



ANNUAL REPORT

20 >> 21



**competition commission**  
*south africa*



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*In loving memory of  
Neo Dikgwejane  
who served the  
Competition Commission  
with dedication, compassion  
and much laughter.*

ck  
nages™





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# ACRONYMS AND ABBREVIATIONS

|                         |   |
|-------------------------|---|
| <b>AVE</b>              | Advertising Value Equivalent  |
| <b>ACF</b>              | African Competition Forum   |
| <b>AG</b>               | Auditor General   |
| <b>CD</b>               | Cartels Division  |
| <b>CRESSE</b>           | Competition and Regulation Summer School and Conference                 |
| <b>The Act</b>          | Competition Act No. 89 of 1998, as amended                              |
| <b>Competition Bill</b> | Competition Amendment Bill 2017   |
| <b>CAC</b>              | Competition Appeal Court  |
| <b>Commission</b>       | Competition Commission of South Africa                                  |
| <b>Tribunal</b>         | Competition Tribunal  |
| <b>ConCourt</b>         | Constitutional Court of South Africa                                    |
| <b>CLP</b>              | Corporate Leniency Policy   |
| <b>CSD</b>              | Corporate Services Division   |
| <b>Data Inquiry</b>     | Data Services Market Inquiry  |
| <b>DALRRD</b>           | Department of Agriculture, Land Reform and Rural Development            |
| <b>DMRE</b>             | Department of Mineral Resources & Energy                                |
| <b>DTIC</b>             | Department of Trade, Industry and Competition                           |
| <b>ERB</b>              | Economic Research Bureau  |
| <b>EAP</b>              | Economically Active Population  |
| <b>FEDSAS</b>           | Federation of Associations of Governing Bodies of South African Schools |
| <b>GRMI</b>             | Grocery Retail Sector Market Inquiry                                    |
| <b>GDP</b>              | Gross Domestic Product  |
| <b>HDPs</b>             | Historically Disadvantaged Persons                                      |

|                |   |
|----------------|---|
| <b>HR</b>      | Human Resources   |
| <b>IRC</b>     | Information Resource Centre                             |
| <b>IT</b>      | Information Technology                                  |
| <b>ICN</b>     | International Competition Network                       |
| <b>LSD</b>     | Legal Services Division                                 |
| <b>ISPs</b>    | Internet Service Providers                              |
| <b>MCD</b>     | Market Conduct Division                                 |
| <b>M&amp;A</b> | Mergers and Acquisitions Division                       |
| <b>NDP</b>     | National Development Plan                               |
| <b>NEDLAC</b>  | National Economic Development and Labour Council        |
| <b>NHI</b>     | National Health Insurance                               |
| <b>OTC</b>     | Office of The Commissioner                              |
| <b>OIPMI</b>   | Online Intermediation Platforms Market Inquiry          |
| <b>HMI</b>     | Private Healthcare Market Inquiry                       |
| <b>PFMA</b>    | Public Finance Management Act No. 1 of 1999, as amended |
| <b>PPTMI</b>   | Public Passenger Transport Market Inquiry               |
| <b>SME's</b>   | Small and Medium Sized Enterprises                      |
| <b>SARS</b>    | South African Revenue Service                           |
| <b>SADC</b>    | Southern African Development Community                  |
| <b>SCA</b>     | Supreme Court of Appeal                                 |
| <b>ToRs</b>    | Terms of Reference                                      |
| <b>EEA</b>     | The Employment Equity Act                               |

# GLOSSARY OF TERMS

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

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

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

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

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

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

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

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

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

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

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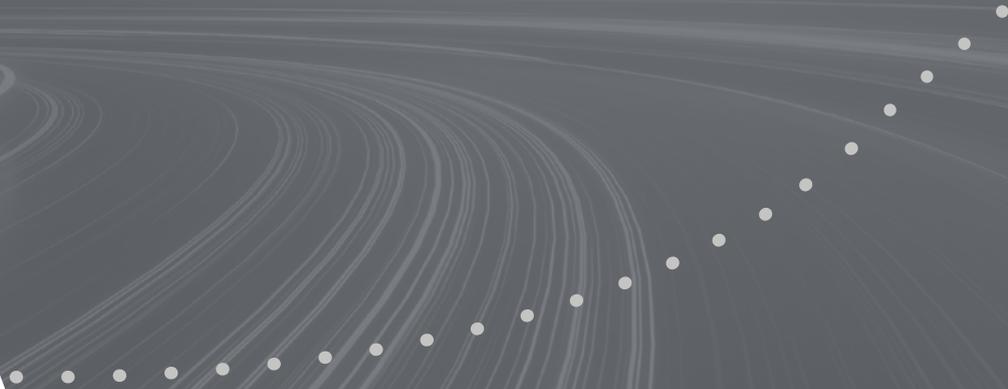
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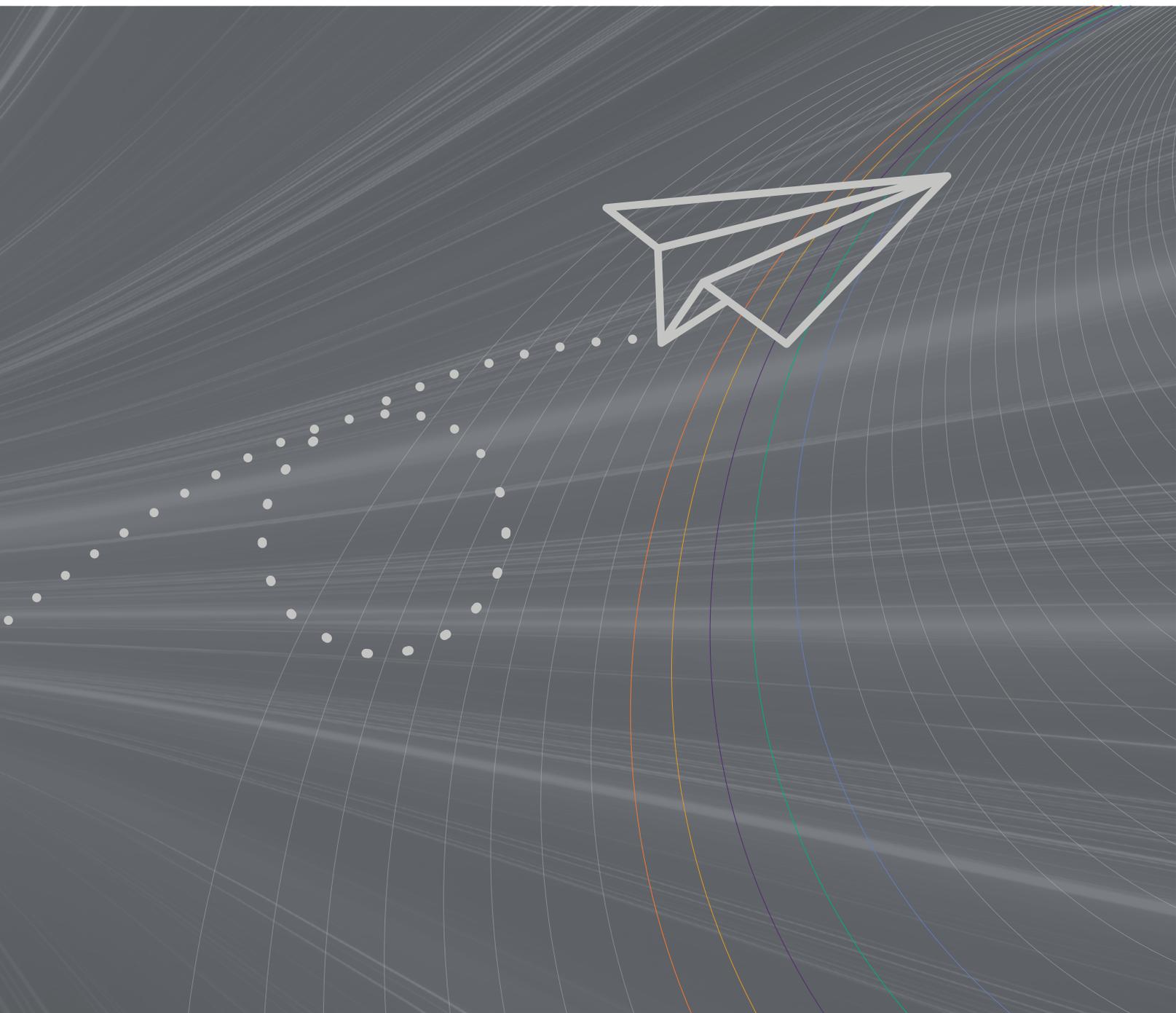
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GENERAL OVERVIEW



A





# 1. ABOUT THE ANNUAL REPORT

This document constitutes the Annual Report of the Competition Commission of South Africa for the 2020/21 financial year. It is premised on the Commission's strategic plan for 2020/21-2024/25.

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

This report is organised as follows:

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



## 2. THE EXECUTIVE



**Tembinkosi Bonakele**  
Commissioner



**Hardin Ratshisusu**  
Deputy Commissioner



**Bukhosibakhe Majenge**  
Divisional Manager:  
Legal Services and Acting  
Deputy Commissioner



**James Hodge**  
Chief Economist: Economic  
Research Bureau and Acting  
Deputy Commissioner



**Nompucuko Nontombana**  
Divisional Manager:  
Market Conduct  
*Resigned 28 February 2021*



**Tamara Paremoer**  
Divisional Manager: Mergers  
and Acquisitions



**Mduduzi Msibi**  
Company Secretary



**Makgale Mohlala**  
Divisional Manager:  
Cartels



**Amos Moledi**  
Chief Financial Officer



**Khanyisa Qobo**  
Divisional Manager:  
Advocacy



**Mapato Ramokgopa**  
Divisional Manager:  
Office of the Commissioner



**Andile Gwabeni**  
Divisional Manager:  
Human Capital  
*Resigned 31 May 2020*

### 3. MINISTER'S FOREWORD



I wish to express my gratitude to Commissioner Tembinkosi Bonakele, assisted by Deputy Commissioners Hardin Ratshisusu, Bukhosibakhe Majenge and James Hodge.

It is my pleasure to table the Annual Report of the Competition Commission for the 2020/21 financial year. The Report sets out the work of the Commission during a challenging year for the economy and society.

The Covid-19 pandemic shaped the work of the Commission and it showed an agility in dealing with a range of challenges: from excessive pricing practices during the early days of the pandemic, to the need to enable greater collaboration in selected sectors to deal with the health challenges.

Guidelines to effect abuse of dominance provisions have also been published,

that includes the Buyer Power and Price Discrimination guidelines, which I note won the entity an international award in the antitrust field.

A total of 242 mergers were notified, including 72 large mergers, 161 intermediate mergers and 9 small mergers. Most of the cases assessed were in critical sectors, including the manufacturing sector, property sector, and wholesale trade. A total of 34 transactions were approved with public interest conditions during the financial year, compared to the 33 in FY19/20.

The Report contains details of the work done by the Commission on cartels. A total

of twenty-eight (28) cartel investigations were completed during financial year 2020/21. Of these, six (6) were referred to the Tribunal for prosecution.

To boost economic impact in sectors key for economic growth, the Commission actively pursued implementation of the recommendations made in the Data Market Inquiry and the Grocery Retail Market Inquiry. The Data Market Inquiry, concluded at the end of the past financial year, made recommendations to reduce the high and structurally anti-poor pricing for mobile data. In this regard, the Commission achieved settlements which saw mobile network providers reducing their prepaid data

prices substantially including introducing of zero-rated access on public benefit and essential government websites; lifeline data; and increased pricing transparency. I am hopeful that these interventions will help improve access and lower communication cost for the majority of South Africans. The Commission concluded a significant settlement with major retailers Shoprite/Checkers, and Pick 'n Pay, which will no longer enforce the exclusivity clauses contained in various lease agreements in shopping malls which effectively discriminates against SMEs.

The Online Intermediation Platforms Market Inquiry was launched in February 2021, covering online markets that facilitate transactions between businesses and consumers (or so-called “B2C” platforms) for the sale of goods, services and software. Online intermediation platforms include eCommerce marketplaces, online classified marketplaces, software application stores and intermediated services such as accommodation, travel, transport and food delivery.

The Automotive Guidelines will provide practical guidance to the automotive aftermarket industry, and are intended to promote inclusion and to encourage competition through greater participation of small businesses as well as historically disadvantaged groups. Progressive efforts have also been made in the longstanding school uniform matter, with the conclusion of various MOUs with school governing

bodies to enhance competition that will ensure reasonable pricing for school uniform.

The new Policy Statement on Competition Policy for Jobs, published earlier this year, provides clarity on the overall approach by Government on competition issues. As the society recovered from the first waves of Covid-19, the focus has shifted to economic recovery, in line with the Economic Reconstruction and Recovery Plan (ERRP). In the new financial year ending March 2022, every agency of the dtic has been requested to report on its contribution to South Africa's national development goals, with a focus on seven key areas, which are termed ‘joint indicators’. In this way, the combined efforts of all public entities will begin to be aligned to the national priorities in a more explicit manner.

These cover the following areas:

- Joint Indicator 1: Integrated Support to Drive Industrialisation (which includes the work on localisation and sector master plans as well as efforts to support beneficiation)
- Joint Indicator 2: Contribution to the development of an AfCFTA Export Plan
- Joint Indicator 3: Investment Facilitation and Growth
- Joint Indicator 4: Development Model and Spatial Equity to enable the impact of all public sector work to be measured and integrated at district level

- Joint Indicator 5: Actions to Promote Transformation
- Joint Indicator 6: The Green Economy and Greening the Economy
- Joint Indicator 7: Strengthening and Building a Capable State

In respect of building a capable state, for example, all public entities will be required to review their procedures, timeframes for delivery, forms to be filled in and public communication of services to simplify these, make processes expeditious where possible, remove unnecessary red-tape where these exist and make it easier for users to access services.

Following the particularly difficult year in which the country lost many talented persons to Covid-19, I wish to convey my condolences to the friends and families of all of our loved ones who passed away.

I wish to express my gratitude to Commissioner Tembinkosi Bonakele, assisted by Deputy Commissioners Hardin Ratshisusu, Bukhosibakhe Majenge and James Hodge, members of the Executive Committee who steered the ship during 2020/21, as well as the entire team of the Commission who continue to deliver exceptional results often in difficult circumstances.



**Ebrahim Patel**

Minister of Trade, Industry and Competition

## 4. COMMISSIONER'S FOREWORD

“

This year marks eight years since I have been at the helm of the Competition Commission, and I am pleased to present the 22nd edition of the Competition Commission's annual report, covering the 2020/21 financial year.



This report reflects a triumph of the human spirit. The outbreak of coronavirus in 2019 was a defining moment in the life of our organisation. Nothing could have prepared us for it. It needed a response so decisive that it either would inject new life to the organisation or would kill it. The disruption required had no middle route. That today we tell a tale of our much-envied interventions in the economy speaks of the resilience, maturity and adaptiveness of our organisation and that of the competition system of South Africa. Everyone involved has a reason to be proud. Amidst a crisis none

of our predecessors have had to confront, coupled with its personal impact on almost everyone, our staff threw themselves into their work as though it was itself a refuge from all that what was brought by the virus. In the end, they produced stellar performance that no words in an annual report could capture. So, I begin this report by acknowledging both the pain and joy, social distancing and teamwork, exhilaration and anxiety that seem to have been the combustion that propelled us forward in extraordinary ways during the reporting period. I begin by saluting the people who lived with and through the virus that will forever define our age, to deliver performance only possible of thorough patriots in the service of their country.

COVID-19 has also worsened the social and economic challenges facing our country. As the country and the world economy plunges into contraction, there are understandable concerns about the deepening and entrenchment of inequality, concentration of the economy, unemployment and poverty which, once more, challenges us to rethink the role of competition policy and a competition agency in our context. To be sure, South African policy makers recognised the need for a sharper focus on the balancing of efficiency objectives of competition law with public interests, such as the participation of SMMEs, jobs and diversity of ownership in the economy through the adoption of amendments to

the Competition Act in 2019. COVID-19 hit the country just as we were starting to implement these amendments, and they remain ever more relevant in the context of the pandemic.

As firms consolidate and cooperate in light of economic challenges, it can be expected that the post covid world will be more concentrated, and more cartelised. This trend is also aided by the rapid rise in digital markets, which tend to consolidate towards a tipping point, and works in a manner that is exceedingly difficult for authorities to detect and address. Therefore there is a lot more work that lies ahead if we are to achieve our dream for an inclusive, competitive and deconcentrated economy. This is the lens through which this report must be read.

A difficult and an unprecedented year has therefore just passed us, and it is for us to look forward and gather the requisite strength to find new opportunities. I however find solace in the heroic words of Martin Luther King Jr, **“Our very survival depends on our ability to stay awake, to adjust to new ideas, to remain vigilant and to face the challenge of change.”**

Much like many other organisations, the Commission has been working tirelessly to keep operations running smoothly throughout the pandemic and lockdown period. We have continued to deliver on our

mandate and serve our stakeholders with minimal disruptions and enhanced energies, taking advantage of the new opportunities for change afforded by the pandemic. Despite the budget cuts and reprioritised resources, the advent of this new dynamic required us to respond swiftly and adapt to this new reality which meant a lot of changes had to be made internally to refocus our operations and work. We were able to timeously invest in necessary digital systems, reorganise our work, providing the necessary connectivity support and other operational requirements to enable our teams to operate remotely and ensure business continuity. Our performance for the reporting period therefore fully exhibits that. A significant reward to our efforts has been yet another clean audit outcome, an affirmation that our governance, financial and risk management processes remain intact.

At the outset of the pandemic, we received an unprecedented number of complaints – swelling to over 2200 cases by March 2021 – related to excessive pricing on essential items (face masks and sanitisers) used in the prevention and treatment of COVID-19 as well as basic food products. We were also concerned, during the course of the year, about emergency public procurement, particularly with the anticipated large-scale procurement by government to respond to the pandemic. To this end, the Commission instituted two test prosecutions against Blue Collar and Tsutsumani involving

price gouging within the context of public procurement. We took a multipronged approach to these matters, including advocacy with suppliers and retailers, enforcement and consumer awareness initiatives. Consumers were also very pro-active in bringing these matters to our attention, which was useful to us in detecting the conduct.

We strengthened our capacity to expeditiously deal with these matters, with a heightened commitment to protecting the interests of consumers and the public purse during this challenging period. This includes our support to the Department in drafting several COVID-19 block exemptions that enabled industry players to alleviate, contain and minimise the effects of the national disaster, regulations against excessive prices, and swift investigations and prosecution of COVID-19 related cases as well as granting exemptions for some sectors that needed to coordinate their response to the pandemic. Through these interventions we created ground-breaking precedent on enforcement of the new excessive pricing provisions introduced by the Competition Amendment Act during a crisis. Our cases, such as the prosecution against Babelegi and Dischem for price gouging, have been matters for both economic and legal engagement in the competition law fora, both locally and internationally. We are proud that we have taken a bold step to create a

precedent that will shape competition law enforcement beyond COVID-19. The Commission has also concluded several settlement agreements, that were confirmed by the Tribunal, relating to price gouging of essential goods which contained a combination of remedies including donations to the Solidarity Fund and public interest organisations, fines and gross margin caps.

In the second round of the prosecution against Computicket and Shoprite, the Commission successfully defended the principle that it could prosecute both the subsidiary and parent company for abuse of dominance. On 7 December 2020, the Tribunal issued reasons in its seminal judgment in the WeBuyCars merger which will, in future, define the approach to mergers in digital markets.

In addition, we continued to monitor food market pricing in order to understand retail level inflation and the need for enforcement action. Which covered several aspects, including the examination of fresh produce market volatility and differentials across markets nationally, movements in grains and fresh produce prices in the wholesale and commodity trading markets, etc. All these efforts and our early investigations and prosecutions sent out a strong message that we believe deterred price gouging and market abuse.





The previous year (FY 2019/20) also marked the completion of the five-year strategic cycle that we unveiled back in 2015. We accordingly began a new five-year strategy cycle, with a refreshed but enlarged mandate, with the promulgation of the amendments of various provisions of the Competition Act, to strengthen various areas of our work and to give greater emphasis on our public interest focus, on SMMEs and participation by historically disadvantaged communities for transformation and inclusivity. Following the amendments, the Commission published the *Guidelines for Buyer Power and Price Discrimination* as a step in implementing the amendments. I must pause at this juncture to acknowledge that the Commission has won an award in the Soft Law Article in the sub-category “Unilateral Conduct”, in the 2021 Antitrust Writing Awards, by Concurrences for our “Buyer power enforcement guidelines” published in the past year. This award, which came as somewhat a surprise to all of us, is the result of a five-month process involving more than 50 international antitrust experts reviewing more than 600 articles. I congratulate our staff who worked on this now globally recognised piece of work.

The new strategy also responds particularly to two initiatives as part of the government’s Medium-Term Strategic Framework (MTSF) designed by Cabinet to guide Government

and entities in planning and to ensure the achievement of common outcomes at a national level, namely, “Decent employment through inclusive growth”; and “An efficient, competitive and responsive economic infrastructure network”. Our vision and mission therefore align to these, i.e. for the realisation of a growing, deconcentrated and inclusive economy whilst advancing public interest objectives, both of which are critical for economic recovery in the context of the COVID-19 pandemic. We, therefore, committed ourselves to play a role to ensure that there is healthy competition between firms, that 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. Our efforts will therefore be aimed at fostering job-creation, industrialisation and export promotion whilst expanding the opportunities for SMEs and the participation of black people, youth, and women in the economy.

The year saw us successfully complete the Public Passenger Transport Market Inquiry focusing on competition issues in the sector. There are many competition issues that emerged from this inquiry, including the structural relationship between the state-owned PRASA and Autopax and its exclusionary impact on the market, inequitable allocation of subsidies to different modes of transports,

and regulatory barriers in relation to the operation of e-hailing and metered taxis. Several recommendations have been made in this regard to bring about a more integrated, yet competitive transport sector. We are, therefore, engaging with stakeholders, including government to ensure that these recommendations are considered.

Aligned to our focus on the transport sector, we published Guidelines for Competition in the Automotive Aftermarkets, following several years of stakeholder complaints and engagements for a more pro-competitive market. We will ensure that these are adopted and promote inclusion and are competitive, particularly for SMEs and HDIs in markets such as townships, which could benefit from increased competition.

Following the successful completion of the Grocery Retail Market Inquiry, we have been able to achieve great progress during the year to conclude settlement agreements with the major retail groups, Shoprite-Checkers and Pick n Pay, to eliminate exclusivity against small and independent retailers, with the hope again to eliminate barriers and allow for inclusive participation by SMMEs and HDIs. We hope that with these settlements, greater competition would be fostered and new markets opened up. In a similar vein, we were able to achieve progress following the recommendations made by the Mobile Data

Market Inquiry, where we had the major mobile firms agreeing through settlements to reduce their costs for pre-paid data. The inquiry found that prices were excessive and anti-poor in structure given the vast differences in the price per MB for smaller prepaid bundles compared to post-paid bundles. The settlements we have reached include reductions in tariffs by 35%-50% and extensive zero-rating of educational and government websites along with some daily free data. All these interventions came in handy in the context of the transition and demand for digital platforms due to the pandemic. It is also within this context that we opted to focus on digital platforms as new markets and new ways of business were emerging and thus potential competition issues were beginning to emerge. Digital platform markets have also been at the forefront of the global competition law debate in recent years due to the growing importance of digital platforms in the economy – particularly in the context of COVID-19. We have in this regard initiated and published draft terms of reference at the end of the financial year, for a market inquiry in Online Intermediation Platforms Market.

