties who may be harmed by price gouging conduct.

The post-Covid-19 economy has required collaboration and co-ordination between Government and the private sector, and also amongst industry players. Legal services division will play a central role in deciding on Block Exemption applications during this period.

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.

In response to the Covid-19 economic challenges, the Commission will undertake an impact assessment, beginning in Q4, to assess the effectiveness of the Government's stimulus package and relief efforts during the state of national disaster. The research will assist in directing enforcement efforts. Further, an impact assessment in Forestry will be undertaken in the financial year, reviewing the Commission's efforts and interventions in this market.

The ERB is central in drafting economic Guidelines on the application of the Act and will be supporting education & awareness activities related to Buyer Power and Price Discrimination Guidelines which were published in the last financial year.

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 2020/21 while focusing on key constituencies within Government, business and civil society, including the youth. Furthermore, there will be strategic interactions with economic partners on areas of commonality.

The Commission will continue its Advocacy work in 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. This includes awareness-raising efforts related to Covid-19.

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. The focus of the division is also on advocacy work arising from Market Inquiries; monitoring the implementation of recommendations of previous inquiries will form the work program for 2020/21.

7.7. Corporate Services Division

The Corporate Services Division (CSD) has two primary functions, namely, the management of Human Capital as well as Systems and Information.

CSD 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.

CSD also comprises other functions including IT, Registry, the Resource Centre, and Security and Facilities. IT should understand the problems and needs of the Commission as the basis for determining how IT can be used to bring about improvements for the business, leading to improved business

processes, improved information systems, new or improved computer applications and knowledge sharing.

The priorities for the business unit are focused on managing the Commission's high retention rate through relevant HR policies and practices, whilst also investing in Learning & Development initiatives. Further, the division intends to source appropriate office space that is OHS compliant and to relocate staff during this period. 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 Resource Centre forms part of the Commission's knowledge management strategy, while Registry (formerly located in the OTC) is responsible for document management.

With the strain and constraints on human capital and physical resources brought about by the Covid-19 pandemic, the Commission has set several targets aimed at maintaining a conducive, developmental and supportive work environment for staff. As such, several indicators related to Human Capital Development have been set for the 2020/21 financial year, although targeted budget for learning and development has been reduced to 0.5%, taking into account financial constraints.

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, timeous 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. Participation in important international networks and fora will be limited during 2020/21; the Commission will not be contributing to or participating in projects by regional, continental and international fora. This work could be resumed in the outer years of the MTEF should the Commission's resource position improve. 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.	KEY PERFORMANCE INDICATORS	Annual Targets						
					Audited/ Actual performance			Estimated performance 2019 / 20	MTEF Period		
					2016/17	2017/18	2018/19		2020/21	2021/22	2022/23
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.	17 days	20 days	17 days	≤ 20 days	≤ 20 days	≤ 20 days	≤ 20 days
		M&A	2.	Average turnaround time for Phase 2 merger investigations.	45 days	45 days	41 days	≤ 45 days	≤ 45 days	≤ 45 days	≤ 45 days
		M&A	3.	Average turnaround time for Phase 3 intermediate and small merger investigations.	56 days	58 days	57 days	≤ 60 days	≤ 60 days	≤ 60 days	≤ 60 days
		M&A	4.	Average turnaround time for 90% of Phase 3 large merger investigations.	116 days	153 days	119 days	≤ 120 days	≤ 120 days	≤ 120 days	≤ 120 days
	b) Compliance monitoring for	M&A	5.	% of imposed merger remedies	100%	100%	100%	100%	100%	100%	100%