Much more work has been achieved in other areas, even though our focus had shifted to COVID-19 related matters. We were able to make progress in the normal course in adjudication of mergers and acquisitions. We particularly took

an active interest in continuing to give effect to the public interest provisions in the Act and, as such, to the national economic imperatives of job preservation, transformation, supplier-development and localisation. In the Thabong Coal/SAEC merger the Commission imposed a divestiture condition that aims to facilitate entry by junior miners. In the mergers involving Comair/K2020704995, Carlmac/Aveng Duraset and 4Racing/Phumelela, the Commission imposed remedies to promote ownership by workers or black-owned firms. In the Alstom/Bombardier merger the Commission secured remedies that would ensure the continued availability of spare parts and the support required to maintain our freight rail fleet, one of the arteries of our industrial development. In the fast-evolving digital market, the Commission secured ground-breaking remedies in the merger between Google LLC/Fitbit Inc to ensure continued access to data and interfaces by competitors so that the fitness tracking and wearables sector remains open to competition and innovation. The Commission remains responsive to firms in economic distress, finalising the transactions involving the sale of some Edcon stores to Retailability and the Foschini Group. These cases were concluded expeditiously, in 17 days (Retailability) and 31 days (Foschini), which is quite impressive.



Following the successful completion of the Grocery Retail Market Inquiry, we have been able to achieve great progress during the year to conclude settlement agreements with the major retail groups, Shoprite-Checkers and Pick n Pay, to eliminate exclusivity against small and independent retailers, with the hope again to eliminate barriers and allow for inclusive participation by SMMEs and HDIs.

We have made a breakthrough in prosecuting cartel activity in the economy, particularly in priority sectors. Our key highlight is the judgment received in the Pickfords matter, where the Constitutional Court granted an appeal to the Commission to prosecute conduct which stopped three years prior to investigation. This provided a necessary precedent and a finality on prosecution of collusion occurring years prior to initiating investigations.

We continued to form part of solid and engaging cooperation with our international counterparts, through both bilateral and multilateral cooperation frameworks in the field of competition law and policy. These includes our interactions through BRICS, International Competition Network, the African Competition Network and others. We have enjoyed the significant benefits of

mutual support, exchange of information and experiences, as well as in areas of capacity building and joint research through the various Working Groups. Not only did we share experiences in responding to the pandemic, we have also ensured that we build capacity for new emerging issues on competition law such as digital markets and sustainability. As the Chair of the ACF, we have ensured that we maintain a strong focus as African countries on pertinent issues that affect our markets, but also using the forum to ensure that the interests of the AfCFTA are pursued, including providing our inputs into the process of negotiations for a Competition Protocol within the agreement.

In conclusion, I have been privileged to have led the Commission with a very committed and intelligent management team, and

I thank them for an amazing experience in the past year. We would not achieve what we did without the support of the Minister of Trade Industry and Competition and his Department. I also thank all our stakeholders who have worked with us in the past years.

**Lastly, I wish to express condolences to our staff, colleagues, partners and stakeholders who have lost their loved ones during the financial year. Their resilience is an inspiration!**

**Tembinkosi Bonakele**  
Commissioner

# 5. ESTABLISHMENT AND MANDATE OF THE COMPETITION COMMISSION

## 5.1 ESTABLISHMENT OF THE COMPETITION AUTHORITIES

With the advent of democracy in 1994, the new South African government initiated a process of reviewing South Africa's competition laws. The purpose of this process was to address the historical economic imbalances resulting from excessive economic concentration and ownership, collusive practices, and the abuse of economic power by firms in dominant positions. The 1994 White Paper on Reconstruction and Development<sup>1</sup> sought to establish a series of immediate measures to address the structural deficiencies in the South African economy. This included the development of a competition regime aimed at reforming markets by prosecuting anti-competitive practices and ensuring an inclusive and transformed economy.

Polymakers recognised early on that competition policy would be one of several economic tools which would be used to achieve transformation. It was thus considered important that the new competition policy framework be flexible enough to accommodate other economic instruments of the state, including trade and industrial policy.<sup>2</sup>

From 1995 the DTI embarked on a consultative process to develop a new policy, which culminated in a National Economic Development and Labour Council (NEDLAC)<sup>3</sup> agreement on the competition policy principles. The result of this process was the Competition Act, which was adopted in 1998 and became effective as of 1 September 1999 (hereafter "Competition Act" or "Act"). The Act established the Competition Commission, the Competition Tribunal and the Competition Appeal Court. The Competition Commission is an investigative and prosecutorial authority, the Tribunal is an adjudicative authority, and the Competition Appeal Court is an appeal body over competition matters.

## 5.2 LEGISLATIVE MANDATE

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

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

<sup>1</sup> Notice 1954 Gazette 16085 of 23 November 1994

<sup>2</sup> Guidelines for Competition Policy, 1997

<sup>3</sup> NEDLAC comprises government, business and labour

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

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

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



## 6. STRATEGIC OVERVIEW



The Commission will use its tools to ensure that viable, competitive businesses can remain in the market.



### OUR VISION

**A growing, deconcentrated, and inclusive economy**

Our vision is for the realisation of a growing and inclusive economy. Promoting equitable economic growth remains a particularly important goal given the prospect of an economic downturn in the wake of the Covid-19 pandemic. 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.



### OUR 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, industrialisation and export promotion whilst expanding the opportunities for SMEs and the participation of blacks, youth and women in the economy.



## OUR OUTCOME-ORIENTED GOALS

The Commission has identified three strategic goals to realise its vision of contributing to a growing and inclusive economy:

### **Goal 1: Enforcing and regulating towards economic growth and enhanced economic participation.**

In this goal, the Commission effectively uses the instruments of merger regulation, market inquiries and enforcement to address market concentration and public interest outcomes. The Commission also uses these tools to respond to firms in distress and markets which may be collapsing due to the economic impact of the Covid-19 pandemic.

Further, the Goal also applies to the investigation and prosecution of instances of abuse-of-dominance and restrictive conduct, and the unmasking and dismantling of cartels, with the creative use of remedies to promote market entry and participation.

### **Goal 2: Advocating for improved compliance and pro-competitive public policy outcomes.**

Under Goal 2, the Commission will promote compliance to the Competition Act through education and awareness initiatives with its key stakeholders: the Public, Big Business, Small Business, Labour, Government and Consumers.

Co-ordination with Government and other Regulators is crucial in promoting the development of pro-competitive public policy outcomes, particularly through the policy-making process.

In this goal, the Commission also seeks to be a thought-leader on competition and economic issues, both domestically and internationally. This includes contributing to the national economic discourse and policy-making.

### **Goal 3: A People-Centric, High-Performance Organization**

Through this goal, the Commission successfully delivers on its objectives through a cohesive, well-structured organization in which people, processes and systems perform optimally.

The Commission provides Human Capital, Information Communication Technology, Facilities and Security solutions that enable the optimal performance of staff, supporting their well-being and performance through the “new normal” working conditions brought about by Covid-19.



## 6.4 OUTCOMES

In line with strategic outcome-oriented goals the Commission has developed a set of key outcomes which it seeks to realize. "Outcomes" in this context refers to the change (in status, behaviour, attitudes, commitment or practices) that felt by the Commission's stakeholders because of the achievement of its strategic goals. Outcomes for the 2020-2025 strategic period are captured in the table below.

**Table 1: Commission Outcomes 2020-2025**

| Strategic Goals & Outcomes   |  |
|--|--|
| <b>1. Enforcing and regulating towards economic growth and enhanced economic participation</b> | <ul style="list-style-type: none"> <li>i. Efficient and effective merger regulation and enforcement.</li> <li>ii. Competitive, contestable and deconcentrated markets</li> <li>iii. Improved public interest outcomes</li> <li>iv. Improved compliance and awareness</li> <li>v. Existing competitive small and large businesses remain in the market</li> </ul>   |
| <b>2. Advocating for improved compliance and greater public policy outcomes</b>                | <ul style="list-style-type: none"> <li>i. Improved public interest outcomes</li> <li>ii. Improved compliance and awareness</li> <li>iii. Improved understanding of market dynamics in priority sectors</li> <li>iv. Improved co-ordination on the application of economic policy and competition policy.</li> <li>v. Increased importance of developmental perspectives in domestic and international competition law discourse</li> </ul> |
| <b>3. A people-centric, high-performance organization</b>                                      | <ul style="list-style-type: none"> <li>i. Sound Corporate Governance</li> <li>ii. Secure, harmonious and conducive working environment</li> <li>iii. Responsive corporate services systems to support workforce during Covid-19 pandemic</li> <li>iv. Highly motivated, engaged and productive workforce</li> </ul>  |

## 6.5 OUR VALUES

For the 2020 – 2025 planning period the Competition Commission has decided to retain its values as developed through an extensive consultative process which began during 2015/16. Its vision and strategic plan are supported by seven core values, namely Communication, Ownership, Making a Difference, Professionalism, Employee Welfare, Teamwork and Efficiency, abbreviated as **COMPETE**. The table below gives more detail for each core value.

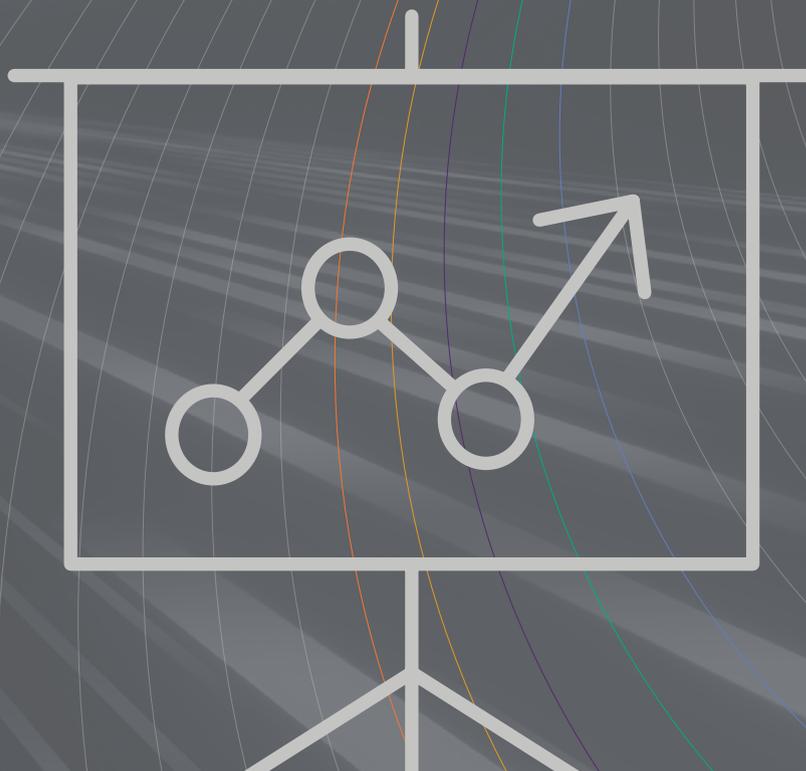
**Table 2: Values of the Commission**

| Values                          | Descriptor   |
|---------------------------------|--|
| i. <b>Communication</b>         | The ability to effectively convey information and expresses thoughts and facts. Demonstrates effective use of listening skills and displays openness to other people's ideas and thoughts.   |
| ii. <b>Ownership</b>            | The ability to commit oneself to task(s) at hand, accept responsibility for own actions and decisions and demonstrate commitment to accomplish work in an ethical and cost-effective manner.   |
| iii. <b>Making a Difference</b> | The ability to consistently deliver required business results; set and achieve realistic, yet aggressive goals; consistently comply with quality, service and productivity standards and meet deadlines; maintain focus on Commission's goals. |
| iv. <b>Professionalism</b>      | An ability to demonstrate good work ethic, respect, integrity and empathy.   |
| v. <b>Employee Welfare</b>      | The ability for employees to achieve full potential whilst maintaining a healthy work-life balance.  |
| vi. <b>Teamwork</b>             | The ability to work cooperatively and effectively with others to achieve common goals. Participates in building a group identity characterised by pride, trust and commitment.   |
| vii. <b>Efficiency</b>          | The ability to measure how well resources are utilised (i.e. means and manner) in pursuit of quality results.  |

# ECONOMIC IMPACT



B



## 7. 2020/21 HIGHLIGHTS

The Commission focuses its work in six priority sectors and has achieved impact in several areas, as discussed in detail below:

### 7.1 IMPACT OF THE COMMISSION'S WORK DURING COVID-19 PANDEMIC

After the announcement of the national lockdown in March 2020, South Africa saw unprecedented spikes in demand for hygiene and healthcare products needed to prevent the spread of the virus. Consumers also started panic-buying and stockpiling essential foodstuffs. This, along with other factors provided conditions for price gouging by suppliers and retailers of these products. The Commission was then called upon to respond to price gouging in the first wave to protect consumers and customers from unconscionable, unfair, unreasonable, unjust or improper commercial practices during the national state of disaster. The Commission responded through advocacy initiatives as well as investigation and prosecution of price gouging allegations. The Commission played a significant role, not only in the framing of the anti-price gouging Regulations, but also in

enforcing them through advocacy work and investigations of price gouging allegations.

The Commission completed more than 1500 cases of price gouging during 2020/21 financial year. In response to numerous Covid-19 related complaints received, the Commission had to establish a Covid-19 investigation team to prioritise the investigations under the Competition Act and the Consumer Protection Regulations promulgated by the Minister of Trade, Industry and Competition on 19 March 2020. This included determining the appropriate tests for assessment of contraventions under the new regulations, developing suitable investigation guidelines and practice notes, and conducting research to monitor food price inflation of basic food commodities.

The Commission also assisted the Department of Trade, Industry and Competition (DTIC) in the drafting of several Covid-19 Block Exemption Regulations for various industries to enable industry players to work together to prevent an escalation of the national disaster and to alleviate, contain and minimise the effects of the national disaster. The Regulations exempt categories of agreements or practices in the respective industries from the application of sections 4 and 5 of the Act, in response to

the declaration of the Covid-19 pandemic as a national disaster.

Covid-19 Block Exemption Regulations were issued for the healthcare sector, the banking sector, the retail property industry, and the hotel industry

The Commission conducted an impact study to assess the economic impact of the Commission's work during the Covid-19 disaster, including the impact of the Covid-19 Block Exemptions granted by the Minister of the DTIC and the effects of the Commission's advocacy efforts, investigations, and prosecutions of price gouging contraventions during the Covid-19 disaster period. The impact study found that the Covid-19 Block Exemptions for the Healthcare Sector, the Retail Property and Banking Sector were largely a success. The impact study also found that the Commission's advocacy and enforcement work related to the anti-price gouging Regulations had deterrent effects on price gouging. Many retailers and wholesalers of essential products and basic food products were made aware of the laws that prohibit price gouging and refrained from increasing prices by either avoiding increasing prices, increasing prices only when suppliers increased cost prices or sought to keep profit margins at pre-disaster levels.

## 7.2 THE COMMISSION FINALISES THE PUBLIC PASSENGER TRANSPORT MARKET INQUIRY

On 10 May 2017, the Commission in exercising its powers under section 43B of the Act, published a notice in the Government Gazette that it would conduct a market inquiry into the land based public passenger transport sector.

The Commission's inquiry focused on Minibus Taxis, Busses and the Rail Market plus the E-Hailing and Metered Taxis Market.

The Inquiry found that the relationship between PRASA and Autopax raises several concerns for the interprovincial bus industry. It is recommended that DOT must address the conflict of interest between PRASA CRES and Autopax, through, among others, a complete structural separation between the entities. Furthermore, PRASA CRES should ensure that all bus operators are treated in a non-discriminatory manner.

The Inquiry also found that the practice by provincial government of perpetual extension of subsidised bus contracts without going out on tender inhibits

competition. Where contracts are put out on tender, government (provincial transport departments or the DOT) should consider breaking some of the contracts into smaller contracts to create opportunities for new entrants and smaller bus operators.

Furthermore, the Commission recommends that the sector's subsidy policy be finalised and ensure equitable allocation of subsidies to the taxi industry and rural bus operators. To facilitate proper functioning of commuter rail services, foster coordination in the rail sector (especially in Gauteng), and improve efficiencies through economies of scale, the Commission recommends that DOT develop a policy that ensures efficiency and integrated planning in commuter rail services. This policy may include, among others, integration of Metrorail and Gautrain in Gauteng.

In relation to e-hailing and metered taxis, the Commission recommends that the regulatory framework for e-hailing and metered taxis should be uniform to create an even competitive environment. The regulatory dispensation in the Amendment Bill for e-hailing services should be extended to metered taxis.

## 7.3 GUIDELINES FOR COMPETITION IN THE AUTOMOTIVE AFTERMARKET

The Guidelines are a culmination of many years of industry and stakeholder engagements towards pro-competitive conduct. The Guidelines have been prepared in terms of section 79(1) of the Act which provides that the Commission may prepare Guidelines to indicate its approach on any matter falling within its jurisdiction in terms of the Act.

The Guidelines provide practical guidance for the automotive aftermarkets industry, intended to promote inclusion and to encourage competition through greater participation of small businesses as well as historically disadvantaged groups.

## 7.4 SMALL RETAILERS GAIN ACCESS TO SHOPPING MALLS

The Commission concluded its inquiry into the grocery retail market, finding that this market was highly concentrated, and that exclusive lease agreements between anchor tenants and large supermarket chains served to entrench concentration. The inquiry recommended that exclusive lease agreements be phased out, and that landlords should immediately stop enforcing such leases against small and medium enterprises, specialty stores, as well as all grocery retailers in non-urban areas. The grocery retail market inquiry also recommended that large suppliers sign up to a code of conduct which would ensure that all rebates have an objective justification, and that they are available to all retailers, including smaller retailers and the buying groups that support them. These recommendations would facilitate SME participation in the market, through access to shopping malls and competitive buying conditions.

The Commission has made major progress with the implementation of the Grocery Retail Market Inquiry recommendations, by concluding a settlement agreement with Shoprite Checkers. Shoprite Checkers will no longer enforce the exclusivity clauses contained in various lease agreements against SMEs and specialist line stores with immediate effect. Shoprite Checkers

will also cease exclusivity against other supermarkets. The Commission has also made significant progress with Pick 'n Pay where a Settlement Agreement was concluded. Pick 'n Pay agreed to eliminate exclusivity against small and independent grocery retailers and supermarkets owned and controlled by historically disadvantaged persons, and to not sign any new lease agreements that contain exclusivity clauses, in compliance with the recommendations of the Grocery Retail Market Inquiry. The agreement with Pick 'n Pay is pending Tribunal's confirmation.

## 7.5 PROMOTING ACCESS AND LOWER COMMUNICATION COSTS

The financial year 2020/21 saw both MTN and Vodacom reducing their prepaid data prices substantially in line with the consent agreements signed with the Commission. The Commission also signed a Memorandum of Agreement with Cell C which included zero-rated access on public benefit and essential government websites; lifeline data plus four free SMSes per day; notification of effective rates for data purchases to increase pricing transparency; and a single landing page for promotions to improve access to data. A similar agreement was signed with Telkom on mobile data with the aims of improving transparency and offering zero-rated access to essential government services and educational institutions, including

the primary Uniform Resource Locators (URLs) of more than 60 universities and Technical and Vocational Education and Training (TVET) institutions. Telkom also committed to zero-rated access to a variety of educational content, and improved transparency of pricing with cost per megabyte pricing for all purchases.

The Commission also reached an agreement with Telkom's Openserve relating to wholesale products provided to Internet Service Providers (ISPs) in the first quarter of the financial year 2020/2021. The agreement with Telkom entails Telkom making changes to its wholesale pricing that removed excessive pricing concerns in respect of IP Connect. Telkom's wholesale division, Openserve, introduced a new wholesale product. The structure and the initial pricing of this new offering from Openserve would, on average, reduce wholesale charges to ISPs in a market context where other providers of wholesale access to ISPs have announced price increases.

## 7.6 PRECEDENT SETTING JUDGMENTS

### **a) Competition Appeal Court confirms small firm's dominance during the pandemic**

The Competition Appeal Court (CAC) dismissed Babelegi's appeal of the Tribunal's finding that Babelegi had market power during the complaint period, and that it has abused its dominant position by excessively pricing FFP1 masks in breach of section 8(1)(a) of the Act. The CAC highlighted that the pandemic provided exogenous factors which allowed Babelegi to gain market power. This judgment sets a very important precedent by confirming that a small firm can attain dominance during abnormal market circumstances such as the state of emergency, and that abuse of such dominance is prosecutable.

### **b) Furniture removal case clarifies application of section 67 of the Act**

The Commission had a great breakthrough with the Pickfords matter where the Constitutional Court of South Africa ("Concourt") 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. This judgment is a great victory for the Commission and paved a clear way for future investigations.

## 7.7 IMPLEMENTING THE AMENDMENTS TO THE COMPETITION ACT

The Competition Act was amended to, amongst other things, introduce provisions that clarify and improve the determination of prohibited practices relating to (1) restrictive horizontal and vertical practices, (2) abuse of dominance and price discrimination, (3) strengthening the penalty regime, (4) introducing greater flexibility in the granting of exemptions that promote transformation and growth, strengthening the role of market inquiries and merger processes in the promotion of competition and economic transformation – through addressing the structure 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 Act came into operation on 12 July 2019.

Following the amendments, the Commission published the Draft Guidelines for Buyer Power and Price Discrimination as a step in implementing the amendments:

### **Final Guidelines for Buyer Power**

The Act has been amended to incorporate a buyer power provision under the abuse of dominance provisions of section 8, with the introduction of the new subsection (4). In terms of subsection (4)(a), it is prohibited for a dominant firm as buyer in designated sectors to require from or impose unfair prices or trading conditions on small and medium businesses or firms controlled or owned by historically disadvantaged persons.

The new section 8(4) also includes a provision for the Minister to make regulations in respect of a) the sectors to which subsection (4) applies, b) the benchmarks for the application of subsection (4) to firms owned or controlled by historically disadvantaged persons (HDPs) and c) the relevant factors and benchmarks for determining whether prices and trading conditions in those sectors are unfair. Regulations were issued on 13 February 2020 (Govt. Gazette no. 43018) and the guidelines released by the Commission are consistent with the regulations.

The Commission's buyer power guidelines set out the general principles that will be followed in assessing whether alleged conduct contravenes section 8(4) of the Act and outline how the Commission intends to interpret the new buyer power provision for enforcement purposes.

## 8. COMMISSION'S INTERVENTIONS IN PRIORITY SECTORS

The Commission conducts its work in eight priority sectors, namely food and agro-processing; intermediate industrial input products; construction and infrastructure; healthcare, energy, banking and financial services, information and communication technology; and transport.

Below is a synopsis of the Commission's work in the sectors over the reporting period.

**Table 3: Commission's enforcement work in priority sectors 2020/21**

| Priority sector                                    | Parties to the investigation  | Type of intervention  |
|--|---|---|
| <b>Agriculture,<br/>Food &amp; Agro-processing</b> | South African Sugar Association exemption   | The Commission granted the South African Sugar Association and its members an exemption until June 31, 2021.<br><br>The exemption has been granted subject to conditions to ensure that the information SASA and its members share is limited to that which is necessary to give effect to the purposes of the South African Sugarcane Value Chain Master Plan to 2030, without compromising competition in the long run. |
|  | Draft Agriculture and Agro-Processing Masterplan by the Department of Agriculture, Land Reform and Rural Development. | The Commission published three research papers that examine the barriers to entry and expansion facing emerging farmers in the South African agricultural sector. These barriers to entry and expansion include access to finance, inputs and infrastructure, and routes to market. The Commission's input was informed by the research conducted in areas which also formed part of the masterplan.                      |

| Priority sector                  | Parties to the investigation  | Type of intervention   |
|----------------------------------|---|--|
| <b>ICT &amp; Digital Markets</b> | Competition Commission vs. Vodacom Group  | <p>The Commission concluded its investigation into the potential exclusionary conduct of Vodacom Group. The complaint originated from an agreement between Vodacom and National Treasury for the supply of mobile communication services to Government for a period of four years (known as the RT15-2016). The agreement, a transversal agreement in nature, can include all state organs.</p> <p>Following an investigation, the Commission decided not to refer the matter to the Tribunal, mainly on the basis that although several anticompetitive effects were observed, they were not of a substantial enough extent to warrant such referral. The Commission however undertook to collaborate with National Treasury in seeking solutions to address some of the concerns which remain. These concerns relate to the design of the RT15 tender in potentially excluding other (and smaller) firms, the impact of the transversal agreement on consumer choice, the potential impact of the agreement on current and future pricing and the potential impact of the agreement against imminent developments in the Fourth Industrial Revolution.</p> |
|                                  | Various complaints against Vumatel, Frogfoot, Openserve, Afrihost, RSA Web, Axxess, Vox Telecom, Mweb and Vodacom | <p>The Commission is engaged in an investigation into the pricing conduct of fibre infrastructure/network providers (FNOs) and several internet service providers (ISPs). This follows the receipt of several complaints against service providers such as Vumatel, Frogfoot, Openserve, Afrihost, RSA Web, Axxess, Vox Telecom, Mweb and Vodacom. The Commission is specifically considering whether excessive prices are being charged in contravention of section 8(1)(a), whether there are restrictive vertical agreements in place between FNOs and ISPs in contravention of section 5(1) and whether general exclusionary conduct is occurring in contravention of section 8(c). The investigation is ongoing</p>   |

| Priority sector   | Parties to the investigation   | Type of intervention  |
|---|--|---|
| <b>Healthcare</b>   | Health Justice Initiative v Various Pharmaceutical companies   | <p>The Commission received complaints from Health Justice Initiative and Ezintsha alleging that Aspen, Zydus SA, Fresenius Kabi SA, Pharma-Q, Cipla, and Gilead have and continue to engage in an excessing pricing conduct for Dexamethasone which is an off-patent drug and Remdesivir which is patented and distributed under brand name, Veklury. According to the Complainants the drugs are used for the treatment of Corona Virus ("Covid-19").</p> <p>The investigation is on-going.</p>  |
| <b>Construction services, Property &amp; Infrastructure</b> | Policy Response on amendments to the Construction Industry Development Board Act, No. 38 of 2000 and Amendments to the Construction Industry Development Regulations 2004. | <p>The Commission's submission provided recommendations from a competition perspective and focussed on the Commission's stance on competition in the construction sector and the recommendations for the proposed legislative amendments on the following aspects; the requirements for registration, renewal and amendment of contractor grading designations, the applicability of the register on contractors, the register of professional Service Providers and the enforcement powers of the CIDB.</p> <p>The Commission's responses to both the DPWI and the CIDB sought to provide proposals and recommendations on strengthening the regulatory role of the CIDB in order to achieve the desired outcome which is a well-regulated construction industry that simultaneously strives to achieve developmental and transformation objectives.</p> |

| Priority sector                       | Parties to the investigation                           | Type of intervention  |
|---------------------------------------|--|---|
| <b>Manufacturing</b>                  | Competition Commission vs Crest Chemicals              | <p>The Commissioner initiated a complaint against Crest Chemicals. The Commissioner alleged that the respondent is abusing its dominance in the local market by charging an excessive price for isopropanol (IPA) which is a critical input into hand-sanitizers and disinfectants.</p> <p>The investigation found that Crest Chemical had derived approximately R158 536.92 as estimated excess profits by charging the alleged excessive prices. A consent order agreement was concluded between the parties and confirmed by the Competition Tribunal.</p>   |
|                                       | Competition Commission vs Sasol South Africa (Pty) Ltd | <p>The Commission received information alleging that Sasol South Africa ("SSA") on or about 20 March 2020 increased its prices of varying strengths of Alcohols (75%, 85%, and 95%) by between 50% and 80%. Alcohols manufactured by SSA are used as critical inputs in the manufacture of hand-sanitizer and disinfectants. In the initiation, the Commission alleged that Sasol is abusing its dominance in the local supply market by charging an excessive price for Alcohols and taking advantage of the supply or demand shock resulting from the Covid-19 pandemic to the detriment of consumers. The matter is under investigation.</p> |
| <b>Banking and Financial Services</b> | Peter Harvard Macleod Brooks vs Nedbank Limited        | <p>The Commission received a complaint against Nedbank Limited alleging that Nedbank has failed to implement the recommendations of the Banking Enquiry (2008). It is alleged that Nedbank continues to charge excessive penalty fees for rejected debit orders due to a lack of funds. This is said to be in defiance of the Banking Enquiry.</p> <p>The matter is under investigation.</p>  |



| Priority sector | Parties to the investigation  | Type of intervention  |
|-----------------|---|---|
| <b>Energy</b>   | SAPIA Exemption   | The Commission has granted SAPIA a short-term conditional exemption in relation to the cooperation agreements and/or practises between SAPIA and its members at various stages of the liquid fuel supply chain.   |
|                 | Policy response on NERSA's consultation document on the inquiry into the features of the gas distribution level of the South African piped-gas value chain that may impede the achievement of the objects outlined in section 2(a), 2(b), 2(c), 2(d), 2(e), 2(h) and 2(j) of the Gas Act. | The Commission's response focussed on features of the distribution level of the piped-gas value chain that may be causing market failures and impede the achievement of the objects of the Gas Act. These include the existence of exclusive distribution areas, the unregulated distribution tariffs and market failures identified by industry participants.  |
|                 | Policy response on NERSA's amendments to the guidelines used for the assessment of inadequacy of competition in the South African piped-gas industry.   | The Commission's recommendations sought to provide guidance that would enable NERSA to achieve the overall objectives of promoting entry and establishing a new gas supplier in the South African gas supply chain. The Commission noted that entry should be at a scale sufficient to reduce the market power of the vertically integrated dominant firm and that will enable the growth of competing traders in the relevant markets. |

| Priority sector                          | Parties to the investigation                     | Type of intervention  |
|--|--|---|
| <p><b>Transport &amp; Automotive</b></p> | <p>Public Passenger Transport Market Inquiry</p> | <p>The Commission completed the Public Transport Market Inquiry during the 2019/20 financial year. The Inquiry identified several concerns that prevent, distort and restriction competition in the sector. The following key recommendations, amongst others, were made:</p> <ul style="list-style-type: none"> <li>• The Inquiry found that the relationship between PRASA and Autopax raises several concerns for the interprovincial bus Industry and recommended that DOT considers ways to remove this conflict. This could be achieved through, among others, a complete structural separation between the entities.</li> <li>• Concerns were identified in the design and allocation of bus contracts and provincial and local level. The perpetual extension of subsidised bus contracts, without going out on tender, inhibits competition. The Commission recommended that tenders be designed to to create opportunities for new entrants and smaller bus operators and that small and local bus operators be given preference given the incumbency advantages enjoyed by the existing large bus operators.</li> <li>• The Commission also recommends that the sector subsidy policy be finalised and ensure equitable allocation of subsidies to the taxi industry and rural bus operators.</li> <li>• In the rail sector, the Commission recommended that mechanisms such as integrated planning be considered to improv ethe efficiency of commuter rail services. This policy may include, among others, integration of Metrorail and Gautrain in Gauteng.</li> <li>• In relation to e-hailing and metered taxis, the Commission recommends that the regulatory framework for e-hailing and metered taxis should be uniform to create an even competitive environment. The regulatory dispensation in the Amendment Bill for e-hailing services should be extended to metered taxis.</li> </ul> |



| Priority sector                                | Parties to the investigation                             | Type of intervention  |
|--|--|---|
| <b>Transport &amp; Automotive</b><br>continued | Guidelines for Competition in the Automotive Aftermarket | <p>The Guidelines are a culmination of many years of industry and stakeholder engagements towards pro-competitive conduct. The Guidelines have been prepared in terms of section 79(1) of the Act which provides that the Commission may prepare Guidelines to indicate its approach on any matter falling within its jurisdiction in terms of the Act.</p> <p>The Guidelines provide practical guidance for the automotive aftermarkets industry, intended to promote inclusion and to encourage competition through greater participation of small businesses as well as historically disadvantaged groups.</p> |

Table 4: Noteworthy M&amp;A cases in priority sectors

| Priority sector   | Parties to the investigation  | Type of intervention   |
|---|---|--|
| <b>Agriculture, Food &amp; Agro-processing</b>              | Shiselweni Forestry Company Limited (SFC)/Peak Timber Limited and Peak Forest Products Proprietary Limited (Peak)   | <p>The Acquiring Firm in this transaction, SFC, is a forestry company located in eSwatini. Its forestry plantations include wattle and eucalyptus. The Target Firm, Peak, is involved in the planting, harvesting, processing and sale of timber and timber related products.</p> <p>The merging parties are both involved in the supply of untreated transmission poles, untreated building and fencing poles, untreated mining timber logs as well as pulp and woodchips.</p> <p>The Commission's investigation revealed that the merger raises foreclosure concerns, in that competitors of the merged entity may be unable to access sufficient quantities of the logs and poles supplied by the merger parties after the merger. For this reason, the Commission proposed that conditions be imposed compelling the merged entity to continue to supply logs and poles to third parties after the merger.</p> |
| <b>Construction services, Property &amp; Infrastructure</b> | Ultimo Properties Proprietary Limited and JD Consumer Electronics and Appliances Proprietary Limited/Part of the rental enterprises of Steinhoff Properties Proprietary Limited | <p>The merger parties in this transaction, Ultimo and Steinhoff, both hold rentable office space and rentable warehouse properties. The Commission found that the merger raises employment concerns and, accordingly, proposed that employment conditions be imposed on the merged entity.</p>   |

| Priority sector                       | Parties to the investigation   | Type of intervention  |
|---------------------------------------|--|---|
| <b>ICT &amp; Digital Markets</b>      | Google LLC (USA)/Fitbit Inc (USA)  | In December 2020, the Commission conditionally approved the global merger in which Google acquired Fitbit Inc. The merger raised several concerns including: (i) a concern regarding the continued ability of Fitbit's competitors to access the Android operating system on fair terms, (ii) Google's ability to use Fitbit data to its advantage in online advertising and (iii) the exclusive use, by Google, of Fitbit's data thereby excluding current or future competitors. Following an extensive investigation, the Commission imposed conditions that ensure that Google's Android API continues to be available, on fair and non-discriminatory terms, to other manufacturers of wearables and that competitors continue to have access to Fitbit's health data. Google also committed to maintaining 'data separation' and not to use Fitbit data for Google Ads. |
| <b>Manufacturing</b>                  | Carlmac Steel Proprietary Limited (Carlmac)/                               | The Alrode Business of Aveng Duraset, an Operating Division of Aveng Manufacturing which is a business of Aveng Africa (Pty) Ltd (Aveng Duraset)  |
| <b>Banking and Financial Services</b> | London Stock Exchange Group plc (LSEG)/ The Refinitiv business (Refinitiv) | The acquiring firm, LSEG, is a financial markets infrastructure business headquartered in London. Refinitiv, the target firm, has three primary business segments: (i) data and analytics; (ii) capital markets and workflow solutions; and (iii) risk management services. Refinitiv's WM/R FX Benchmarks are used widely in the development of financial market indices. The Commission found that the proposed transaction may raise competition concerns in that the merged entity may, post-merger, have the ability and incentive to restrict access to the WM/R FX Benchmarks to firms that compete with it in South Africa. To address this concern, the Commission has imposed a condition that LSEG, as well as Refinitiv, commit to make WM/R FX Benchmarks available to index licensing customers in South Africa for a period of 5 years.                        |

| Priority sector                   | Parties to the investigation   | Type of intervention   |
|-----------------------------------|--|--|
| <b>Energy</b>                     | In the 2020/21 financial year, the Commission evaluated 9 mergers involving Independent Power Producers or inputs into the renewable energy sector. The M&A team deepened the analysis on IPP mergers to assess potential impact on competition dynamics in local (municipal) regions and on information exchange arising from cross-shareholding. |  |
| <b>Transport &amp; Automotive</b> | Alstom Societe Anonyme/<br>Bombardier Transportation<br>(Investments) UK Limited   | <p>The Commission recommended that the large merger between Alstom and Bombardier be approved with conditions.</p> <p>Alstom participates in South Africa's rolling stock market through two companies called Alstom Gibela ("Gibela") and Alstom Ubunye. In 2012, Gibela won PRASA's tender to renew its mainline rolling stock fleet. Bombardier Transportation is the rail transport division of Canadian Bombardier Inc. In South Africa, Bombardier is active in the supply and maintenance of signalling systems in South Africa.</p> <p>The Commission proposed that conditions be imposed relating to security of supply of particular locomotive signalling systems and related spare parts; as well as repair and maintenance support in South Africa post-merger. These conditions should apply for the duration of the life cycle of the products in question.</p> |

PERFORMANCE  
INFORMATION

C



## 9. PROGRAMS & FUNCTIONS

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

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

The divisions that carried out the Commission's work during the reporting period were:

- Market Conduct Division (MCD): investigates abuse of dominance, vertical restrictive practices, assesses exemption applications and conducts market inquiries;
- Cartels Division (CD): investigates and prosecutes cartel conduct;
- Mergers and Acquisitions Division (M&A): analyses and evaluates applications for corporate consolidations;
- Legal Services Division (LSD): the program provides litigation services and legal expertise to the Commission, and advisory opinions to the public;
- Economic Research Bureau (ERB): the division provides economic expertise to the organisation and enhances the Commission's knowledge and understanding of market dynamics.
- Advocacy: the division conducts preliminary investigation of complaints received, provides policy responses to Government and other regulators, and advocates for voluntary compliance with the Act. The division is also responsible for the Commission's Strategic Planning function.
- The Corporate Services Division (CSD): the division provides corporate support services, including human resource management, registry, security and facilities management, as well as the management of Information Technology (IT).
- The Finance Division is tasked with the responsibility for finance management.
- Finally, the Office of the Commissioner (OTC) carries out communication and corporate governance. The OTC is also responsible for managing the Commission's relations with international stakeholders.

Table 5 shows each of the Commission's strategic goals, and the divisions responsible for achieving them.

**Table 5: Strategic goals, outcomes and responsible divisions**

| Strategic goal  | Intended outcomes   | Responsible divisions   |
|---|---|---|
| <b>Enforcing and regulating towards economic growth and enhanced economic participation</b> | <ul style="list-style-type: none"> <li>• Efficient and effective merger regulation and enforcement.</li> <li>• Competitive, contestable and deconcentrated markets.</li> <li>• Improved public interest outcomes.</li> <li>• Improved compliance and awareness.</li> <li>• Existing competitive small and large businesses remain in the market.</li> </ul>   | <ul style="list-style-type: none"> <li>• Advocacy Division</li> <li>• Cartels Division</li> <li>• ERB Division</li> <li>• Market Conduct Division</li> <li>• Legal Services Division</li> <li>• M&amp;A Division</li> </ul>                                       |
| <b>Advocating for improved compliance and pro-competitive public policy outcomes</b>        | <ul style="list-style-type: none"> <li>• Improved public interest outcomes.</li> <li>• Improved compliance and awareness.</li> <li>• Improved understanding of market dynamics in priority sectors.</li> <li>• Improved co-ordination on the application of economic policy and competition policy.</li> <li>• Increased importance of developmental perspectives in domestic and international competition law discourse.</li> </ul> | <ul style="list-style-type: none"> <li>• Office of the Commissioner</li> <li>• Advocacy Division</li> <li>• Cartels Division</li> <li>• ERB Division</li> <li>• Market Conduct Division</li> <li>• Legal Services Division</li> <li>• M&amp;A Division</li> </ul> |
| <b>A People-Centric, High-Performance Organization</b>                                      | <ul style="list-style-type: none"> <li>• Sound Corporate Governance</li> <li>• Secure, harmonious and conducive working environment.</li> <li>• Responsive corporate services systems to support workforce during Covid-19 pandemic.</li> <li>• Highly motivated, engaged and productive workforce.</li> </ul>  | <ul style="list-style-type: none"> <li>• Corporate Services Division</li> <li>• Finance Division</li> <li>• All other divisions</li> </ul>  |

## 10. MARKET CONDUCT DIVISION

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

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

**Abuse of a dominant position** by a firm may include excessive pricing of goods or services, denying competitors access to an essential facility, price discrimination (unjustifiably charging customers different prices for the same goods or services) and other exclusionary acts (such as refusal

to supply scarce goods to a competitor, inducing suppliers or customers not to deal with a competitor, charging prices that are below cost so as to exclude rivals, bundling goods or services, and buying up a scarce input required by a competitor).

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





Exemptions allow firms to engage in anti-competitive conduct, if the conduct and their motivation meet the requirements set out in the Act.

**Exemptions** allow firms to engage in anti-competitive conduct, if the conduct and their motivation meet the requirements set out in the Act.

The Market Conduct Division also conducts market inquiries, which are formal inquiries into the general state of competition in a market for goods or services, without necessarily referring to the conduct or activities of any firm.

## 10.1 SUMMARY OF PERFORMANCE VS TARGETS

The Market Conduct Division was responsible for six (6) performance targets in the 2020/21 financial year, four (4) targets were met, and two (2) targets exceeded.

## 10.2 PERFORMANCE HIGHLIGHTS

In this financial year the Market Conduct Division had fifty- nine (59) complaints under investigation. Market conduct completed thirteen (13) investigations during the

financial year: twelve (12) complaints were non-referred, and one (1) complaint was referred to the Tribunal for prosecution.

Below, we discuss some of the complaints completed/ referred to the Tribunal during the financial year:

### **a) Amandelbult RMC vs 3Q Concrete (Pty) Ltd and PPC Limited**

The Complainant, Amandelbult RMC (“Complainant”), produces and supplies ready-mix concrete in the Amandelbult region. The Respondent is 3Q Concrete (Pty) Ltd and PPC Limited. 3Q Concrete is a subsidiary of PPC Limited (“PPC”). PPC acquired 3Q Concrete in July 2016. PPC is predominantly a cement company and 3Q Concrete produces and supplies ready-mix concrete.

The Complainant alleges that the Respondent abused its dominance in the ready-mix concrete market within the Amandelbult region. In particular, the Complainant alleges that the Respondent is pricing ready-mix concrete below cost. It is

further alleged that the aim of pricing below cost is to drive the Complainant out of the market, after which the Respondent is likely to increase prices. The complaint was investigated as a potential contravention under section 8(1)(d)(iv) of the Act which prohibits dominant firms from selling goods or services at predatory prices.

The investigation revealed the following:

Since the entry of the Complainant in July 2018, the Respondent has only priced below Average Variable Cost in December 2018. In this case, the allegation of predatory pricing could not be sustained based on pricing below Average Variable Costs for a period of one (1) month.

The investigation also assessed the Respondents' pricing in relation to average avoidable costs. It was found that the Respondent's prices remained above Average Avoidable Costs before the Complainant's entry (except December 2017). After the entry of the Complainant in July 2018, the average prices charged by the Respondents remained above Average Avoidable Costs except for three months (in October 2018, December 2018 and June 2019) when prices dropped below Average Avoidable Costs. It was found that, in this case, the allegation of predatory pricing cannot be sustained based on pricing below average avoidable costs for a period of three (3) months.

There is also no evidence that suggests that the alleged conduct had adverse effects on the business of the Complainant. Further, the Respondent exited the relevant geographic market due to a drop in volumes following the entry of a competitor.

In light of this, the complaint was non-referred.

### **b) Competition Commissioner vs Transnet SOC Ltd (ports)**

On 7 July 2016, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against Transnet SOC Ltd ("Transnet") and two of its divisions, namely, Transnet National Ports Authority ("TNPA") and Transnet Port Terminals ("TPT") (Transnet, TNPA and TPT will collectively be referred to as "the Respondents"). The initiation was based on information obtained by the Commission that gave rise to a reasonable suspicion that the Respondents may have engaged in excessive pricing in the provision of port services and exclusionary practices in the prioritisation of cargo and berthing at port terminals. This conduct may, respectively, amount to a contravention of sections 8(a) and 8(c) of the Act. TNPA is also responsible for issuing licences to terminal operators to provide terminal operating services within a port. In this regard, TNPA has issued licences to TPT (another division of Transnet) and private terminal operators. TPT and private terminal operators are responsible for

managing terminal operations and handling cargo at commercial ports in South Africa.

The investigation revealed the following:

- In respect of TPT, the investigation revealed that TPT is charging excessive prices at the following terminals: Durban RoRo (automotive), Port Elizabeth Multipurpose, Saldanha Multipurpose and Saldanha Dry Bulk. The Commission has taken a decision to refer the allegations of excessive pricing against TPT to the Tribunal in respect of these terminals.
- The investigation revealed that TNPA has refused to issue terminal licences and/or enter into terminal operator agreements in contravention of section 8(c) of the Act and the Commission will refer the alleged conduct to the Tribunal for prosecution.
- With respect to the allegations of excessive pricing by TNPA, the Commission found that TNPA's revenue is below its total economic costs. The evidence before the Commission indicates that the allegations of excessive pricing cannot be sustained. As a result, the excessive pricing allegations against TNPA has been non-referred.
- The alleged exclusionary conduct against TPT has been non-referred as the investigation revealed that the allegation of exclusionary conduct cannot be sustained.

### **c) Competition Commissioner vs Transnet SOC Ltd (rail)**

On 14 September 2016, the Commissioner initiated a complaint against Transnet and its subsidiary, Transnet Freight Rail (“TFR”). In the complaint, the Commissioner alleged that TFR’s prices for transporting freight are excessive, in contravention of section 8(a) of the Act; and that TFR engaged in conduct of charging different prices to different customers, in contravention of section 9(1), or alternatively section 8(c) of the Act.