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2019 / 20	MTEF Period		
					2016/17	2017/18	2018/19		2020/21	2021/22	2022/23
	merger conditions			and conditions monitored.							
	c) Covid-19 investigations	Advocacy, Cartels & MCD	6.	No. of Covid-19 investigations completed within 12 months.	N/A	N/A	N/A	N/A	1500	N/A	N/A
		LSD	7.	% of Covid-19 cases won at the Tribunal and the courts.	N/A	N/A	N/A	N/A	90%	N/A	N/A
		LSD	8.	Average turnaround time for referral of Covid-19 matters to the Tribunal, after Commission decision.	N/A	N/A	N/A	N/A	10 days	N/A	N/A
		LSD & ERB	9.	% of Covid-19 exemptions applications completed within 3 months.	N/A	N/A	N/A	N/A	100%	N/A	N/A
		Advocacy & ERB	10.	Assessment of impact of stimulus measures on markets.	N/A	N/A	N/A	N/A	1	N/A	N/A
		ERB	11.	Report on Food Prices	N/A	N/A	N/A	N/A	4	N/A	N/A
		Cartels	12.	Monitoring of anti-competitive conduct	N/A	N/A	N/A	N/A	100%	N/A	N/A

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2019 / 20	MTEF Period		
					2016/17	2017/18	2018/19		2020/21	2021/22	2022/23
				in Government procurement							
		Advocacy & OTC	13.	No. of Covid-19 Education & Awareness initiatives	N/A	N/A	N/A	N/A	2	N/A	N/A
2. Competitive, Contestable and Deconcentrated Markets	a) Abuse of dominance and restrictive case investigations	Market Conduct	14.	No. of abuse of dominance and restrictive case cases initiated in prioritized sectors.	4	5	1	2	5	2	2
3. Improved public interest outcomes	b) Market Conduct Investigations	Market Conduct & Advocacy	15.	% of market conduct investigations completed within 18 months.	94%	93%	≥75%	≥75%	≥60%	≥60%	Market Conduct Investigations
	c) Exemption application decisions	Market Conduct	16.	% of exemption applications completed within 12 months.	100%	0%	≥75%	≥75%	≥75%	≥75%	≥75%
	d) Cartel Investigations	Cartels	17.	No. of cartel investigations completed.	N/A	28	3	15	5	10	Cartel Investigations

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2019 / 20	MTEF Period		
					2016/17	2017/18	2018/19		2020/21	2021/22	2022/23
	e) Cartel prosecutions	Cartels & LSD	18.	% of cartel cases won at the Tribunal and the courts.	100%	85%	≥75%	≥75%	≥75%	≥75%	≥75%
	f) Prosecution of Abuse of dominance and restrictive practices	LSD	19.	% of cases won at the Tribunal and the courts in relation to abuse of dominance, restrictive practices and exemption litigation.	100%	100%	≥70%	≥70%	≥70%	≥70%	≥70%
	g) Merger litigation	LSD	20.	% of merger decisions upheld by Tribunal and/or courts.	100%	92%	67%	≥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 & ERB	21.	No. of education, training and outreach initiatives conducted on amendments.	N/A	5	4	2	2	2	2

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2019 / 20	MTEF Period		
					2016/17	2017/18	2018/19		2020/21	2021/22	2022/23
		Advocacy & OTC	22.	Number of awareness publications on the Competition Act.	N/A	N/A	N/A	N/A	4	6	6
	b) External Guidelines on the application of the Act	LSD & ERB	23.	No. of Guidelines on the application of the Act issued to stakeholders	N/A	0	1	1	2	1	1
	c) Advisory Opinions	LSD	24.	% of advisory opinions issued within 60 days.	N/A	N/A	N/A	N/A	≥90%	≥90%	≥90%
5. Improved understanding of market dynamics in priority sectors	a) Market inquiries	Market Conduct	25.	No. of market inquiries initiated.	0	2	0	0	1	1	1
		Market Conduct	26.	No. of market inquiries completed.	1	0	0	4	1	1	1
		Advocacy & ERB	27.	No. of implementation report on Market Inquiry recommendations	0	0	0	0	4	4	4
	b) Industry Scoping Studies	ERB	28.	No. of industry scoping studies conducted in prioritized sectors.	1	0	0	1	0	1	1