The excessive pricing assessment was conducted on export iron ore, export coal, general freight and TFR’s whole operations. Based on the analysis, although TFR is making positive operating margins, the Commission found that average mark-ups on economic costs are in the negative. Further, a sensitivity analysis demonstrated poor prospects of an excessive pricing finding against TFR in terms of the Act. An efficiency benchmark exercise conducted was inconclusive, hence there were no efficiency related adjustments to TFR’s costs.

Considering the above findings, the Commission concluded that the allegations of excessive pricing against TFR be non-referred because the allegations cannot be sustained.

The Commission also found that the allegations of price discrimination cannot be sustained because transactions involving

TFR’s customers were not equivalent. Moreover, TFR provided justifications for price differentials. In most instances, the differentials were because of different services offered and varying arrangements with customers.

### **d) Competition Commission vs Vodacom Group**

On 3 October 2017 the Commission initiated a complaint against the Vodacom Group for an alleged contravention of section 8(d)(i) of the Act which prohibits inducement, alternatively section 8(c) of the Act, which relates to a general exclusionary act.

The complaint originated from an agreement between Vodacom and National Treasury for the supply of mobile communication services to Government for a period of four years (known as the RT15-2016). The agreement, a transversal agreement in nature, can include all state organs.

Given that a single and dominant service provider was appointed following the tender process, the Commission’s concerns were that markets would be distorted as a result, that barriers to entry and/or expansion would be raised further, that Vodacom’s dominance would be entrenched and that competitors of Vodacom would be excluded from the relevant market because of the transversal agreement. The agreement’s initial term spanned from 15 September 2016 to 31 August 2020.

Following an investigation, the Commission decided not to refer the matter to the Tribunal, mainly on the basis that although several anticompetitive effects were observed, they were not substantial enough to warrant such referral.

The Commission found that although Vodacom was in fact a dominant firm in the relevant market, the conduct of entering into the transversal agreement with National Treasury was unlikely to induce National Treasury not to deal with Vodacom’s competitors in future. This analysis entailed establishing whether Vodacom entered into an agreement that, by its design or characteristics (i.e., through its clauses or incentives linked to the agreement) locks-in (i.e. induces) Treasury to continue only dealing with Vodacom to the exclusion of Vodacom’s competitors. The Commission was unable to conclusively determine that the clauses, the products or incentives have such ability.

The Commission was also not able to find conclusive evidence indicating that Vodacom sought to leverage the transversal agreement into adjacent markets – notably for markets utilising smart technologies forming part of the “internet of things” (such as smart metering services or vehicle tracking).

Further, although the Commission found that the transversal agreement was a de facto exclusive agreement; and although

the act of entering into such an agreement qualified as an exclusionary act, the anti-competitive effects flowing from the agreement were not substantial enough, on the available evidence, to justify a contravention of section 8(c) of the Act.

The Commission consequently concluded that the conduct of Vodacom, in entering into the transversal agreement, is unlikely to sustain a contravention of either section 8(d) (i) or section 8(c) of the Competition Act.

The Commission however undertook to collaborate with National Treasury in seeking solutions to address some of the concerns which remain. These concerns relate to the design of the RT15 tender in potentially excluding other (and smaller) firms, the impact of the transversal agreement on consumer choice, the potential impact of the agreement on current and future pricing and the potential impact of the agreement on advances in e-government.

### 10.3 INITIATIONS

The Commission initiated 36 complaints in the 2020/21 financial year, of which 33 complaints were in respect of Personal Protective Equipment (“PPE”) related products. Thirty-two (32) of these complaints were initiated after receiving information from National Treasury regarding government procurement of PPE. Some initiated complaints are summarised below:

#### **a) Competition Commission vs Sasol Limited and Sasol South Africa (Pty) Ltd**

On 08 April 2020, the Commissioner initiated a complaint in terms of Section 49B(1) of the Act, against Sasol Limited (“Sasol”) and Sasol South Africa Pty (Ltd) (“SSA”) for an alleged contravention of Section 8(a) of the Act read with the Consumer and Customer Protection and National Disaster Management Regulations and Directions. The Commission received information pertaining to potential excessive pricing of alcohols which are a critical input in the manufacture of hand-sanitizers and disinfectants. In this regard, the Commission received information from the Department of Energy and the Department of Trade, Industry and Competition alleging that SSA on or about 20 March 2020 increased its prices of varying strengths of alcohols (75%, 85%, and 95%) by between 50% and 80%. In addition, the Commission received information which indicated that on 16 March 2020 SSA increased the price of alcohols (strength of 85% and 99%) by 55% with immediate effect. Moreover, further information received via the Commission’s SMS hotline indicated that Sasol increased prices of alcohols from R14.00 per/kg to R17.00 per/kg following the outbreak of the Covid-19 pandemic in South Africa. The matter is still under investigation.

#### **b) Competition Commission vs Discovery Vitality (Pty) Ltd**

The complaint was initiated on 18 June 2020 against Discovery Vitality (Pty) Ltd; Discovery Health (Pty) Ltd; Discovery Life Ltd and Discovery Ltd. The Respondents operate a wellness and reward programme called the Discovery Vitality Health programme (“Vitality”). Over time, the Respondents have integrated the Vitality programme with its other products offerings including long term insurance, short term insurance and banking.

The Respondents are allegedly offering customers an upfront premium reduction and/or dynamic annual premium adjustments (increases/decreases) and/or cash back on premiums paid, all dependant on a customer’s Vitality status. The conduct may amount to an inducement of customers not to deal with the Respondents’ competitors in the long-term insurance market. The alleged conduct may impede and/or prevent other firms in the long-term insurance market from entering into, participating in or expanding within the relevant market as such firms may either not have access to a similar wellness product to use as a risk proxy or are unable to achieve the same scale required as Vitality, given the Respondents’ dominance. Further, the leveraging of the Respondents’ dominance through the tying of the Vitality programme to a long-term insurance product (such as

life insurance policy) to qualify for certain benefits (such as an upfront premium reduction and/or dynamic annual premium adjustments (increases/decreases) and/or cash back on premiums paid) may amount to an exclusionary act in contravention of the Act.

In addition, the Respondents' refusal to allow a competitor to use a consumer's Vitality status as risk proxy may amount to a contravention of the Act, in that such conduct may exclude or impede the participation of competitors of the Respondents in the long-term insurance market. This conduct may further limit consumer choice by obliging consumers, who seek to benefit from their Vitality status as a risk proxy, to purchase a life insurance policy from the Respondents only. This may impede and/or prevent other firms in the long-term insurance market from entering into, participating in or expanding within the relevant market.

The Commission is investigating the alleged conduct for potential contraventions of section 8(1)(d)(i) and/or section 8(1)(d)(iii) and/or section 8(1)(c) of the Act.

### **c) Competition Commission vs Crest Chemicals (Pty) Ltd**

The Commissioner initiated a complaint against Crest Chemicals Proprietary Limited in terms of section 49B(1) of the Act read with the Consumer and Customer Protection and National Disaster

Management Regulations and Directions. The Commissioner alleged that the respondent is abusing its dominance in the local market by charging an excessive price for isopropanol (IPA), a critical input into hand-sanitizers and disinfectants, thus taking advantage of the supply or demand shock resulting from the Covid-19 pandemic to the detriment of consumers. The matter is still under investigation.

## **10.4 EXEMPTIONS**

During this period, the Commission finalised one (1) exemption application. The Commission did not receive any new exemption applications in the financial year. The Commission has extended existing exemptions sought by the South African Petroleum Industry Association (SAPIA) for one (1) year, ending in December 2020, and Abalone Farmers Association of South Africa (AFASA) for one (1) year, ending in September 2020. The number of exemption applications assessed is set out in Table 6.

**Table 6: Exemption applications finalised in 2020/21**

| Applicant                                  | Conduct sought to be exempted | Status of the application at year end |
|--|-------------------------------|---------------------------------------|
| <b>SAPIA</b>                               | 4(1)(b)(i)                    | Conditional exemption granted         |
| <b>AFASA</b>                               | 4(1)(b)(i)                    | Conditional exemption granted         |
| <b>Day Hospital Association</b>            | 4(1)(b)(i)                    | Under investigation/ pending          |
| <b>The South African Sugar Association</b> |                               | Conditional exemption granted         |

### **a) South African Sugar Association Exemption**

The South African Sugar Association ("SASA") and its members, ("the Applicants") filed an application for an exemption in terms of Section 10(3)(b)(iv) of the Act on 17 August 2020. SASA is a statutory body established in terms of Section 2(1) of the Sugar Act No. 9 of 1978 ("the Sugar Act"). It provides a variety of services to its members to support the functioning of the regulatory framework within which the industry operates, and acts as a representative of the industry in relation to engagements with external stakeholders. SASA's members comprise of two levels of the value chain, namely Growers and Millers and are made up of the associations which represent the interests of those levels. These are (1) the South African Sugar Miller's Association ("SASMA"), (2) the South African Cane Growers

Association (“SACGA”) and (3) the South African Farmer’s Development Association (“SAFDA”).

The application emanates from the fact that, on 23 June 2020, the Minister of Trade, Industry and Competition, after consultation with the Minister of Agriculture, Land Reform and Rural Development, designated the sugar industry in terms of Section 10(3)(b)(iv) of the Act for a period of 12 months, commencing on 1 July 2020. The designation is meant to offer support for the economic development, growth, transformation, and stability of the sugar industry in line with the objectives of the proposed South African Sugarcane Value Chain Master Plan to 2030 (“Sugar Master Plan”).

The scope of the application for exemption is in terms of agreements and/or practices in the industry to:

- a) restrain producer price increases of sugar in terms of timing, notice and manner of implementing such price increases;
- b) share competitively sensitive information and in light of that information, engage regarding various options for interventions that could be implemented to support small-scale growers and ensure that they become a sustainable part of the sugar supply chain, in line with the objectives of the Sugar Master Plan;

- c) share competitively sensitive information of the various sugar industry participants, including growers, millers and refiners and in light of that information engage on the various means by which the industry could implement a restructuring of the nature contemplated in the Sugar Master Plan;
- d) share competitively sensitive information with the Eswatini Sugar Association (including in relation to production volumes, local and export sales volumes, notional pricing, and identification of diversification opportunities) and in light of this information engage with the Eswatini Sugar Association to achieve policy harmonisation to the mutual benefit of each country’s sugar producers.

The agreements and/or practices which are sought to be exempted stem from the Sugar Master Plan and contemplate a social compact between the sugar industry, Government and other stakeholders in order to facilitate interventions which are aimed at stabilizing the sustainability of the sugar industry for the future. The applicants submit that the sugar industry is on a downward trajectory mainly because of drought; low international sugar prices, decline in sales volumes due to sugar tax, and competition from cheap imports, mainly from Brazil and recently Eswatini. The Applicants submit that the conduct for which the exemption is being sought may amount to a contravention of

Section 4(1)(b)(i) & (ii) of the Act. According to the Applicants, the implementation of the Master Plan through an exemption from the Commission will prevent the collapse of the South African sugar industry and the loss of the material socio-economic benefits that flow from it.

On 19 October 2020, the Commission granted SASA and its members a conditional exemption until 31 June 2021. The exemption has been granted subject to conditions to ensure that the information SASA and its members share is limited to that which is necessary to give effect to the purposes of the South African Sugarcane Value Chain Master Plan to 2030 (“Sugar Master Plan”).

The Commission has granted the exemption, with the following conditions:

#### **Price Restraint**

1. There will be no co-ordination or information exchange between Millers regarding actual prices charged to wholesalers, retailers and industrial sugar users. Millers must still make independent decisions on actual prices and/or increases to be implemented in line with the commitments in the Exemption Application.

***Small-scale grower retention and support***

2. The information shared is limited specifically to costs of production and volume outputs.
3. All information shared in this regard must be done anonymously.
4. The shared information should be aggregated per region.

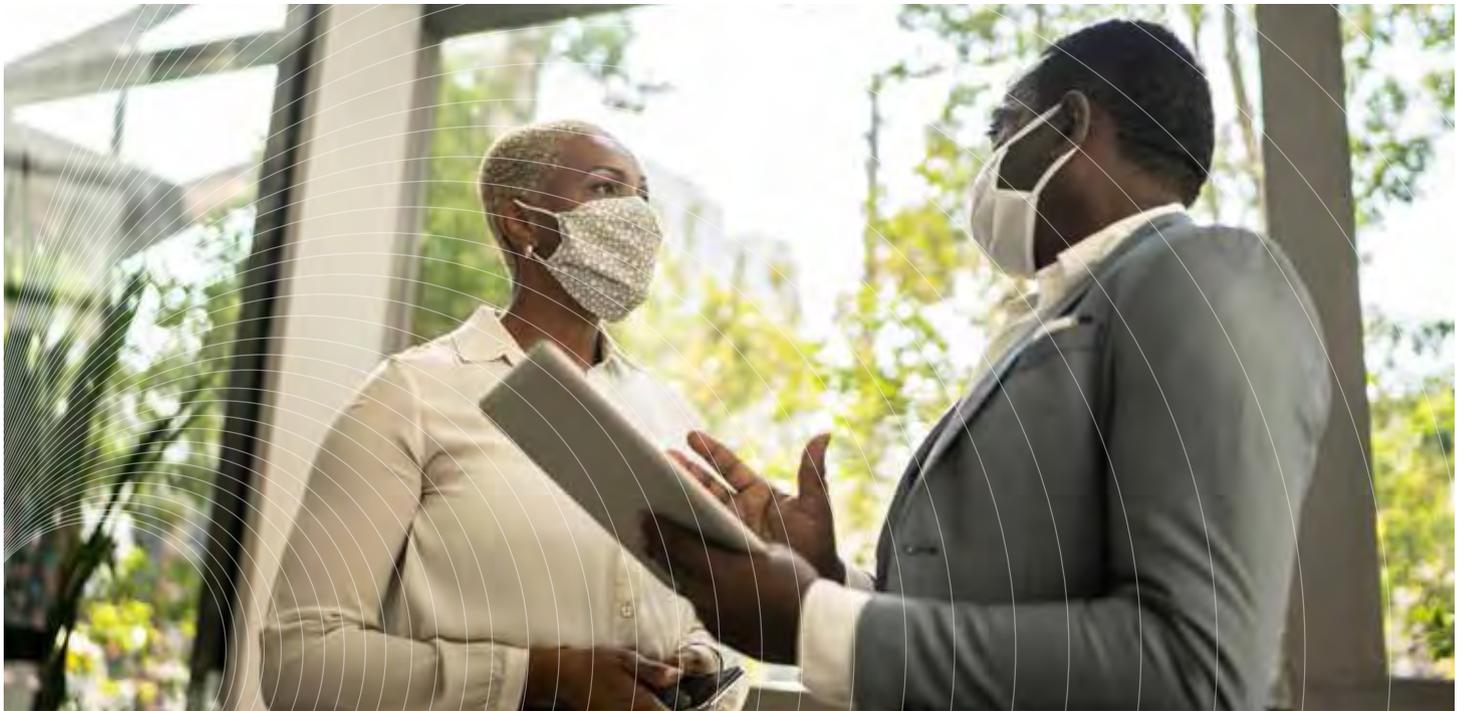
***Managed Industry Restructuring***

5. A DTIC facilitator must be present at all meetings where information is to be shared.

6. All information shared must not be unjustifiably disaggregated in relation to the objectives set out in the Master Plan.
7. No information is to be retained or distributed to individuals outside the structures/committees created by SASA.
8. All necessary information to be shared must be submitted individually to SASA for collation.
9. All information shared must be pre-approved by the DTIC facilitator.

***SACU Harmonization***

10. A DTIC facilitator must be present at all meetings where information is to be shared for the purposes of SACU Harmonization.
11. All necessary information to be shared must be submitted individually to SASA for collation.
12. All information shared must be pre-approved by the DTIC facilitator.



# 11. CARTELS DIVISION

The Cartels Division (CD) is responsible for investigating and prosecuting cartel conduct.

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

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

## 11.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Cartels Division was responsible for four (4) performance targets in 2020/21 financial year. The Cartels Division met two (2) targets and exceeded two (2) targets.

## 11.2 PERFORMANCE HIGHLIGHTS

During the 2020/21 financial year, the Commission received twenty-three (23) cartel complaints from third parties and initiated five (5) cartel investigations. A total of twenty-eight (28) cartel investigations were completed during financial year 2020/21. Of these, six (6) were referred to the Tribunal for prosecution, while twenty-two (22) were non-referred. The Cartels Division received four (4) CLP applications in 2020/21 financial year. The Cartels Division did not conduct any dawn raids in the 2020/21 financial year, due to Covid-19 restrictions.

**Table 7: Cartels case statistics**

| CARTEL CASES RECEIVED, INVESTIGATED AND FINALISED | 2017/18 | 2018/19 | 2019/20 | 2020/21 |
|---|---------|---------|---------|---------|
| <b>Cases received from third parties</b>          | 35      | 13      | 6       | 23      |
| <b>Cases initiated by the Commission</b>          | 28      | 22      | 2       | 5       |
| <b>Completed investigations</b>                   | 63      | 30      | 25      | 28      |
| <b>Referrals to the Tribunal</b>                  | 52      | 18      | 9       | 6       |
| <b>Cases non-referred</b>                         | 11      | 12      | 12      | 22      |

Key cartel investigations are discussed below:

**a) Competition Commission vs Provanage (Pty) Ltd, Outdoor Network Ltd, Kwaito Trading Company (Pty) Ltd and others**

On 24 March 2021, the Competition Tribunal confirmed the settlement agreement between the Commission and two respondents being Adreach (Pty) Ltd (“Adreach”) and Sotobe Media Holdings (Pty) Ltd (“Sotobe Media”) for contravention of section of 4(1)(b)(i) & (ii) of the Act as an order.

This followed a Commission investigation which found that from 2013, Outdoor Network, Adreach and Sotobe Media agreed to share equally the market for street pole and shopping mall pole advertising in the municipalities of eThekweni, Msunduzi, uMhlathuze, Emnambithi, Umdoni and Mbombela. These firms also agreed not to approach each other’s existing customers. These firms further agreed to adhere to the same rate card when selling advertising space on street poles in the eThekweni, Msunduzi, uMhlathuze, Emnambithi, Umdoni and Mbombela municipalities.

This conduct amounts to price fixing and market division, which contravene

section 4(1)(b)(i) & (ii) of the Act. Adreach admitted to this conduct and agreed to pay a R2 500 000 (two million five hundred thousand rand) administrative penalty. Further, Adreach undertook to provide free advertising campaigns to qualifying SMMEs, to a total value of R1 790 901.44 (one million seven hundred and ninety thousand nine hundred and one rand and forty-four cents). Qualifying SMMEs will be those enterprises with an annual turnover not exceeding R5 million. Sotobe Media admitted to this conduct and agreed to pay an administrative penalty of R12 500 (twelve thousand five hundred rand).

**b) Competition Commission vs Pickfords Removals (Pty) Ltd**

On 24 June 2020, the Constitutional Court upheld the appeal brought by the Commission against the decision of the Competition Appeal Court (“CAC”). The CAC dismissed the appeal of the Commission against the decision of the Tribunal.

The case emanated from an interlocutory application brought before the Tribunal by Pickfords Removals SA (Pty) Ltd (“Pickfords”) after the Commission referred 37 instances of collusive tendering in September 2015 against Pickfords to the Tribunal for prosecution. Pickfords raised an objection that out of the 37 instances of collusion,

20 should be dismissed, as 14 of them occurred and stopped three years before the investigation was initiated and 6 were not sufficiently pleaded. The Commission opposed this exception at 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 appealed the Tribunal decision to the CAC which was dismissed on the basis of the same reasoning as the Tribunal, namely that section 67(1) prevents the Commission from investigating and prosecuting cartels that stopped three years before the investigation is initiated. The Commission approached the Constitutional Court for relief which upheld the Commission’s appeal and set aside the judgment of the CAC.

The Commission argued that section 67(1) is not a prescription provision but a procedural time-bar provision, which in the event of non-compliance, can be condoned by the Tribunal in terms of section 58(1)(c)(ii) of the Act. The Constitutional Court agreed with the Commission.

The Constitutional Court agreed, finding that section 67(1) of the Act is not a prescription

section, but procedural time-bar which can be condoned by the Tribunal in the event of non-compliance. The Constitutional Court also held that Section 58(1)(c)(ii) of the Act empowers the Tribunal to condone, on good cause shown, non-compliance with section 67(1) of the Act.

The Constitutional Court also ruled on the initiation of the complaint. It held that it is not necessary for the Commissioner to name all the firms involved in the cartel when initiating a complaint as the complaint initiation is against a prohibited practice. The Commissioner can add new firms to the complaint at any time during the investigation.

This judgment affirmed the Commission's constitutional right to access to the courts. It clarified that section 67 is not a proscription section and that the Tribunal has the powers to condone non-compliance with it. Lastly, it clarified that the Commissioner does not need to list all the firms when initiating a complaint and that new firms can be added during the investigation.



# 12. MERGERS AND ACQUISITIONS DIVISION

The Mergers and Acquisitions (M&A) Division assesses mergers filed with the Commission to determine whether the merger is likely to substantially prevent or lessen competition in a market, and whether the merger can or cannot be justified on public interest grounds.

Mergers are classified as either small, intermediate or large, depending on the turnover or asset values of the merging firms. The Commission receives a filing fee for every intermediate or large merger filed.

According to the Act, it is not compulsory for small mergers to be notified, and no filing fee is prescribed. However, the Commission may call for the notification of a small merger within six months of implementation, if it believes the merger is likely to substantially prevent or lessen competition, or if the merger cannot be justified on public interest grounds. In terms of the guidelines on small merger notifications, the Commission requires any

party to a small merger to inform it of that merger if either party is under investigation by the Commission for a contravention of the Act, or if there is an ongoing investigation in the relevant market. The merger thresholds are set out in the table below.

**Table 8: Mergers and acquisitions thresholds applicable in the 2020/21 financial year**

| Threshold               | Combined turnover or asset value | Target turnover or asset value | Size of the merger | Filing fee |
|-------------------------|----------------------------------|--------------------------------|--------------------|------------|
| <b>Lower threshold</b>  | R600 000 000                     | R 100 000 000                  | Intermediate       | R 165 000  |
| <b>Higher threshold</b> | R6 600 000 000                   | R 190 000 000                  | Large              | R 550 000  |

## 12.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Mergers and Acquisitions (M&A) Division was responsible for five (5) performance targets in 2020/21 financial year and met all the targets.

## 12.2 PERFORMANCE HIGHLIGHTS

The Commission classifies notified mergers as either phase 1 (non-complex), phase 2 (complex) or phase 3 (very complex) mergers, depending on the complexity of the competition or public interest issues raised. The Commission has published service standards for the time periods within which it aims to complete an investigation. These service standards are necessary as the Act has set out timeframes for merger investigations, regardless of their level of complexity. Therefore, the service standards assist in managing internal deadlines and stakeholders' expectations when notifying mergers with varying levels of complexity. The table below gives a complete picture of the timeframes set out in the Commission's service standards, and the maximum allowable timeframes set for merger assessments in the Act.

Table 9: Time frames set for assessing mergers of varying complexities

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

In the 2020/21 financial year, the Commission met its turnaround time targets, as set out in Table 10 below.

Table 10: Average turn-around times in 2020/21 against service standards

| Phase  | Service standard | Total number of transactions (excluding withdrawn and no jurisdiction cases) | Average turnaround time |
|--|------------------|--|-------------------------|
| <b>Phase 1</b>                                     | 20               | 61   | 18                      |
| <b>Phase 2</b>                                     | 45               | 150  | 37                      |
| <b>Phase 3 (small and intermediate)</b>            | 60               | 5  | 55                      |
| <b>90% of Phase 3 large merger investigations.</b> | 120              | 9  | 93                      |

In the 2020/21 financial year, the Commission received 242 merger filings and finalised 225 cases. The number of filings declined by 20% compared to the previous financial year, reflecting more subdued economic activity as a result of the Covid-19 pandemic. Most of the cases finalised in this financial year were intermediate mergers (67% of cases finalised).

The majority of mergers filed during 2020/21 (84%) were approved unconditionally while 34 cases (15%) were approved with conditions. The Commission prohibited one case during the 2021/21 financial year, namely the merger between Averda South Africa (Pty) Ltd and A-Thermal Retort Technologies (Pty) Limited (A-Thermal), A-Thermal Resources (Pty) Ltd (A-Thermal Resources)

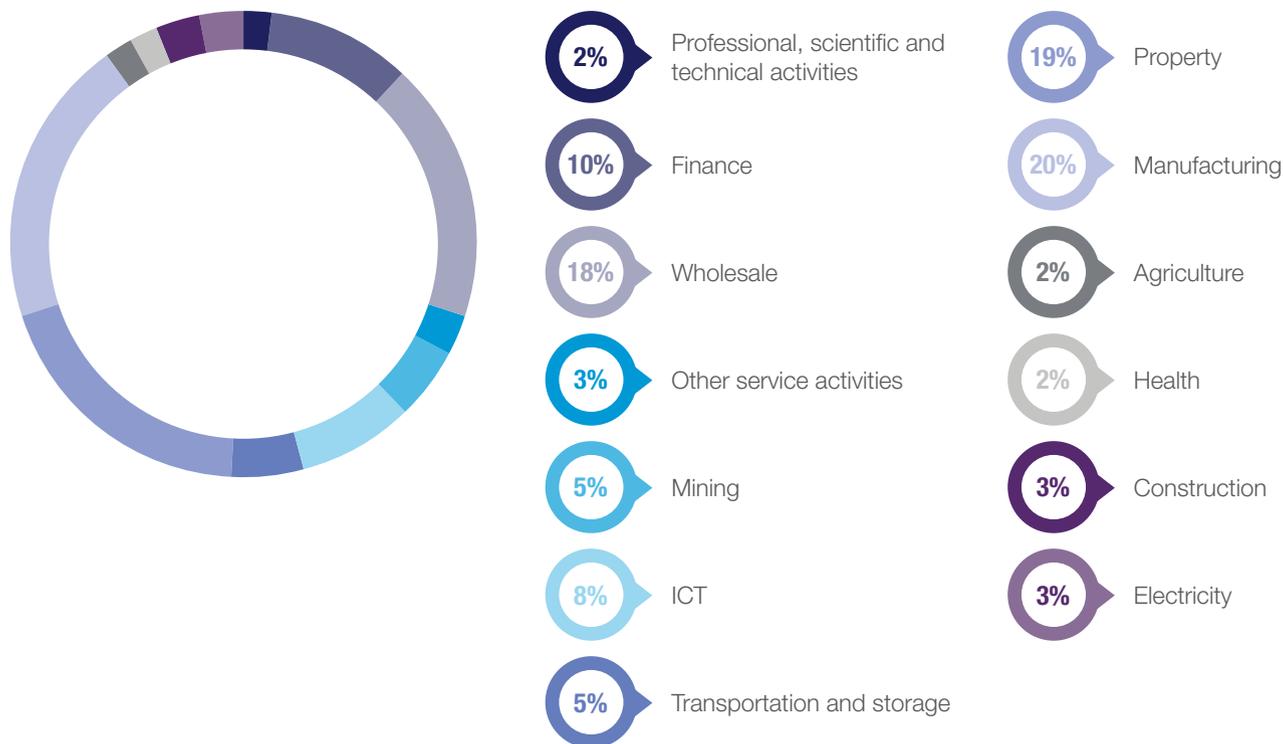
and Cecor Allied Technologies (Pty) Ltd (Cecor) in the healthcare risk waste sector. The Commission also recommended that the Tribunal prohibit the merger between Senwesbel and Suidwed (Pty) Ltd. The Tribunal did not uphold the prohibition but approved the transaction with conditions.

**Table 11: Mergers notified and reviewed over five years**

|                                    | 2016/17    | 2017/18    | 2018/19    | 2019/20    | 2020/21    |
|------------------------------------|------------|------------|------------|------------|------------|
| <b>Notified</b>                    | <b>418</b> | <b>377</b> | <b>348</b> | <b>302</b> | <b>242</b> |
| Large                              | 93         | 119        | 104        | 82         | 72         |
| Intermediate                       | 319        | 249        | 235        | 217        | 161        |
| Small                              | 6          | 9          | 9          | 3          | 9          |
| <b>Finalised</b>                   | <b>385</b> | <b>388</b> | <b>336</b> | <b>318</b> | <b>225</b> |
| Large                              | 109        | 120        | 106        | 84         | 67         |
| Intermediate                       | 270        | 261        | 221        | 230        | 150        |
| Small                              | 6          | 7          | 9          | 4          | 8          |
| <b>Approved without conditions</b> | <b>349</b> | <b>325</b> | <b>287</b> | <b>278</b> | <b>189</b> |
| Large                              | 91         | 94         | 85         | 69         | 50         |
| Intermediate                       | 252        | 226        | 196        | 206        | 132        |
| Small                              | 6          | 5          | 06         | 3          | 7          |
| <b>Approved with conditions</b>    | <b>31</b>  | <b>52</b>  | <b>41</b>  | <b>33</b>  | <b>34</b>  |
| Large                              | 13         | 23         | 18         | 13         | 16         |
| Intermediate                       | 18         | 27         | 21         | 19         | 17         |
| Small                              | 0          | 2          | 2          | 1          | 1          |

|                                  | 2016/17  | 2017/18   | 2018/19  | 2019/20  | 2020/21  |
|----------------------------------|----------|-----------|----------|----------|----------|
| <b>Prohibited</b>                | <b>5</b> | <b>12</b> | <b>4</b> | <b>7</b> | <b>2</b> |
| Large                            | 1        | 4         | 1        | 2        | 1        |
| Intermediate                     | 4        | 7         | 2        | 5        | 1        |
| Small                            | 0        | 1         | 1        | 0        | 0        |
| <b>Withdrawn/No jurisdiction</b> | <b>3</b> | <b>7</b>  | <b>4</b> | <b>3</b> | <b>2</b> |
| Large                            | 1        | 1         | 2        | 1        | 0        |
| Intermediate                     | 2        | 9         | 2        | 2        | 1        |
| Small                            | 0        | 0         | 0        | 0        | 1        |

Figure 1: M&A 2020/21 sectoral analysis



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

**a) *Averda and A-Thermal Resources and Cecor***

On 28 October 2020, the Commission prohibited the proposed transaction whereby Averda South Africa (Pty) Ltd (Averda) intends to acquire A-Thermal Retort Technologies (Pty) Limited (A-Thermal), A-Thermal Resources (Pty) Ltd (A-Thermal Resources) and Cecor Allied Technologies (Pty) Ltd (Cecor) (collectively, the “Target Firms”)

Averda is an end-to-end provider of waste management services globally and in South Africa. Averda’s activities in South Africa include the collection, transportation, treatment, and disposal of general waste (domestic and industrial) and hazardous waste (which includes general hazardous and hazardous healthcare risk waste (HCRW)). HCRW includes anatomical waste, pharmaceutical waste, sharps waste and infectious waste. Of relevance to this proposed transaction was Averda’s HCRW treatment activities using burn technology (i.e., incineration) and non-burn technology (e.g., electro thermal deactivation and autoclaves) to treat / neutralise waste. Averda’s waste treatment facilities are located in Gauteng, North West, and Western Cape.

Through A-Thermal, the Target Firms operate an incinerator which can treat all forms of HCRW. A-Thermal also operates a thermal desorption facility which is a form of burn technology that treats waste via pyrolysis technology. Unlike an incinerator, the waste is not combusted. The thermal desorption plant is licensed by the Department of Forestry, Fisheries and Environment (DFFE) to treat hazardous pharmaceutical and chemical waste. Through Cecor, the Target Firms operate an autoclave which is a technology that treats healthcare risk waste such as medical sharps waste (needles, syringes etc.) via disinfection. The Target Firms’ waste treatment facilities are located in Gauteng.

The merging parties both treat general hazardous waste and HCRW. The more significant overlap between the activities of the merging parties is with respect to the treatment of HCRW. The Commission therefore assessed the impact of the proposed transaction on the treatment of HCRW both nationally and regionally as follows:

1. The market for the treatment of HCRW using burn and non-burn technologies.
2. The market for the treatment of HCRW using burn-technologies.
3. The market for the treatment of HCRW using non-burn technologies.

4. The market for the treatment of pharmaceutical waste using burn technologies.
5. The market for the treatment of anatomical/pathological waste using burn incineration technologies.
6. The market for the treatment of infectious and sharps waste using non-burn and burn incineration technologies.

The Commission found that the proposed transaction will result in the merged entity having high market shares in most of the relevant markets assessed. The investigation showed that Averda has a history of expanding through acquisitions and has engaged in several acquisitions over the past 5 years, some of which were small mergers. The Commission found that Averda’s acquisition of the Target Firms’ additional burn technology capacity enables the merged entity to withhold supply of capacity to competitors, or price it at a level that makes rivals less competitive.

The Commission also found that the merged entity’s acquisition of a portfolio of technologies used in HCRW treatment places it in a unique position to contest for contracts/tenders. This may hinder the effective operations of competitors, particularly SMEs and HDP-controlled competitors, that traditionally rely on outsourced capacity to effectively compete in HCRW treatment markets. In addition,

barriers to entry are high and there is currently constrained burn capacity due to various reasons. Thus, the Commission found that the proposed transaction is likely to substantially prevent or lessen competition in the relevant markets post-merger.

The Commission found that the proposed transaction has a negative effect on the ability of SMEs and/or HDP competitors to effectively enter into, participate in or expand within the waste management (and treatment) sector. Waste management in particular has more scope for the entry and expansion of SMEs and HDP competitors, but this requires that they are able to access treatment capacity on competitive terms. The Commission is therefore of the view that the merger raises significant public interest concerns.

The Commission and the merging parties were not able to agree on remedies to address the competition and public interest concerns identified. Accordingly, the Commission prohibited the merger.

**b) Google LLC (USA) and Fitbit Inc (USA)**

On 18 December 2020, the Commission approved the merger between Google and Fitbit with conditions.

Google is active in a wide range of areas, including online search, online advertising, other online services such as YouTube, Google Maps and Gmail as well as cloud computing services. In addition, Google maintains and develops the Android ecosystem which includes an open-source mobile Operating System (OS) and a suite of mobile apps and services. Google's business in South Africa relates to the provision of local support and marketing services internally for Google. Google does not sell any wearable devices or hardware in South Africa. The main products and services relevant to this transaction are Wear OS, Google Fit, The Play Store, Google Search and Google Ads.

Fitbit develops, manufactures and distributes wrist-worn wearable devices and smart scales as well as software and services designed to give its users tools to help them reach their health and fitness goals. The main Fitbit products available in South Africa are fitness trackers, smartwatches and the Fitbit mobile app.

The Commission found that the proposed transaction is likely to result in a substantial prevention or lessening of competition.

The Commission was concerned that as a direct result of the proposed merger:

**i. Google may exclude Fitbit's competitors in the market for wrist-worn wearable devices**

As a direct result of the proposed merger, Google will be able to exclude competing suppliers of wrist-worn wearable devices from accessing its Android operating system for smartphones. Android is a dominant mobile operating system, and, unlike the Apple ecosystem, it is not vertically integrated into the production of wrist-worn wearable devices prior to the merger. This makes Android an important input for third party smartwatch manufacturers that compete with Fitbit. Bearing in mind the integral connectivity between smartwatches, companion apps to the wrist worn wearable device as well as smartphones, and given the significant market shares enjoyed by Android, the proposed merger will give Google the ability to exclude competitors of Fitbit or frustrate the functionalities of competitors' companion apps from operating optimally on Android OS. This will significantly alter the market structure for the supply of wrist worn wearable devices in SA and increase barriers to entry for potential entrants in the market.

**ii. Google may entrench its dominance in the online advertising and online search market**

As a direct result of the proposed merger, Google would acquire (i) the database maintained by Fitbit (about its users' health and fitness); and (ii) the technology to develop a database similar to that of Fitbit. The Commission was concerned that the acquisition of Fitbit's database may provide an important advantage in online advertising markets to Google and allow Google to entrench its dominance in the market.

**iii. Google may restrict access to health data collected by Fitbit**

The Commission was concerned that, as a direct result of the proposed merger, Google will be able to use Fitbit's health data to enter the digital health market or other health services markets (for example the market for health insurance) and exclude other players or potential entrants by restricting access to health Fitbit health data.

To alleviate all these concerns, Google tendered the following conditions, which the Commission has accepted:

**Android API conditions**

Google commits to making access to the Android Operating System available, without charge for access and on a non-discriminatory basis, under the same license terms and conditions that currently apply, to all competing manufacturers of wrist-worn wearable devices. Google will not differentiate or degrade the availability or functionality of access to its operating system depending on whether it is accessed by Fitbit or a competing manufacturer.

**Specifically, Google commits:**

- Not to discriminate against any wrist-worn wearable device manufacturers by withholding, denying, or delaying access to the Android functionalities that Google generally makes available to other Android smartphone app developers for use with an Android app.
- Not to discriminate between wrist-worn wearable device manufacturers and other Android smartphone app developers in relation to changing, replacing, or retiring Android APIs.
- Not to discriminate between wrist-worn wearable device manufacturers and other Android smartphone app developers in terms of the access it provides to developer previews.

- Not to discriminate between wrist-worn wearable device manufacturers and other Android smartphone app developers in terms of the access it provides to developer documentation.

**Advertisement conditions**

Google commits to maintain Data Separation between the Fitbit data and Google's existing data and not to use any Measured Body Data or Health and Fitness Activity Location Data from Fitbit in, or for, Google Ads. Further, Google commits to present each South African User the choice to grant or deny use by Other Google Services (excluding Google Ads) of any Measured Body Data stored in their Google Account or Fitbit Account.

**Web API conditions**

Google will allow third parties that currently access Fitbit's data to continue to have access to users' health and fitness data through the Fitbit Web API, without charging for access and subject to user consent.

These conditions are for a period of 10 years and are in line with what is offered in order jurisdictions. The conditions will be monitored by an independent Trustee who will have the necessary skills, competencies, and technical abilities to monitor these conditions.

**c) Thabong Coal (Pty) Ltd and South32 SA Coal Holdings (Pty) Ltd**

The Commission recommended that the Competition Tribunal approve the proposed transaction whereby Thabong Coal (Pty) Ltd (Thabong Coal) intends to acquire South32 SA Coal Holdings (Pty) Ltd (SAEC) with conditions. Thabong Coal is a wholly owned subsidiary of Seriti Resources Holdings (Pty) Ltd (Seriti). Both Seriti and SAEC have long-term supply contracts with Eskom.

Seriti supplies thermal coal to Eskom through 3 mines namely, New Vaal, New Denmark and Kriel. Seriti supplies the Tutuka, Lethabo and Kriel power stations. SAEC owns and operates 4 thermal coal mines namely, Khuthala, Ifaletu, Klipspruit and Wolvekrans. SAEC supplies the Duvha and the Kendal power stations through the Khuthala and Ifaletu mines. The Klipspruit and Wolvekrans mines primarily produce export coal. SAEC also sells thermal coal to other domestic customers.

Seriti has an upcoming mining project, namely the New Largo Coal Mine, which is intended to supply coal to the Eskom Kusile power station. SAEC also has several projects in development including Pegasus, Leandra and Naudesbank, amongst others.

The Commission found that post-merger, Seriti will be the largest coal supplier to Eskom with a market share upwards of 30%. The Commission found that although the proposed transaction will lead to an increase in concentration in coal supply to Eskom, the merger is unlikely to impact on Eskom's existing bargaining and buyer power position given the individualised nature of negotiations of the long-term contracts. Despite the structural change from the merger, Seriti's newfound position is unlikely to directly result in greater leverage power for the merged entity during contract renegotiations and is therefore unlikely to have a significant effect on the price of coal to Eskom. The Commission finds that due to the symbiotic relationship between Eskom and cost-plus contract holders, and the limited outside options of the merged parties' mines, both parties are equally reliant on establishing mutual agreement with respect to the continuation of cost-plus contracts going forward.

The Commission was concerned that the proposed transaction may facilitate the exchange of commercially sensitive information between SAEC and the coal mining companies in which the shareholders of Seriti hold interests.

The Commission also identified some public interest concerns that relate to job losses, impact on junior miners and the Community Trust to be established for the benefit of the communities that are adjacent to the operational mines of SAEC and/or any of its subsidiaries.

In order to remedy the various issues arising, the merging parties have agreed to conditions that the merged entity:

- i. Will put measures in place to ensure that there is no flow of commercially sensitive information between the Seriti shareholders' affiliated coal mining companies and SAEC.
- ii. Commits to a cap in relation to merger specific retrenchments of a maximum of 25 skilled employees for a period of 2 years.
- iii. Commits to a timeline of 9 months for the identification and selection of the beneficiaries of the Community Trust which will own a stake in SAEC; and
- iv. Assists junior miners to participate in the coal production sector by divesting a SAEC coal mining project that has not yet been developed.

### 12.3 PUBLIC INTEREST CONSIDERATIONS IN MERGERS 2020/21

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

Similarly, an anti-competitive merger can be approved if it is in the public interest to do so. As such, the public interest provisions in the Act have far-reaching implications. The Act sets out five public interest provisions, namely impact on a particular sector or region; employment, the ability of small and medium businesses, or firms owned or controlled by HDPs to effectively enter into, participate in, or expand within a market, the ability of national industries to compete in international markets, and; 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 Commission has the authority to approve or prohibit a merger solely because of its effect on public interest. This has only happened once since the Commission's inception, where a merger was approved on the basis of the significant public interest it generated. In general, where public interest concerns have been raised, the Commission and/or Tribunal have imposed conditions on the merger which aim to mitigate or eliminate the public interest concern, thus allowing the merger but minimising its negative effect on public interest.

During the financial year 2020/21, the Commission recommended and/or imposed conditions on thirty-four (34) merger cases. Most of these merger cases raised a combination of public interest issues including employment, impact on HDPs, maintenance of local production, SME development, and BEE ownership levels. In terms of employment, the Commission's intervention in mergers resulted in a net saving of 8 596 jobs. The table below sets out mergers with conditions:



Table 12: Mergers approved with conditions

| Case Number | Primary Acquiring Firm | Primary Target Firm        | Location | Sector    | Condition  |
|-------------|------------------------|----------------------------|----------|-----------|--|
| 2020Oct0045 | Dotsure Limited        | Hollard Holdings (Pty) Ltd | National | Insurance | <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Moratorium on merger-specific retrenchments of certain employees for 24 months from implementation of the merger.</li> </ul> <p><b>Relocation condition</b></p> <ul style="list-style-type: none"> <li>The merging parties shall cover the relocation costs of all employees that might be required to move from the Gauteng Province to George in the Western Cape province as a results of the merger</li> </ul> <p><b>Worker ownership condition</b></p> <ul style="list-style-type: none"> <li>The Merging Parties shall, within 5 years of implementation of the merger, consider setting up an employment share scheme.</li> </ul> |

| Case Number | Primary Acquiring Firm                    | Primary Target Firm                                    | Location | Sector   | Condition   |
|-------------|---|--|----------|----------|---|
| 2020Aug0084 | Shiselweni Forestry Company Limited (TWK) | Peak Timber Limited and Peak Forest Products (Pty) Ltd | National | Forestry | <p><b>Supply</b></p> <ul style="list-style-type: none"> <li>• The merging parties shall continue to supply various entities with timber products for a period of time following implementation of the merger</li> <li>• In respect of Mining Timber (not sawn or untreated) TWK will continue to honour the contractual terms entered into by Target Firms with third parties.</li> <li>• In respect of Mining Timber (final product), TWK through Bedrock, will continue as and when necessary, to purchase Mining Timber (final product) from third party mills on a spot basis, for a fixed period of the Approval Date.</li> <li>• In respect of untreated transmission poles, TWK will continue to negotiate in good faith, with the aim of entering into a supply agreement for the supply of untreated transmission poles for a set period after approval date.</li> <li>• In respect of untreated building and fencing poles, TWK will continue to negotiate in good faith, with the aim of entering into supply agreement for the supply of untreated building and fencing poles for a defined period from approval date.</li> </ul> |



| Case Number | Primary Acquiring Firm | Primary Target Firm | Location | Sector | Condition   |
|-------------|------------------------|---------------------|----------|--------|---|
|             |                        |                     |          |        | <ul style="list-style-type: none"> <li>• In respect of untreated building and fencing poles, TWK will continue to negotiate in good faith, with the aim of entering into supply agreement for the supply of untreated building and fencing poles for a defined period from approval date.</li> <li>• In respect of treated building poles and fencing poles, TWK will continue to honour the supply agreement entered into with a third-party for treated building and fencing poles for the remainder of its term.</li> <li>• In respect of pulp logs, TWK will continue to negotiate in good faith, with the aim of entering into a supply agreement for the supply of pulp logs, for a fixed period</li> <li>• In respect of saw logs, TWK will continue to supply saw logs to a third-party for a fixed period. The merging parties shall provide the non-confidential version of the conditions to existing customers and also publish them on the merged entity's website.</li> </ul> |