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2019 / 20	MTEF Period		
					2016/17	2017/18	2018/19		2020/21	2021/22	2022/23
	c) Impact assessments on Commission decisions or competition policy	ERB	29.	No. of impact assessment studies completed.	5	4	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	N/A	4	4	4
5. 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.	N/A	6	4	2	4	2	2
		OTC	32.	No. of strategic activities undertaken in collaboration with universities.	N/A	1	2	2	0	2	2
	Policy Responses	Advocacy	33.	No. of submissions or responses to policy or regulation.	N/A	6	4	4	4	4	4
	Research & Thought Leadership	ERB	34.	No. of research and thought leadership insights published.	N/A	N/A	N/A	N/A	2	4	4

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2019 / 20	MTEF Period		
					2016/17	2017/18	2018/19		2020/21	2021/22	2022/23
6. Increased importance of developmental perspectives in domestic and international competition law discourse	a) Collaboration with regional and international partners	OTC	35.	No. of research projects and/or publications undertaken with African, BRICS and international partners.	8	8	4	4	0	4	4
STRATEGIC GOAL 3: A PEOPLE-CENTRIC AND HIGH-PERFORMANCE ORGANIZATION											
7. Sound Corporate Governance	a) Audit Outcome	Finance	36.	Audit Opinion.	Unqualified Audit	Clean audit	Unqualified Audit	Clean Audit	Clean Audit	Clean Audit	Clean Audit
8. Secure, harmonious and conducive working environment	a) Conducive Facilities & Efficient Security	CSD	37.	Relocate staff to appropriate office space.	N/A	N/A	N/A	N/A	0	1	1
		CSD	38.	% implementation of the OHS compliance plan.	N/A	N/A	N/A	N/A	100%	100%	100%
9. Highly engaged, motivated and productive workforce	a) Talent Management	CSD	39.	% of HR spend in learning and development.	N/A	N/A	1.5%	1%	0.5%	1%	1%
		CSD	40.	% retention rate of staff complement.	95%	98%	≥98%	≥90%	≥90%	≥90%	≥90%
		OTC	41.	% of staff reached through training	N/A	N/A	N/A	N/A	50%	60%	70%

Outcome	Outputs	Accountable Program	No.	Annual Targets							
				KEY PERFORMANCE INDICATORS	Audited/ Actual performance			Estimated performance 2019 / 20	MTEF Period		
					2016/17	2017/18	2018/19		2020/21	2021/22	2022/23
				academy initiatives.							

9. Annual Indicators and Quarterly Targets - 2020/21

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%

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
	b) Covid-19 investigations	Advocacy, Cartels & MCD	6.	No. of Covid-19 investigations completed within 12 months.	1500	500	500	250	250
		LSD	7.	% of Covid-19 cases won at the Tribunal and the courts.	90%	90%	90%	90%	90%
		LSD	8.	Average turnaround time for referral of Covid-19 matters to the Tribunal, after Commission decision.	10 days	10 days	10 days	0	0
		LSD & ERB	9.	% of Covid-19 exemptions applications completed within 3 months.	100%	100%	100%	100%	100%
		Advocacy & ERB	10.	Assessment of impact of stimulus measures on markets.	1	0	0	0	1
		ERB	11.	Report on Food Prices	4	1	1	1	1
		Cartels	12.	Monitoring of anti-competitive conduct in Government procurement	100%	100%	100%	100%	100%
		Advocacy & OTC	13.	No. of Covid-19 Education & Awareness initiatives	2	1	1	0	0
2. Competitive, Contestable and Deconcentrated Markets + 3. Improved public interest outcomes	a) Investigation of Abuse of dominance and restrictive practices	Market Conduct	14.	No. of abuse of dominance and restrictive case cases initiated in prioritized sectors.	5	4	1	0	0
	b) Market Conduct investigations	Market Conduct & Advocacy	15.	% of market conduct investigations completed within 18 months.	≥60%	≥60%	≥60%	≥60%	≥60%