| Case Number | Primary Acquiring Firm   | Primary Target Firm   | Location | Sector         | Condition   |
|-------------|--|---|----------|----------------|---|
| 2020Dec0060 | Sanlam Life Insurance Limited  | African Rainbow Life Limited  | National | Life Insurance | <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The merging parties shall not retrench affected employees as a result of the merger for 24 month following implementation of the merger.</li> </ul>   |
| 2021Jan0016 | Ultimo Properties (Pty) Ltd and JD Consumer Electronics and Appliances (Pty) Ltd | Part of rental enterprises of Steinhoff Properties (Pty) Ltd and others |          | Property       | <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Moratorium on retrenchments for 24 months following implementation of the merger.</li> </ul>  |
| 2020Dec0041 | Mr Price Group Limited   | Otto Brothers Distributors (Pty) Ltd                                    | National | Retail         | <p><b>Procurement</b></p> <ul style="list-style-type: none"> <li>The merged entity shall maintain or improve on their local sourcing requirements from suppliers in South Africa.</li> </ul>  |
| 2020Oct0032 | Afrique Pet Food (Pty) Ltd   | Phil Africa Foods (Pty) Ltd and Martin and Martin (Pty) Ltd             | National | Manufacturing  | <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Other than the affected employees, the merged entity shall not retrench any other employee for 24 months following implementation of the merger.</li> </ul> <p><b>Restraint of trade</b></p> <ul style="list-style-type: none"> <li>The merged entity shall reduce the restraint of trade from 5 year to 3 years</li> </ul> |

| Case Number | Primary Acquiring Firm  | Primary Target Firm                                       | Location | Sector        | Condition   |
|-------------|-------------------------|---|----------|---------------|---|
| 2021Jan0038 | 4 Racing (Pty) Ltd      | Phumelela Gaming and Leisure Limited (in business rescue) | National | Gambling      | <p><b>Ownership and transformation</b></p> <ul style="list-style-type: none"> <li>The merging parties shall enter into an empowerment transaction that will lead to increase in ownership stake by the Historically Disadvantaged Persons (HDPs).</li> </ul>  |
| 2020Aug0006 | Carlmac Steel (Pty) Ltd | The Alrode Business of Aveng Duraset                      |          | Manufacturing | <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Three-year moratorium on retrenchments following implementation of the merger.</li> </ul> <p><b>Skills transfer – students</b></p> <ul style="list-style-type: none"> <li>The merging parties shall ensure that there is training and mentorship programme for students.</li> </ul> <p><b>Skills transfer – unskilled and semi-skilled</b></p> <ul style="list-style-type: none"> <li>The merging parties shall ensure that there is transfer of skills to unskilled/semiskilled HD per year.</li> </ul> <p><b>Skills transfer – transferring employees</b></p> <ul style="list-style-type: none"> <li>the merged entity will provide skills development training to upskill all transferring employees.</li> </ul> <p><b>Restructure</b></p> <ul style="list-style-type: none"> <li>The merged entity shall ensure that there is an increase in ownership stake by the HDPs following implementation of the merger.</li> </ul> |

| Case Number | Primary Acquiring Firm             | Primary Target Firm                                | Location | Sector         | Condition   |
|-------------|------------------------------------|--|----------|----------------|---|
| 2020May0016 | Alstom Societe Anonyme             | Bombardier Transportation (Investments) UK Limited |          | Manufacturing  | <p><b>Supply</b></p> <ul style="list-style-type: none"> <li>Continued supply and repair of AGATE system for a period of time post-implementation.</li> <li>Continued supply and repair of iVPI system for a period of time post-implementation.</li> <li>Continued supply and repair of Ebilock to support TFR for a period of time following implementation.</li> </ul> <p><b>Enterprise and Supplier Development Programmes</b></p> <ul style="list-style-type: none"> <li>The merging parties shall continue with their existing enterprise and supplier development programmes in South Africa and shall not reduce or discontinue these initiatives as a result of the transaction.</li> </ul> |
| 2020Oct0001 | K2020704995 South Africa (Pty) Ltd | Comair Limited (In business rescue)                |          | Transportation | <p><b>Ownership</b></p> <ul style="list-style-type: none"> <li>The merged entity shall ensure that there is an appropriate ownership stake by the HDPs. The merged entity shall ensure that there is an Employee Share Ownership Plan in place following implementation of the merger</li> </ul>  |
|             |                                    |  |          |                | <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The merging parties shall not, for a period of 3 years, retrench any employees as a result of the merger, except for the identified employees</li> </ul>  |



| Case Number | Primary Acquiring Firm                  | Primary Target Firm               | Location | Sector             | Condition  |
|-------------|---|-----------------------------------|----------|--------------------|--|
| 2020Aug0077 | Macsteel Services Centres SA (Pty) Ltd  | Certain Assets of Robor (Pty) Ltd |          | Manufacturing      | <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>The merging parties shall re-employ the retrenched employees of MSCSA</li> </ul>   |
| 2020Nov0027 | Advent International Corporation        | Nielsen Global Connect            |          | Services           | <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Moratorium on retrenchments for a period of 2 years following implementation.</li> </ul>   |
| 2020Sep0016 | Arrie Nel Pharmacy (Pty) Ltd            | Pharmed Pharmaceuticals (Pty) Ltd |          | Pharmaceuticals    | <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Moratorium on retrenchments for a 3-year period following implementation of the merger</li> </ul>  |
| 2020Nov0034 | Fleming Capital Securities Incorporated | G4S Plc                           |          | Private security   | <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Moratorium on retrenchments of a period of 3 years following implementation of the merger.</li> </ul>                                    |
| 2020Nov0008 | Siemens Healthineers AG                 | Varian Medical Systems Inc        |          | Manufacturing      | <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Moratorium on retrenchments for a period of 2 years following implementation of the merger</li> </ul>                                    |
| 2020Oct0040 | London Stock Exchange Group Plc         | The Refintiv business             |          | Financial services | <p><b>Supply</b></p> <ul style="list-style-type: none"> <li>The merged entity shall ensure that there is a continued supply of certain products, services or systems to the certain customers</li> </ul> |

| Case Number | Primary Acquiring Firm             | Primary Target Firm        | Location | Sector  | Condition  |
|-------------|------------------------------------|----------------------------|----------|---------|--|
| 2020Sep0045 | Google LLC                         | Fitbit Inc (USA)           |          | ICT     | <p><b>Android API Condition</b></p> <ul style="list-style-type: none"> <li>Google commits to making the core interoperable APIs available, without charge for access, under the same licence terms and conditions that apply to all other Android APIs that Google makes available as part of AOS and on non-discriminatory basis.</li> </ul> <p><b>Ads Condition</b></p> <ul style="list-style-type: none"> <li>Google commits not to use any measured body data or health and fitness activity location data in or for Google Ads. Google also commits to maintaining data separation.</li> </ul> <p><b>Web API Access Condition</b></p> <ul style="list-style-type: none"> <li>Google commits to maintaining access, subject to user content consistent with applicable laws and without charge for access, to supported measured body data for API users.</li> </ul> |
| 2020May0013 | Capital Works Atlanta GP (Pty) Ltd | Peregrine Holdings Limited |          | Finance | <p><b>Public interest</b></p> <ul style="list-style-type: none"> <li>Moratorium on retrenchments for a 2-year period following implementation of the merger.</li> </ul>  |



| Case Number | Primary Acquiring Firm  | Primary Target Firm   | Location | Sector | Condition   |
|-------------|-------------------------|---|----------|--------|---|
| 2019Dec0020 | Thabong Coal (Pty) Ltd  | South32 Coal Holdings (Pty) Ltd   |          | Mining | <p><b>Divestiture</b></p> <ul style="list-style-type: none"> <li>• Divestiture of certain assets of the merged entity</li> </ul> <p><b>Information exchange</b></p> <ul style="list-style-type: none"> <li>• The merged entity shall ensure that there are clear barriers to ensure that there is no information sharing between various shareholders of the merging parties</li> </ul> <p><b>Public interest</b></p> <ul style="list-style-type: none"> <li>• Moratorium on retrenchments for a period of 24 months following implementation of the merger.</li> <li>• Identification of the beneficiaries of Community Trust within 1 year of the implementation date.</li> <li>• Continuation of the projects in South32 Social and Labour Plans (SLPs).</li> <li>• Procurement of products and services from the businesses owned by the HDPs.</li> </ul> |
| 2020Aug0037 | Retailability (Pty) Ltd | Parts of the Edgars business conducted by Edcon Limited in South Africa |          | Retail | <p><b>Public interest</b></p> <ul style="list-style-type: none"> <li>• Moratorium on retrenchments for a 3-year period following the implementation of the merger</li> </ul>  |

| Case Number | Primary Acquiring Firm         | Primary Target Firm   | Location | Sector                              | Condition   |
|-------------|--------------------------------|---|----------|-------------------------------------|---|
| 2020Jul0062 | AFGRI Agri Services (Pty) Ltd  | Certain assets and business owned by Hinterland Holdings (Pty) Ltd and its subsidiaries     |          | Agriculture                         | <p><b>Public interest</b></p> <ul style="list-style-type: none"> <li>• Moratorium on retrenchments for a 2-year period following implementation of the merger.</li> </ul>   |
| 2020Jul0011 | Hensoldt Optronics (Pty) Ltd   | The air traffic management business and defense and security business of Tellumat (Pty) Ltd |          | Manufacturing                       | <p><b>Public interest</b></p> <ul style="list-style-type: none"> <li>• The parties shall use their best endeavours to avoid retrenchments.</li> </ul>   |
| 2020Aug0070 | Nimble Credit Fund 1 (Pty) Ltd | Parts of Edcon Limited's loan book and associated administration services                   |          | Administration and support services | <p><b>Public interest</b></p> <ul style="list-style-type: none"> <li>• Nimble shall re-employ at least 150 employees</li> <li>• Moratorium on retrenchments for a 2-year period following implementation date.</li> </ul> |



| Case Number | Primary Acquiring Firm          | Primary Target Firm  | Location | Sector   | Condition  |
|-------------|---------------------------------|--|----------|--|--|
| 2020Aug0003 | Foschini Retail Group (Pty) Ltd | The assets and business conducted by Edcon Limited as a going concern under Jet division         |          | Retail   | <p><b>Public interest</b></p> <ul style="list-style-type: none"> <li>• Moratorium on retrenchments for a 2-year period following implementation date.</li> <li>• Transfer of certain employees from Edcon to Foschini.</li> <li>• Transfer of certain stores from Edcon to Foschini subject to various external factors.</li> <li>• The merged entity shall ensure that the target firm maintains at least the same ratio of procurement of apparel products from South African manufacturers and suppliers as it did at the end of its preceding financial year.</li> </ul> |
| 2020Jul0038 | Roos Foods (Pty) Ltd            | The business of 10 KFC Franchise Restaurants owned and carried on by Van Eeden Kitskos (Pty) Ltd |          | Restaurants and mobile food service activities | <p><b>Public interest</b></p> <ul style="list-style-type: none"> <li>• Moratorium on merger-specific retrenchments.</li> </ul>   |

| Case Number | Primary Acquiring Firm               | Primary Target Firm                                   | Location | Sector             | Condition  |
|-------------|--------------------------------------|---|----------|--------------------|--|
| 2019Jul0051 | HCI Invest 15 HoldCo (Pty) Ltd       | Zamani Marketing and Management Consultants (Pty) Ltd |          | Finance            | <p><b>Employment condition</b></p> <ul style="list-style-type: none"> <li>The Merging Parties shall not, for a period of 24 months, retrench any employees in South Africa as a result of the Merger.</li> </ul> <p><b>Conditions relating to control</b></p> <ul style="list-style-type: none"> <li>Should the nature of control that HCI Invest will have over the Target Firms as a result of the proposed Merger, change (extend beyond the exercise of oversights), post-implementation of the proposed Merger, the Merging Parties must notify such change of control to the Commission as a merger in the prescribed manner.</li> </ul> |
| 2020Feb0022 | Fiat Chrysler Automobiles N.V.       | Peugeot S.A.  |          | Vehicle dealership | <p><b>Public Interest: Employment</b></p> <p>Moratorium on merger related retrenchments for a period of time from the implementation date.</p>   |
| 2020Feb0010 | Chrome Production Holdings (Pty) Ltd | Lanxess Chrome Mining (Pty) Ltd                       |          | Mining of chrome   | <p><b>Public Interest: Employment</b></p> <p>The merging parties to commit to an Employment Timeline Plan, within 3 years following the implementation date, which states the number of jobs to be created, and the prevailing market conditions under which such employment must be created.</p>  |



| Case Number | Primary Acquiring Firm           | Primary Target Firm                  | Location | Sector                               | Condition   |
|-------------|----------------------------------|--------------------------------------|----------|--------------------------------------|---|
| 2020Feb0002 | Elanco Animal Health Inc         | Bayer A.G. Animal Health business    |          | Animal health                        | <p><b>Public Interest: Employment</b><br/>Moratorium on retrenchments at the target firm for a 2-year period from the implementation date.</p> <p><b>Divestiture</b><br/>Disposal of the certain assets of the merged entity in South Africa.</p> |
| 2020Apr0025 | Gatsby Security SPV (Pty) Ltd    | Cell C Limited                       |          | Information Communication Technology | The Merging Parties shall ensure that there are measures in place to ensure that there is no exchange or sharing of competitively sensitive information between various shareholders of the merged entity.  |
| 2020Mar0017 | Ceva Logistics A.G.              | AMI Worldwide Limited                |          | Transport and storage                | <p><b>Public Interest: Employment</b><br/>The merging parties can only retrench a certain number of management employees.</p> <p>There is a Moratorium on retrenchments for a period of 2 years following the implementation date.</p>            |
| 2020Nov0046 | Devland Cash and Carry (Pty) Ltd | Certain Stores of Masscash (Pty) Ltd | National | Retail                               | <p><b>Employment</b><br/>Moratorium on retrenchments for a period of 9 months following implementation of the merger.</p>   |

| Case Number | Primary Acquiring Firm            | Primary Target Firm   | Location | Sector                 | Condition  |
|-------------|-----------------------------------|---|----------|------------------------|--|
| 2020Nov0040 | Blue Falcon 188 Trading (Pty) Ltd | Certain portions and assets of John Craig business, a division of Pepkor Speciality (Pty) Ltd | National | Retail                 | <p><b>Employment</b></p> <ul style="list-style-type: none"> <li>Moratorium on retrenchments for a period of 24 months following implementation of the merger.</li> </ul> <p><b>Local procurement</b></p> <ul style="list-style-type: none"> <li>The acquiring firm shall use its best efforts to procure the labels from local manufacturers.</li> </ul> |
| 2021Jan0026 | Creadev International S.A.S       | eAdvance (Pty) Ltd  | National | Education and training | <p><b>Employment</b></p> <p>The acquiring firm shall offer suitable employment to the affected employees when positions become available.</p>  |



# 13. LEGAL SERVICES DIVISION

The Legal Services Division (LSD) is responsible for managing the Commission's litigation before the Tribunal, CAC, High Court, Supreme Court of Appeal (SCA) and Constitutional Court.

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

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

## 13.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Legal Services Division had six (6) performance targets applicable for the 2020/21 financial year. Five (5) targets were met, and one (1) target was exceeded.

**Table 13: Commission's litigation load at the end of 2020/21**

| Category  | Number of cases |
|---|-----------------|
| Number of cartel cases in litigation at the Tribunal and the courts             | 87              |
| Number of abuse of dominance cases in litigation at the Tribunal and the courts | 5               |
| Number of minimum resale price maintenance cases in litigation at the Tribunal  | 1               |
| Number of contested large mergers in the Tribunal                               | 0               |
| Number of reconsiderations <sup>4</sup> in litigation                           | 5               |
| Number of prior implementation cases in litigation                              | 5               |
| Number of appeals, review and variation applications                            | 9               |
| <b>Total cases</b>  | <b>5</b>        |

## 13.2 PERFORMANCE HIGHLIGHTS

### a) *The Competition Appeal Court Decision on the Babelegi Workwear price gouging case*

On 15 April 2020 the Commission referred to the Tribunal the complaint of excessive pricing of facial masks against Babelegi Workwear and Industrial Supplies CC (Babelegi). The Commission investigated the complaint expeditiously and found that during the period 31 January 2020 to 5 March 2020 Babelegi had increased its prices of facial masks from R41 per box up to R500 per box, earning mark-ups more than 500% during this period. Babelegi's prices for facial masks increased by at least 888% when comparing the prices charged on 5 March 2020 to the prices charged on 9 December 2019.

<sup>4</sup> A reconsideration application is an application brought by the merging parties to the Tribunal to reconsider a decision of the Commission, either prohibiting a small or intermediate merger, or approving such a merger with conditions.

This was the first Covid-19 excessive pricing case referred for prosecution. The complaint was laid with the Commission on 24 March 2020 and the matter was heard on 24 April 2020. On 1 June 2020 the Tribunal handed down its judgment in which it found Babelegi guilty of excessive pricing, in contravention of section 8(1)(a) of the Act.

The Tribunal concluded that:

- a) Babelegi had market power during the Complaint Period since it behaved to an appreciable extent independently of its competitors, customers or suppliers. Accordingly, it was a dominant firm during the Complaint Period in terms of section 7(c) of the Act.
- b) The Commission established a prima facie case of an abuse of dominance because Babelegi charged excessive prices for FFP1 masks during the complaint period in breach of section 8(1)(a) of the Act.
- c) Babelegi's price increases and mark-ups were unreasonable in that they "... bear no reasonable relation to the prices charged and mark-ups prior the Complaint Period as the appropriate and sensible benchmark of what competitive prices and mark-ups would be under conditions of normal and effective competition".
- d) "Babelegi knew full well that there was a significant increase in demand for masks ... and took advantage of customers and consumers amid the international Covid-19 health crisis. This leads us to conclude that Babelegi's prices charged during the Complaint Period were to the detriment of consumers and customers".

The Tribunal imposed a penalty of R76 040.

On 18 June 2020 Babelegi filed an appeal to the CAC against the Tribunal's determination. The matter was set down for hearing on 4 September 2020. During the hearing of the appeal the Commission and Babelegi presented oral argument, as did the *amici curiae*, Health Justice Initiative, Open Secrets NPC, and the South African Human Rights Commission. On 18 November 2020, the CAC dismissed Babelegi's appeal.

The CAC found that "The evidence on record revealed that throughout the complaint period the appellant acted as if it was a monopolist, extracting the maximum price that it possibly was able to obtain from those who purchased a product which was necessary to assist in slowing the spread of the virus."

The CAC stated that: "... no evidence was produced to show that costs were expected to rise by an amount which was anywhere

close to the 888% increase extracted during the complaint period." The CAC held that Babelegi's explanation proffered for the increases effected were "manifestly inadequate" to rebut the Commission's prima facie case of excessive pricing.

The CAC held that Babelegi's "excessive prices were charged at a time of crisis, when the employment of a mask by every person in the country was seen as being essential to the protection of the health, safety and welfare of others and therefore critical to the reduction of the danger posed by Covid-19. The high prices of such a necessity unquestionably acted to the detriment of consumers in the country."

With regard the penalty, the CAC noted the obvious precedential value and importance of the case, however, the CAC had regard to Babelegi's size, the very few masks sold at an excessive price, and the harm Babelegi had suffered as a result of its own excessive pricing conduct, and determined that no administrative penalty should be imposed, and accordingly set aside the Tribunal's penalty determination.

### **b) Dis-Chem vs Competition Commission**

Dis-Chem is involved in the wholesale distribution and retailing of pharmaceutical products. It also offers personal care and beauty products, healthcare and nutrition products as well as baby care products.

It further offers confectionery products, household goods and ancillary services such as clinics, and hair and beauty salons. Dis-Chem distributes pharmaceutical products to its own retail stores as well as to third parties. It trades from over 110 stores and has more than 200 clinics.

From 28 March 2020 the Commission received several complaints from individual members of the public against several retail stores owned by Dis-Chem for engaging in excessive pricing in the retail sale of face masks.

Relying on the information provided by Dis-Chem, the Commission established that, prior to the declaration of a national state of disaster, Dis-Chem was selling three types of masks, namely, (i) surgical face masks blue 50PC, (ii) surgical face masks 5PC and (iii) surgical face masks foliodress blue at much lower prices than in March 2020. For surgical face mask blue 50PC, the weighted average price moved from R43.47 (excl VAT) per unit (50 masks) in February 2020 to R156.95 (excl VAT) per unit (50 masks) in March 2020. This is a price increase of 261%. For surgical face masks 5PC, the weighted average price moved from R13.27 (excl VAT) per unit (5 masks) in February 2020 to R19.03 (excl VAT) per unit (5 masks) in March 2020. This is a price increase of 43%. For surgical face masks foliodress blue, the weighted average price moved from R60.42 (excl

VAT) per unit to R18.35 per unit in March 2020. These masks were initially sold as a pack of 50 and were subsequently broken into smaller pack sizes in March 2020. An examination of invoices provided show no change in the cost of these masks, yet gross profit margins have increased from 20% in February 2020 to 45% in March 2020, which shows that prices must have increased on a “per mask” basis, by approximately 45%.

Following the investigation of the complaint received, the Commission concluded that Dis-Chem contravened section 8(1) (a) of the Act, read with Regulation 4 of the Consumer Protection Regulations, by abusing its dominance in March 2020 by charging excessive prices for surgical face masks blue 50PC, surgical face masks 5PC and surgical face masks foliodress blue to retail customers and consumers. The conduct was indicated as being possibly ongoing in respect of these three products.

On 24 April 2020 the Commission referred the complaint to the Tribunal for excessive pricing in the advent of Covid-19, against Dis-Chem, in respect of the three types of surgical face masks. The Commission contended that Dis-Chem had contravened section 8(1)(a) of the Act, read with regulation 4 of the Consumer Protection Regulations. The Tribunal heard the matter on an urgent basis via video conferencing in early May 2020 and found in favour of the Commission.

On 7 July 2020 the Tribunal handed down judgment in favour of the Commission, finding that Dis-Chem contravened section 8(1)(a) of the Act, in that it charged an excessive price for those masks during March 2020, to the detriment of consumers. The Tribunal ordered Dis-Chem to pay an administrative penalty of R1 200 000 (one million two hundred thousand Rand).

On 27 July 2020 Dis-Chem filed an appeal to the Competition Appeal Court (CAC) against the Tribunal’s determination. The matter was set down for hearing on 4 September 2020. On 20 August 2020 Dis-Chem filed a notice of withdrawal of its appeal to the CAC. In the circumstances the Tribunal’s determination in the Dis-Chem matter stands.

### ***c) MIH eCommerce Holdings (Pty) Ltd and We Buy Cars***

On 27 March 2020, the Competition Tribunal issued an order prohibiting the proposed large merger between MIH eCommerce Holdings (Pty) Ltd (“MIH eCommerce”) and We Buy Cars (“WBC”). This was following a recommendation by the Commission that the transaction be prohibited.

On 19 September 2018, MIH eCommerce notified the Commission of its intention to acquire a 60% interest in WBC. MIH eCommerce is an investment holding firm which is controlled by Naspers Limited

("Naspers"). WBC is in the business of purchasing and selling second-hand cars.

In May 2019, after investigating the proposed merger, the Commission recommended to the Tribunal that the proposed merger be prohibited. The Commission based its recommendation for the prohibition on two theories of harm.

The first theory of harm related to unilateral effects. The Commission found that the proposed merger would result in the removal of a potential competitor. During its investigation, the Commission uncovered that Naspers, through an investment in Frontier Car Group Inc ("FCG"), had planned to enter the South African market for car buying services. This is the market that WBC currently dominates. This entry would have been in competition with WBC. The plans to enter were stopped directly as a result of the proposed merger.

The second theory of harm related to portfolio effects. The Commission argued that the acquisition of WBC by the Naspers group would give WBC an unassailable advantage in the car buying services market in which it operates. Through an analysis of the Naspers group of companies, the Commission found that Naspers, through MIH eCommerce, owns OLX and AutoTrader which are online classified automotive advertising platforms. These are

the two major platforms for private sellers and used car dealer sales in South Africa respectively. WBC utilises these platforms to either sell or purchase vehicles.

Furthermore, the Commission argued that the proposed merger would likely result in a substantial lessening of competition through the exclusion of other competing car buying services. The Commission found that there were numerous ways in which Naspers could harness the complementarities between WBC and AutoTrader and/or OLX to the exclusion of effective competition against WBC rivals as well as other online platforms. This included the sharing of customer and vehicle data which would provide an unassailable advantage in the development of automated car buying pricing tools. Other complementarities included channeling tired private sellers to WBC and giving WBC preferential positioning for vehicle sales on AutoTrader.

The Commission found that these complementarities could be leveraged to entrench WBCs' dominant position in the purchasing of used cars from the public. Further, the Commission found that this dominance would also likely translate into dominance in the wholesale of second-hand car stock to used car dealers. This would result in higher prices being paid by used car dealers for wholesale stock sourced from the public.

To address the Commission's concerns related to proposed merger, the merging parties offered various sets of conditions. There were, however, no conditions that could remedy the theories of harm identified by the Commission and hence it recommended a prohibition. The Tribunal issued an order on 27 March 2020 and confirmed the Commission's recommendation of a prohibition of the proposed merger. The reasons for its decision are still to be issued.

On 29 May 2020, the merging parties filed a notice of appeal to the CAC. The merging parties subsequently withdrew this appeal on 14 September 2020. The ultimate result is that the Commission's recommendation of a prohibition of the merger remains as confirmed by the Tribunal's order.

### **13.3 SETTLEMENT AGREEMENTS AND ADMINISTRATIVE PENALTIES**

During this financial year the Commission imposed two (2) administrative penalties and concluded fifty-nine (59) settlement agreements. The Commission levied R23 571 849.95 in penalties, and approximately R2 215 597,42 in donations from price-gouging cases.



Table 14: Penalties &amp; Settlement Agreements Confirmed at Tribunal &amp; Courts in 2020/21

| Decision Date | Case Name   | Section Transgressed     | Penalty levied | Donation value (Price-gouging cases only) |
|---------------|---|--------------------------|----------------|---|
| 22/1/2021     | Crest Chemicals (Pty) Ltd                             | 8(1)(a)                  | R98 536.92     | R60 000.00                                |
| 12/3/2021     | CC vs Supra Healthcare                                | R 0.00                   | R304 135.00    |   |
| 12/02/ 2021   | Seatrade Group N.V./Seatrade Reefer Chartering N.V.   | 4(1)(b)(ii)              | R373 921.00    | R0.00                                     |
| 24/03/2021    | Adreach (Pty) Ltd &                                   | 4(1) (b)(i) & (ii)       | R2 500 000.00  | R0.00                                     |
| 24/03/2021    | Sotobe Media Holdings (Pty) Ltd                       | 4(1) (b)(i) & (ii)       | R12 500.00     | R0.00                                     |
| 04/ 02/ 2021  | CC vs Oak Medical and Laboratory Supplies CC          | 8(1)(a)                  | R0.00          | R109 772.84                               |
| 07/10/2020    | CC v Swift Chemicals Pty (Ltd)                        | 8(1)(a)                  | R300 000.00    | R653 639.50                               |
| 09/11/2020    | CC v Rooibos Ltd                                      | 8(d)(i) / 8(c)           | R0.00          | R0.00                                     |
| 06/11/2020    | CC v PPC  | 4(1)(b)(i) and (ii)      | R0.00          | R0.00                                     |
| 19/08/2020    | CC and LevTrade International (Pty) Ltd               | 8(a)                     | R50 000.00     | R35 000.00                                |
| 06/07/2020    | CC and Life Wise (Pty) Ltd trading as Eldan Auto Body | 4(1)(b)                  | R750 000.00    | R0.00                                     |
| 28/07/2020    | CC v Sumitomo Electric Industries Ltd                 | 4(1) b (i), (ii) & (iii) | R437 278.38    | R0.00                                     |
| 13/07/2020    | CC v Stelkor Pharmacy                                 | 8(1) (a)                 | R0.00          | R12 500.00                                |
| 08/07/2020    | CC v Eldoram Dienste CC t/a Eldopark Pharmacy         | 8(1) (a)                 | R0.00          | R5 500.00                                 |
| 07/07/2020    | CC v Quintax Cleaning Services                        | 4(1) b (iii)             | R250 305.27    | R0.00                                     |
| 06/08/2020    | CC v Mzansi Meat and Chicken (Pty) Ltd                | 8(1)(a)                  | R0.00          | R12 000.00                                |
| 08/07/2020    | CC v Green Hygiene (Pty) Ltd                          | 8(1)(a)                  | R0.00          | R8 097.00                                 |
| 08/07/2020    | CC v Mica Barberton                                   | 8(1)(a)                  | R0.00          | R10 000.00                                |
| 14/08/2020    | CC v Kalundu Trading                                  | 4(1) b (ii)              | R458 979.52    | R0.00                                     |
| 30/09/2020    | CC v Eagle Fire Control                               | 4(1) b (ii)              | R120 000.00    | R0.00                                     |
| 16/09/2020    | CC v Panasonic Corporation                            | 4(1) b (ii)              | R537 980.00    | R0.00                                     |
| 21/09/2020    | CC v T.RAD Company Ltd                                | 4(1) b (ii)              | R500 000.00    | R0.00                                     |

| Decision Date | Case Name  | Section Transgressed   | Penalty levied | Donation value (Price-gouging cases only) |
|---------------|--|------------------------|----------------|---|
| 21/08/2020    | CC v Yazaki Corporation                            | 4(1) b (ii)            | R3 898 675.15  | R0.00                                     |
| 14/08/2020    | CC v Ramsin industrial Supplies t/a Fire Unlimited | 4(1) b (ii)            | R59 660.05     | R0.00                                     |
| 14/09/2020    | CC v Mahle GMBH                                    | 4(1) b                 | R1 622 106.00  | R0.00                                     |
| 28/07/2020    | CC and Cambridge Food (Pty) Ltd                    | 8(a)                   | R0.00          | R24 947                                   |
| 2020/07/06    | CC and Caprichem (Pty) Ltd                         | 8(1)(a)                | R500 000.00    | R100 000                                  |
| 2020/07/06    | CC v Mica Durban North                             | 8(1)(a)                | R0.00          | R10 000                                   |
| 2020/07/03    | CC v Sanitech                                      | 8(1)(a)                | R0.00          | R65 028                                   |
| 2020/07/02    | CC v Vasilis Cleaning Supplies                     | 8(1)(a)                | R0.00          | R243 148,70                               |
| 2020/07/13    | CC v Umhlanga Medisport Pharmacy                   | 8(1)(a)                | R0.00          | R20 000                                   |
| 2020/07/13    | CC v Steelmate (Pty) Ltd                           | 8(1)(a)                | R0.00          | R5 662                                    |
| 2020/07/13    | CC v Food lovers market Westgate                   | 8(1)(a)                | R0.00          | R18 579                                   |
| 2020/08/06    | CC v Rand Safety                                   | 8(1)(a)                | R0.00          | R8 284                                    |
| 2020/09/02    | CC v Sentra Kem Pharmacy Paarl                     | 8(1)(a)                | R0.00          | R15 785.03                                |
| 2020/08/14    | CC v Oil and More General Trading (Pty) Ltd        | 8(1)(a)                | R0.00          | R18 361.51                                |
| 2020/09/30    | CC vs Aberdare Cables (Pty) Ltd                    | 4(1)(b)(i)(ii)(iii)    | R0.00          | R0.00                                     |
| 2020/09/02    | CC vs GWK Farm Foods (Pty) Ltd                     | 4(1)(b)(i)             | R1 000 000.00  | R0.00                                     |
| 21/05/2020    | CC and Sicuro Safety and Hennox 638                | 8(1)(a)                | R1 500 000.00  | R200 000                                  |
| 06/05/2020    | CC and Matus                                       | 8(1)(a)                | R5,949,542.00  | R0.00                                     |
| 24/06/2020    | CC and Haw and Inglis Civil Engineering            | 4(1)(b)                | R0.00          | R0.00                                     |
| 24/06/2020    | CC and MTN   | N/A                    | R0.00          | R0.00                                     |
| 18/05/2020    | CC and Faurecia Emissions Control Technologies SA  | 4(1)(b) (ii) and (iii) | R66 885.66     | R0.00                                     |
| 14/04/2020    | CC and Domoney Brothers Bloem                      | 8(1)(a)                | R0.00          | R30 040.00                                |



| Decision Date | Case Name  | Section Transgressed | Penalty levied        | Donation value (Price-gouging cases only) |
|---------------|--|----------------------|-----------------------|---|
| 14/04/2020    | CC and C Sanua t/a Naturally Yours Weleda Pharmacies               | 8(1)(a)              | R0.00                 | R18 750.00                                |
| 14/04/2020    | CC and Retrospective Trading 199 t/a Merlot Pharmacy               | 8(1)(a)              | R0.00                 | R16 832.00                                |
| 07/05/2020    | CC and Mandini Pharmacy  | 8(1)(a)              | R0.00                 | R300,00                                   |
| 14/04/2020    | CC and Retrospective Trading 200 t/a Seaside Pharmacy              | 8(1)(a)              | R0.00                 | R4 168.00                                 |
| 11/06/2020    | CC and Samys Wholesalers   | 8(1)(a)              | R0.00                 | R4 000,00                                 |
| 02/06/2020    | CC and N Bhabikan t/a T.N.T Basic Trading                          | 8(1)(a)              | R0.00                 | R150 150,00                               |
| 02/06/2020    | CC and Auction and Salvage Net                                     | 8(1)(a)              | R0.00                 | R9 521.74                                 |
| 26/05/2020    | CC and Cedar Pharmaceuticals t/a Bel-Kem                           | 8(1)(a)              | R0.00                 | R1 059.10                                 |
| 26/05/2020    | CC and Manhattan Cosmetics   | 8(1)(a)              | R0.00                 | R612,00                                   |
| 26/05/2020    | CC and Sunset Pharmacy   | 8(1)(a)              |                       | R8 640,00                                 |
| 06/05/2020    | CC and Van Heerden Pharmacy Group – Hand Sanitisers Bottom of Form | 8(1)(a)              | R30 000.00            | R3 875                                    |
| 20/04/2020    | CC and Evergreens Fresh Market                                     | 8(1)(a)              | R0.00                 | R1 800.00                                 |
| 23/04/2020    | CC and Main Hardware   | 8(1)(a)              | R0.00                 | R0.00                                     |
| 20/04/2020    | CC and Cilliers and Heunis   | 8(1)(a)              | R0.00                 | R25 410.00                                |
| 18/11/2020    | CC vs Babelegi Workwear and C CC vs Industrial Supplies            | 8(1)(a)              | R76 040.00            | R0.00                                     |
| 07/07/2020    | CC vs Dis-Chem Pharmacies  | 8(1)(a)              | R1 200 000.00         | R0.00                                     |
| 05/08/2020    | CC vs Retail Capital Pty Ltd/First Asset Finance Pty Ltd           | 13A                  | R742 500,00           | R0.00                                     |
|               |  |                      | <b>R23 571 849,95</b> | <b>R2 215 597,42</b>                      |

**Table 15: Total administrative penalties levied over the last ten years**

| Year    | Administrative penalty |
|---------|------------------------|
| 2020/21 | R 23 million           |
| 2019/20 | R 70 million           |
| 2018/19 | R333 million           |
| 2017/18 | R354 million           |
| 2016/17 | R1.628 billion         |
| 2015/16 | R338 million           |
| 2014/15 | R191 million           |
| 2013/14 | R1.7 billion           |
| 2012/13 | R225 million           |
| 2011/12 | R584 million           |
| 2010/11 | R794 million           |



# 14. ECONOMIC RESEARCH BUREAU DIVISION

The Economic Research Bureau Division (ERB) is composed of economists and provides internal leadership on research and the Commission's strategic approach to core economic issues in competition policy. ERB is also closely involved with the day-to-day work of case teams, providing economic guidance and methodological assistance in complex cases and competition policy issues.

ERB also provides economic expert testimony to the Tribunal on behalf of the Commission, on a case-by-case basis, and has led several of the Commission's Market Inquiries.

## 14.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

ERB had seven (7) performance targets for financial year 2020/21, met six (6) targets, and exceeded one (1) target.

## 14.2 PERFORMANCE HIGHLIGHTS

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

- 1) Forestry Impact Study
- 2) Buyer Power Guidelines

- 3) Report on Food Price Monitoring
- 4) Implementation of recommendations from the Data Services Market Inquiry
- 5) Implementation of recommendations from the Grocery Retail Sector Market Inquiry
- 6) Mergers database compilation project between CCSA and World Bank

Below we discuss some of the ERB highlights from the 2020/21 financial year.

### a) Forestry Impact Study

The final impact study was gazetted on 11 December 2020. Preliminary findings and recommendations in relation to the Forestry Impact Study were published for comments on 31 July 2020. A total of 10 submissions were received from forestry firms, government departments

and industry associations. In general, many of the stakeholders agreed with the Commission's findings and recommendations, with some stakeholders providing comments and suggestions to improve the content of the preliminary report. These comments and suggestions were reviewed and incorporated in the final version of the report.

### b) Buyer Power Guidelines

The Act has been amended to incorporate a buyer power provision under the abuse of dominance provisions of section 8, with the introduction of the new subsection (4). In terms of subsection (4)(a), it is prohibited for a dominant firm as buyer in designated sectors to require from or impose unfair prices or trading conditions on small and medium businesses or firms controlled or owned by historically disadvantaged persons.

The new section 8(4) also includes a provision for the Minister to make regulations in respect of a) the sectors to which subsection (4) applies, b) the benchmarks for the application of subsection (4) to HDP firms and c) the



relevant factors and benchmarks for determining whether prices and trading conditions in those sectors are unfair. Regulations were issued on 13 February 2020 (Govt. Gazette no. 43018) and these guidelines are consistent with these regulations.

ERB has led the internal team in the development of buyer power guidelines which represent the general principles that the Commission will follow in assessing whether alleged conduct contravenes section 8(4) of the Act. These guidelines seek to provide guidance by outlining how the Commission intends to interpret the new buyer power provision for enforcement purposes, and further how it will seek to screen and assess complaints laid in terms of the new provision.

The guidelines were published on 15 May 2020 and have been the subject

of a number of educational external and internal engagements.

### **c) Report on Food Price Monitoring**

With the onset of the Covid-19 pandemic and the enforcement action on price gouging behaviour, the ERB division began to monitor essential food prices more broadly – including upstream food commodity and fresh produce markets – in order to understand the effect of the pandemic, the preventative measures of government and the economic crisis on food markets. The economic context has the potential to amplify the effect of certain market features, pointing to underlying competition and structural problems in these markets that also warrant closer scrutiny. The ERB division captures these observations in its Essential Food Price monitoring reports.

**Table 16: Publications produced during 2020/21**

| Title  | Publication      |
|--|------------------|
| <b>Merger Threshold Determination</b>  | Conference Paper |
| <b>Mergers in a Failing Industry:<br/>A Case Study of the Ostrich Merger</b> | Conference Paper |
| <b>Failing Firm: Business Rescue and Reorganization in Antitrust</b>         | Conference Paper |

# 15. MARKET INQUIRIES

The Commission is empowered to conduct market inquiries into the general state of competition in any industry. Market inquiries are different from investigations in that, while investigations target specified firms engaged in specified anti-competitive conduct, market inquiries look into any feature or combination of features in a market which may have the effect of distorting or restricting competition – without targeting any one firm.

During the 2020/21 financial year the Commission completed the Public Passenger Transport Market Inquiry. The Commission also initiated one (1) market inquiry. Below is a detailed discussion of each of the market inquiries.

## 15.1 LAUNCH OF A MARKET INQUIRY INTO ONLINE INTERMEDIATION PLATFORMS SERVICES

On 30 March 2021, the Commission initiated a market inquiry into online intermediation platforms services in South Africa (the “Online Intermediation Platforms Market Inquiry” or OIPMI). The OIPMI is initiated in terms of section 43B(1)(a) of the Act given that the Commission has reason to believe that there exist market features which impede, distort or restrict competition amongst the platforms themselves, and which undermine the purposes of the Act.

The OIPMI will focus on online intermediation service platform markets which intermediate transactions between business users and consumers (or so-called “B2C” platforms), including the generation of transactions leads (such as the case with online classifieds and travel aggregators).

These include the following platforms:

- i. eCommerce marketplaces;
- ii. online classifieds;
- iii. Travel and accommodation aggregators;
- iv. Short term accommodation intermediation;
- v. Food delivery;
- vi. App stores; and
- vii. Other platforms identified in the course of the inquiry.

The inquiry is broadly focused on three areas of competition and public interest, namely a) market features that may hinder competition amongst the platforms themselves, b) market features that give rise to discriminatory or exploitative treatment of business users, and c) market features that may negatively impact on the participation of SMEs and/or firms owned or controlled by HDPs. Whilst the inquiry will consider how consumer and business data advantages may shape competition, the inquiry will specifically exclude broader data privacy issues.

The main objectives of the inquiry into online intermediation services are to:

- i. Evaluate trends in adoption and use of the different online intermediation platform markets, including the identification of leading platforms across each market;

- ii. Evaluate whether any market features, core platform conduct and/or contracts and terms of use with business users and consumers are likely to have the effect of raising barriers to entry and reducing competition amongst platforms domestically. These include, but are not limited to, price parity or MFN clauses, exclusive contracting, loyalty incentives, conglomerate leveraging (incl. data and advertising) and predation;
- iii. Evaluate other barriers to entry and expansion by rival platforms, including but not limited to network effects, capital costs and consumer marketing costs;
- iv. Evaluate whether platform conduct, contracts, prices and terms of use with business users are discriminatory or unfair, and the likely effect thereof on consumer choice, competition amongst business users and the participation of SMEs and firms owned or controlled by HDPs. This includes, but is not limited to, the existence of self-preferencing conduct, discriminatory pricing, promotional or pricing restrictions, inflated access pricing and access to/use thereof of business user transaction data.
- v. Evaluate whether the ranking algorithms used by platforms, including any pay for position or promotional opportunities, negatively impact competition on the merits, consumer choice and/or the participation of SMEs and firms owned or controlled by HDPs;
- vi. Evaluate any other barriers to entry into online commerce for SMEs and firms owned or controlled by HDPs, including but not limited to marketing costs, technological and product challenges;
- vii. Evaluate the extent to which the findings and any identified remedies in respect of core platforms are generalisable across online intermediation platforms;
- viii. Determine appropriate remedies where an adverse effect on competition or the purposes of the Act are found as set out in section 43C(3) of the Act.
- iv. allocation of operational subsidies;
- v. transport planning; and
- vi. transformation in the land-based public passenger transport industry.

The Commission finalised the Public Passenger Transport Market Inquiry during Q4. The main findings and recommendations from the inquiry are set out below.

### **Minibus, Bus and Rail Market**

On transport integration, the Commission found that there is lack of integration in the public transport system and this is worsened by the persistent inequality between and within transport modes (e.g., between modes such as minibus taxis and Bus Rapid Transit (BRT) systems and within modes such as Gautrain and Metrorail).

The stark differences in infrastructure investment, service levels and quality standards in the modes is an impediment to integration. The differences in service levels further deepens the socioeconomic divide in the society, as public transport is now catering for different classes.

## **15.2 THE PUBLIC PASSENGER TRANSPORT MARKET INQUIRY**

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

- i. price setting mechanisms;
- ii. price regulation;
- iii. route allocation, licensing and entry regulations;

Government currently does not have a subsidy policy which provides justification for some modes of transport being subsidised while others are not. The Commission notes the effort by government to change the subsidy framework through the development of a subsidy policy. Different subsidies are allocated to different spheres of government and given intergovernmental coordination failures, value for money is compromised (from duplicated effort due to lack of integration), and economies of scale from a planning perspective are lost.

The Commission found that the IRPTN/BRT system in its current format has led to several inefficiencies due to low passenger numbers. This results in under-recovery of revenue. In some instances, the wrong corridors seem to have been chosen for the first phase of the implementation of the integrated rapid public transport network (IRPTN) system. The chosen corridors had low density routes, and low passenger volumes. In some cities, it is evident that no feasibility studies or needs assessments were conducted to justify the implementation of the system.

For contracted commuter bus services, provinces are entrusted with the responsibility for managing the contracts. During the transition from the apartheid regime, government continued with the bus contracts. As a provisional measure, before

the finalisation of the contracting system, government signed interim contracts with bus operators that were already part of the subsidy system. However, most of these contracts have now been in existence for over 21 years without being put on tender.

Commuter rail is subsidised across the world for economic, social and environmental reasons. In South Africa, Metrorail services are considered a social service and are thus provided in the interest of the public. However, Metrorail is inefficient in the provision of urban rail commuter services. There are several challenges that constrain the quality of the service – including continuous breakdown of trains, unreliable services, and fare evasion by passengers.

Contrary to the social service provided by Metrorail, the main objective of the Gautrain was to reduce traffic congestion in Gauteng, thus providing an alternative for private motor vehicle users. Gautrain provides a superior service that benefits a smaller proportion of the commuters, despite significant subsidies provided by government. Rail (both Gautrain and Metrorail) accounts for around 9.9% cent of commuters yet receives substantial support from government. The minibus taxi industry accounts for approximately 66.5% of commuters and only receive 1% of the total subsidy in the form of capital subsidy (taxi recapitalisation). There is a skewed

relationship between ridership levels and subsidy funding.

The major concern from the taxi industry is that subsidies skew competition in favour of the subsidised services. This, as well as route allocation challenges, fuels violence. Approval of operating licences on routes is primarily the responsibility of the Provincial Regulatory Entities (PREs) with the directives from municipalities (planning authorities). There are significant backlogs in applications and the general time taken for the issuing of operating licences is approximately 9 to 18 months in some provinces, as opposed to the 60 days stipulated in the National Land Transport Act.

With respect to interprovincial bus operations, the Commission found that certain practices in the provision of interprovincial bus services limit, distort and/or prevent competition between bus operators. For example, abuse and exploitation by large established bus operators that object to applications by new and existing players who try to expand.

Interprovincial bus services require access to terminal facilities. PRASA manages most of the terminals in the country, and provides access to these facilities through its division called PRASA CRES. PRASA is vertically integrated as it runs most of the bus terminal facilities and is also active in

the provision of interprovincial bus services through its subsidiary Autopax Passenger Services (SOC) Ltd (Autopax). Autopax operates two brands, City to City and Translux.