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
	c) Exemption application decisions	Market Conduct	16.	% of exemption applications completed within 12 months.	≥75%	≥75%	≥75%	≥75%	≥75%
	d) Cartel investigations	Cartels	17.	No. of cartel investigations completed.	5	0	3	1	1
	e) Cartel prosecutions	Cartels & LSD	18.	% of cartel cases won at the Tribunal and the courts.	≥75%	≥75%	≥75%	≥75%	≥75%
	f) Prosecution of Abuse of dominance and restrictive practices	LSD	19.	% of market conduct cases won at the Tribunal and the courts in relation to abuse of dominance, restrictive practices and exemption litigation.	≥70%	≥70%	≥70%	≥70%	≥70%
	g) Merger litigation	LSD	20.	% of merger decisions upheld by Tribunal and/or 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 & ERB	21.	No. of education, training and outreach initiatives conducted on amendments.	2	0	0	1	1
		Advocacy & OTC	22.	Number of awareness publications on the Competition Act.	4	1	1	1	1
	b) External Guidelines on	LSD & ERB	23.	No. of Guidelines on the application of the Act issued to	2	0	0	1	1

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
	the application of the Act			stakeholders.					
	c) Advisory Opinions	LSD	24.	% of advisory opinions issued within 60 days.	90%	90%	90%	90%	90%
5. Improved understanding of market dynamics in priority sectors	a) Market inquiries	Market Conduct	25.	No. of market inquiries initiated.	1	0	0	0	1
		Market Conduct	26.	No. of market inquiries completed.	1	0	0	0	1
		Advocacy & ERB	27.	No. of implementation Report on Market Inquiry recommendations.	4	1	1	1	1
	b) Industry Scoping Studies	ERB	28.	No. of industry scoping studies conducted in prioritized sectors.	0	0	0	0	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.	4	1	1	1	1
6. Improved co-ordination on the application of	a) Strategic Partnerships with relevant	Advocacy	31.	No. of workshops or seminars on competition, trade, industrial policy and/or regulatory matters	4	1	1	1	1

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
economic policy and competition policy	stakeholders			hosted.					
		OTC	32.	No. of strategic activities undertaken in collaboration with universities.	0	0	0	0	0
	b) Policy Responses	Advocacy	33.	No. of submissions or responses to policy or regulation.	4	1	1	1	1
	c) Research & Thought Leadership	ERB	34.	No. of research and thought leadership insights published.	2	0	0	1	1
7. Increased importance of developmental perspectives in domestic and international competition law discourse	d) Collaboration with Regional & International partners	OTC	35.	No. of research projects and/or publications undertaken with African, BRICS and international partners.	0	0	0	0	0
STRATEGIC GOAL 3: A PEOPLE-CENTRIC AND HIGH-PERFORMANCE ORGANIZATION									
8. Sound Corporate Governance	a) Audit Outcome	Finance	36.	Audit Opinion.	Clean Audit	N/A	N/A	Clean Audit	-
9. Secure, harmonious and conducive working environment	a) Conducive Facilities & Efficient Security	CSD	37.	Relocate staff to appropriate office space.	0	0	0	0	0
		CSD	38.	% implementation of the OHS compliance plan.	100%	100%	100%	100%	100%
10. Highly engaged,	a) Talent	CSD	39.	% of HR spend in learning and	0.5%	0.5%	0.5%	0.5%	0.5%

Outcome	Outputs	Accountable Program	No.	Performance Indicator	Annual Target	Q1	Q2	Q3	Q4
motivated and productive workforce	Management			development.					
		CSD	40.	% retention rate of staff complement.	≥90%	≥90%	≥90%	≥90%	≥90%
		OTC	41.	% of staff reached through training academy initiatives	50%	50%	50%	50%	50%

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	<ul style="list-style-type: none"> • Approval of organizational structure • Review of HR policies and procedures

Risk	Risk Mitigation
(both human and tools & equipment)	<ul style="list-style-type: none"> • 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 • 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.)

Risk	Risk Mitigation
	<ul style="list-style-type: none"> • 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
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	<ul style="list-style-type: none"> • Stabilisation of the Commission IT systems to cater for the remote working

Risk	Risk Mitigation
Commission IT Systems due to large traffic volumes	<ul style="list-style-type: none"> • 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