PRASA's presence in both the provision of intermodal terminal facilities and the provision of interprovincial bus services is undesirable. Between March 2017 and July 2019, the Commission received five complaints from interprovincial bus operators concerning allegations of, among other things, excessive access fees charged by PRASA for access to loading bays at Park Station. The Commission investigated the complaints and found that PRASA has contravened sections 8(1)(c), 8(b) and 8(a) of the Act. Based on these findings, on 07 February 2020, the Commission referred the five complaints to the Competition Tribunal for determination.

PRASA's ownership of Autopax creates perverse incentives, as PRASA always tries to safeguard and protect the interests of Autopax even in instances where it is not economically justifiable to do so. The interprovincial bus services market is competitive, and the continuous protection and/or bailing out of Autopax seems unjustifiable.

The Commission's findings in relation to transformation are that there is no or limited transformation within the public transport

industry across the value chain (financing, manufacturing, fuel supply etc). Upstream levels of the value chain, such as financing and manufacturing, are not transformed. At an operational and ownership level, the minibus taxi businesses are majority Black-owned.

### Recommendations

The relationship between PRASA and Autopax raises several concerns for the interprovincial bus industry. It is recommended that the Department of Transport (DOT) must address the conflict of interest between PRASA CRES and Autopax. This can be achieved through, among others, a complete structural separation between these entities. Furthermore, PRASA CRES should ensure that all bus operators are treated in a non-discriminatory manner.

The perpetual extension of subsidised bus contracts, without going out on tender, inhibits competition. Where contracts are put out on tender, government (provincial transport departments or the DOT) should consider breaking some of the tenders into smaller contracts to create opportunities for new entrants and smaller bus operators. Small and local bus operators should be given preference, given the incumbency advantages enjoyed by the existing large bus operators.

To promote the use of public transport as an integrated system and improve coordination, the Commission recommends the establishment of dedicated transport authorities at provincial, metropolitan, district or municipal level, where appropriate. Government (national and provincial government) and the South African Local Government Association (SALGA) should create capacity at local government level to ensure that transport planning is prioritised by municipalities.

To facilitate proper functioning of commuter rail services, foster coordination in the rail sector (especially in Gauteng), and improve efficiencies through economies of scale, the Commission recommends that the DOT develop a policy that ensures efficiency and integrated planning in commuter rail services. This policy may include, among others, integration of Metrorail and Gautrain in Gauteng. The DOT and National Treasury should explore alternative funding sources to deal with infrastructure backlogs and new rail infrastructure investments.

The Commission notes that government, through the DOT, is currently in the process of developing a subsidy policy. The Commission recommends that the subsidy policy be finalised and consider the following:

- i. Address fragmented subsidies in the public transport sector to improve coordination and correct the skewed distribution of subsidies between urban and rural areas.
- ii. Equitable allocation of subsidies to the taxi industry and rural bus operators.
- iii. Prescribe the conclusion of negotiated contracts (as opposed to tendered contracts) with small bus operators. The negotiated contracts awarded to small bus operators should account for a minimum of 30% of all contracts, and progressively increase over time.

With respect to the BRT/IRPTN implementation, the Commission recommends that the DOT and National Treasury, should do a complete review of the BRT/IRPTN model taking into account long-term fiscal and financial sustainability; suitability of the model in smaller cities; and inclusion and participation of the minibus taxi industry. In addition, DOT should consider reviewing the 12-year BOC/VOC model, or undertake a study to evaluate if the 12-year model promotes transformation and empowerment.

### **E-Hailing and Metered Taxis Market**

The Commission found that the entry of e-hailing services into South Africa disrupted the business model of metered taxis. The growing popularity of e-hailing services also caught regulatory authorities off-guard, as e-hailing services do not fall under the conventional regulatory framework. Despite the entry of e-hailing services, metered taxis were slow to respond and found it difficult to create their own digital platforms.

Digital platforms such as e-hailing services are characterised by strong network effects. These network effects increase barriers to entry into platform markets, because of the “winner takes all” or “winner takes most” phenomenon. The brand loyalty and first-mover advantages enjoyed by pioneers of e-hailing services make it difficult for metered taxi companies or operators to launch apps that can successfully compete with established brands.

Given the barriers faced by metered taxis and the nature of platform markets, metered taxi operators found it very difficult to compete with e-hailing services. The basis for the lack of competition arises from factors such as area restrictions and pricing dynamics, which will be discussed below.

### **The impact of area restrictions and price regulation on competition**

A practice note issued by the DOT makes provision for e-hailing operators to be licensed as metered taxi operators, whilst the National Land Transport Amendment Bill is being considered. At an operational level, there are important distinctions between the constraints faced by metered taxis and e-hailing services. Metered taxis have legislative restrictions imposed on their licences and operate within a defined radius. E-hailing services do not adhere to area restrictions because the app used by e-hailing operators allows operators to connect to the nearest passenger even if this is outside their municipal boundaries and strictly speaking in violation of the licence conditions. The Amendment Bill formalises this distinction between metered taxis and e-hailing operators in respect of operational areas (defined for metered taxis vs no restrictions for e-hailing services) as well as price regulation (regulated for metered taxis vs no regulation for e-hailing services), thus creating an uneven competitive environment.

Metered taxi operators have two ways of setting prices (i) regulated fares and (ii) fares determined by the local metered taxi association. The NLTA makes provision for the MEC or Minister, in consultation with the relevant authority, to determine a fare structure for metered taxis. E-hailing services, on the other hand, have adopted

a market-based approach in which the fares are determined by the forces of demand and supply.

## Recommendations

The Commission recommends that the regulatory framework for e-hailing and metered taxis should be uniform to create an even competitive environment. The regulatory dispensation in the Amendment Bill for e-hailing services should be extended to metered taxis in respect of the following:

- i. The Amendment Bill does not impose any area restrictions for e-hailing services, and this should be extended to metered taxis to create an even competitive environment.
- ii. The Amendment Bill does not regulate fares for e-hailing services and therefore, the Commission recommends that the legislature delete Section 66(3) of the NLTA which allows an MEC or the Minister together with the planning authority to determine a fare structure for metered taxi services. No price regulation for metered taxis is recommended as the Amendment Bill does not regulate e-hailing fares. This is essential to create an even competitive landscape.

On the backlog of operating licences, the Commission recommends that capacity at PREs and planning authorities be increased and all existing applications for operating licences should be expeditiously processed.

On empowering metered taxis and e-hailing operators – metered taxi associations and e-hailing operators should be empowered to represent the interests of the industry in the following manner:

- i. The DOT and PREs should assist the industry to establish a national association of metered taxis and e-hailing operators.
- ii. The DOT should assist metered taxis in conducting market research, business development, and innovation projects which include the development and deployment of technology to modernise the metered taxi industry.

## 15.3 DATA SERVICES MARKET INQUIRY

The Data Services Market Inquiry released its final findings and recommendations on 2 December 2019, thereby drawing the Inquiry to a formal close. The Inquiry found that mobile data prices were both high and structurally anti-poor, insofar as smaller volume bundles were priced inexplicably higher on a per MB basis compared to larger bundles. The Inquiry found that to overcome such discrimination, poorer consumers were driven to bundles with a short validity period, which did not provide

for continuous connectivity. The Inquiry recommended that the dominant providers, Vodacom and MTN, drop prices for monthly prepaid data by 30-50%, and remove discrimination on bundles of 500MB and lower. The Inquiry also recommended that all operators provide a daily free lifeline data allowance to each subscriber and adopt a common approach to zero rating.

The Inquiry also found that the mobile data market was concentrated, and competition ineffective. The dominant operators (Vodacom and MTN) had demonstrated the ability to price independently of the two challenger networks (Telkom Mobile and Cell C), and this was perpetuated through adverse wholesale arrangements for roaming and site access. The Inquiry recommended that facilities access regulation be enhanced to include price regulation, and that roaming agreements should contain rates that represent a discount on the effective retail price of the roaming provider. A similar rule was recommended for MVNO access. The Inquiry also proposed accounting separation for the two dominant mobile operators, and legislative changes to enhance sector regulation.

The Commission subsequently concluded a consent agreement with MTN. In terms of the consent agreement, MTN has undertaken the following, among others:



### Retail price reductions

- I. to reduce the price of 30-day prepaid bundles;
- II. to implement the retail price reductions across all its retail channels; and
- III. to communicate these reductions to all channel partners.

### Daily lifeline package

- I. to offer all its customers a daily free capped data bundle.

MTN records that it implemented the daily lifeline package in respect of the Ayoba chat, media and channels functionalities on 12 March 2020, and is to implement the Ayoba browser functionality on 1 June 2020.

### Zero-Rated Access

- I. to offer all its customers capped Zero-Rated Access to certain PBO and other websites, subject to a maximum of 500 websites focusing on education, healthcare and job recruitment via MTN's own website, which shall be subject to terms and conditions.

### Transparency

- I. to enable all its customers, at no charge, to manage their data usage through an MTN USSD and on MTN's website.

The Tribunal has approved the consent agreement concluded between the Commission and MTN.

The Commission also signed a Memorandum of Agreement with Cell C which included zero-rated access on public benefit and essential government websites; lifeline data plus four free SMSes per day; notification of effective rates of data purchases to increase pricing transparency; and a single landing page for promotions to improve access to data. A similar agreement was signed with Telkom to improve price transparency and to offer zero-rated access to essential government services and educational institutions, including the primary URLs of more than 60 universities and TVET institutions. Telkom also committed to zero-rated access to a variety of educational content, and improved transparency of pricing with c/MB pricing for all purchases.

in the first quarter of the 2020/2021 financial year the Commission also reached an agreement with Telkom's Openserve relating to wholesale products provided to Internet Service Providers (ISPs). The agreement entails Telkom making changes to its wholesale pricing to removed excessive pricing concerns in respect of IP Connect. Telkom's wholesale division, Openserve, introduced a new wholesale product the structure and the initial pricing of which would, on average, reduce wholesale

charges to ISPs in a market context where other providers of wholesale access to ISPs have announced price increases.

The Commission continued to work on the implementation of the recommendations of the Data Services Market Inquiry (DSMI). With respect to commitments made by the Mobile Network Operators (MNOs), the Commission continued to engage with the operators to ensure that commitments were being complied with. The Commission is also engaging in a formal impact assessment which will assist in understanding the impact of the inquiry and any concerns around compliance with the commitments made. Initial results of the impact assessment suggest that the short-term price relief commitment would have resulted in savings for mobile consumers of over R3bn in the first year alongside access to hundreds of online education and government services sites.

In terms of the recommendations for legislative changes, which involves amendments to the Electronic Communications Act, work within the task team established by the Department of Communications and Digital Technology ("DCDT") continued. The task team is constituted by the DCDT, Department of Trade, Industry and Competition, the Commission, the Independent Communications Authority of South Africa ("ICASA") and the Department of Cooperative Governance and Traditional

Affairs. A draft Amendment Bill has been prepared which is now set for internal consultations amongst the stakeholders within the task team. The intention remains to finalise the Amendment Bill and related processes in 2021.

#### **15.4 GROCERY RETAIL SECTOR MARKET INQUIRY**

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

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

The Grocery Retail Market Inquiry released its final findings and recommendations on 25 November 2019, and thereby drawing the Inquiry to a formal close. The Inquiry found that the formalised grocery retail market was concentrated, and that this was perpetuated through exclusive leases with shopping malls, and superior rebates resulting from buyer power of the four large national chains. The Inquiry recommended that exclusive leases be phased out, with an immediate cessation in the enforcement of such leases against Small and Medium Enterprises (SMEs) and speciality stores nationally, as well as against all grocery retailers in non-urban areas. The Inquiry also recommended that no exclusivity provisions be included in future leases or renewals of existing leases. For the remaining urban shopping malls, the Inquiry recommended that provisions against other grocery retailers be phased out over 5 years. In respect of supplier rebates, the Inquiry recommended that large suppliers sign up to a Code of Conduct which ensures that all rebates have an objective justification, and that they are available to all retailers, including smaller retailers and the buying groups that support them.

The Inquiry found that spaza shops faced a dual competitive threat from foreign shop owners and national retail chains. The ability of spaza shops to respond to these market changes is limited by regulatory barriers and business barriers, including lack of access to buyer groups and credit.

The Inquiry recommended that government address regulatory barriers, including the proactive re-zoning of areas for business, the provision of infrastructure and security, and the adjustment of trading hours to suit the convenience role played by spaza shops in township communities. The Inquiry also recommended a competitiveness fund to support businesses seeking to include spaza shops in buyer groups, develop township warehouse and distribution, and provide credit to individual stores.

The Commission has made major progress with the implementation of the Grocery Retail Market Inquiry recommendations by concluding a settlement agreement with Shoprite Checkers. Shoprite Checkers will no longer enforce the exclusivity clauses contained in various lease agreements against SMEs and specialist line stores with immediate effect. Shoprite Checkers will also cease exclusivity against other supermarkets. The Commission has also made significant progress with Pick 'n Pay where a Settlement Agreement was concluded. Pick 'n Pay agreed to eliminate exclusivity against small and independent grocery retailers and supermarkets owned and controlled by historically disadvantaged persons, and to not sign any new lease agreements that contain exclusivity clauses, in compliance with the recommendations of the Grocery Retail Market Inquiry. The agreement with Pick 'n Pay is pending the Tribunal's confirmation.

# 16. THE ADVOCACY DIVISION

The Advocacy Division comprises of four (4) functions, namely (1) stakeholder relations; (2) strategy; (3) policy; and (4) screening.

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

## 16.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Advocacy Division was responsible for ten (10) performance targets in the 2020/21 financial year. Advocacy Division met seven (7) performance target and exceeded three (3) targets.

## 16.2 PERFORMANCE HIGHLIGHTS

### a) *Screening*

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

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

The Commission received a total of two thousand and thirty-eight (2038) complaints from the public during the 2020/21 financial year, of which four hundred and forty-one (441) were ordinary enforcement complaints, and one thousand five hundred and ninety-seven (1597) complaints were related to price gouging of essential products for the Covid-19 pandemic.

The Commission completed preliminary investigation (screening) of a two hundred and eighty-four (284) complaints, of which one hundred and ninety-two (192) were non-referred, seven (7) were withdrawn, eleven (11) transferred to other entities and the remaining cases recommended for further investigation. The tables below provide a summary of screening statistics:

Figure 2: Sectors with the most complaints

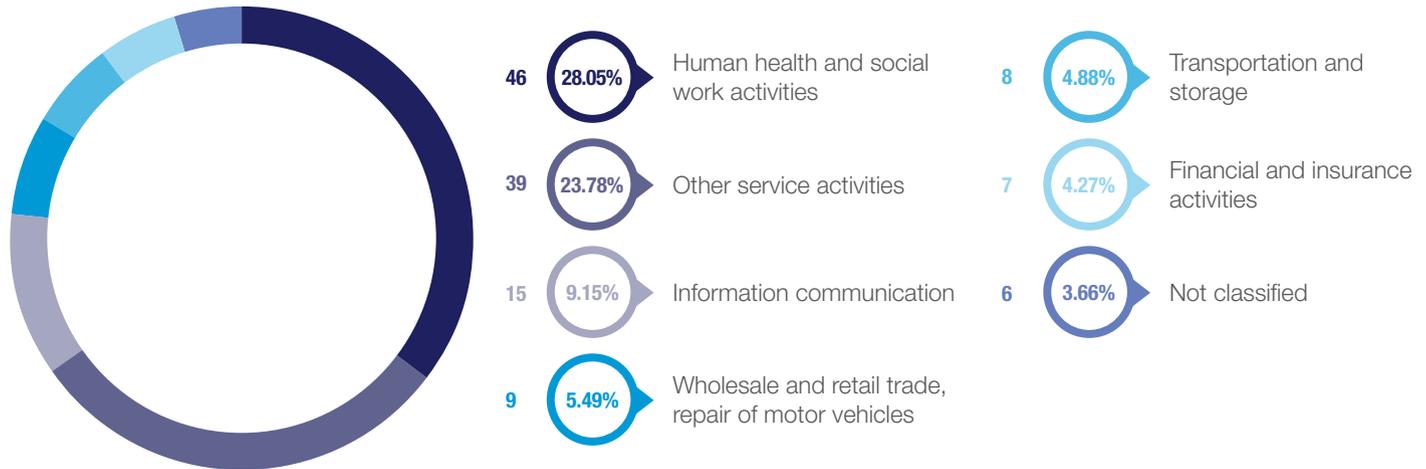


Table 17: 2020/21 Screening statistics

| Complaints   | Numbers            |
|--|--------------------|
| Total complaints received (covid + non-covid)      | 2 038              |
| Total Covid-19 complaints received                 | 1 597              |
| Total ordinary enforcement complaints received     | 441                |
| Total Covid-19 complaints completed                | 1 740 <sup>1</sup> |
| Total Covid-19 complaints referred                 | 39                 |
| Total Covid-19 complaints non-referred             | 998                |
| Total ordinary enforcement complaints completed    | 284                |
| Total ordinary enforcement complaints referred     | 1                  |
| Total ordinary enforcement complaints non-referred | 192                |
| Total complaints withdrawn                         | 7                  |

<sup>5</sup> This number includes cases initiated by the Commission.



The Commission non-refers several complaints at preliminary investigation (screening) stage, however, the Commission attempts to resolve the issues arising in some of the complaints. Below are some of the complaints resolved during 2020/21 financial year:

**Table 18: Screening cases resolved in 2020/21**

| Parties to the investigation   | Complaint  | Type of intervention  |
|--|--|---|
| <p><b>Ms Elizabeth Sathekge of Renal-Med vs Med-Lebo Barbara Hospita.</b></p>              | <p>Renal-Med alleged Barbara Hospital has denied it practice access privileges at its premises in Lebowakgomo, Limpopo Province. Renal-Med alleged that Barbara Hospital had initially approved a contract for its practice to occupy rental space for the provision of renal dialysis but later withdrew the access privileges without providing any valid reasons.</p> | <p>The Commission engaged Barbara Hospital, which agreed to reinstate Renal-Med's access privileges for the provision of acute dialysis services at the hospital</p>  |
| <p><b>Gunther Schmitz on behalf of German Autoworks vs FCA South Africa (Pty) Ltd.</b></p> | <p>German Autoworks alleged that it required a specialised timing tool to repair a vehicle and consequently requested a quotation from a motor vehicle dealer called 'Rola Motor Group' but was informed that FCA South Africa does not permit its dealers to sell specialised timing tool to independent workshops.</p>   | <p>The Commission engaged with FCA South Africa on the matter, as per the principles contained in the Commission's Guideline for the Automotive Aftermarket. FCA South Africa subsequently engaged with its Head Office in Italy on the sale of and supply of diagnostic tools and related items to independent service providers. FCA South Africa's Head Office in Italy confirmed that the tools could be supplied to independent service providers subject to compliance with the Respondent's registration protocols for the software used to operate such tools. The timing tool was subsequently supplied to German Autoworks.</p> |

| Parties to the investigation                                    | Complaint   | Type of intervention  |
|---|---|---|
| <b>Bongani Gordon Mathebula (Mr Mathebula) vs Royal School.</b> | Mr Mathebula alleged that Royal School has appointed a retailer called ‘Dekler Apparel’ (“Dekler”) as the only supplier for its school uniform. | The Commission decided to engage with Royal School about the importance of ensuring that there is consumer choice for parents, particularly for the supply of unique school uniform items. Following our engagements, Royal School decided to sign an undertaking that it will adhere to the school uniform guidelines as issued by the Commission. In this regard, Royal School has since undertaken to appoint additional school uniform suppliers to ensure that there is consumer choice. |

**b) Guidelines for Competition in the South African Automotive Aftermarket**

The Guidelines are a culmination of many years of industry and stakeholder engagements towards pro-competitive conduct. The Guidelines have been prepared in terms of section 79(1) of the Act which provides that the Commission may prepare Guidelines to indicate its approach

on any matter falling within its jurisdiction in terms of the Act.

The Guidelines provide practical guidance for the automotive aftermarkets industry, intended to promote inclusion and to encourage competition through greater participation of small businesses as well as historically disadvantaged groups.

**c) Policy Responses**

The Commission provides responses and comments to key policies as part of its advocacy activities, to ensure policies and laws are aligned with the Act. The Commission submitted eleven (11) policy responses in the 2020/21 financial year. The table below provides the policies where the Commission submitted responses, and the purpose of the Commission’s submission.

Table 19: Policy Responses in 2020/21

| Relevant Policy  | Purpose of intervention  |
|--|--|
| <b>SARB Paper on Procession of Payments in South Africa.</b>   | The Commission's submission sought to clarify potential competition issues identified in the paper.  |
| <b>SARB's Consultation Paper on open-banking activities in the national payment system.</b>  | The Commission's submission focused on identifying potential competition issues in the policy.   |
| <b>Draft Public Procurement Bill.</b>  | The Commission's submission provided its stance on public procurement during the Covid-19 pandemic and recommendations for the proposed public procurement policy framework in South Africa.   |
| <b>Draft ICT and Digital Economy Masterplan for South Africa.</b>  | The Commission provided a paper titled "Competition in the Digital Economy" as input to the Masterplan. The paper aims to inform government and corporate stakeholders of its approach to regulating competition in the digital economy and to facilitate coordinated regulatory and advocacy efforts in this area. The paper sets out the ways in which South Africa's competition laws can be implemented to achieve equitable outcomes in the digital economy and the Commission's intentions in this regard. |
| <b>Draft Agriculture and Agro-Processing Masterplan by the Department of Agriculture, Land Reform and Rural Development.</b>                                   | The Commission published three research papers that examine the barriers to entry and expansion facing emerging farmers in the South African agricultural sector. The significant barriers to entry and expansion that the papers examine include access to finance, inputs and infrastructure and routes to market. The Commission's input was informed by the research conducted in areas which also formed part of the masterplan.  |
| <b>The Department of Small Business Development's National Small Enterprise Amendment Bill, 2020.</b>  | The Commission's submission focused on identifying potential competition issues in the Bill, and to identify potential overlaps with the Competition Act.  |
| <b>Amendments to the Construction Industry Development Board Act, No. 38 of 2000 and Amendments to the Construction Industry Development Regulations 2004.</b> | The Commission's submission focussed on the Commission's stance on competition in the construction sector and the recommendations for the proposed legislative amendments on the requirements for registration, renewal and amendment of contractor grading designations, the applicability of the register on contractors, the register of professional Service Providers and the enforcement powers of the CIDB.   |

| Relevant Policy  | Purpose of intervention   |
|--|---|
| <p><b>Amendments to the Construction Industry Development Board Act, No. 38 of 2000 and Amendments to the Construction Industry Development Regulations 2004. (continued)</b></p>  | <p>The Commission's responses sought to provide pro-posals and recommendations on strengthening the regulatory role of the CIDB to achieve the desired outcome which is a well-regulated construction industry that simultaneously strives to achieve developmental and transformation objectives.</p>  |
| <p><b>The Construction Industry Development Regulations 2004 (as amended).</b></p>   | <p>The Commission's recommendations focussed on the following aspects; the registration criteria in so far as it relates to financial and performance capabilities of contractors, the registration grades, the class of work in the Specialist Works categories, registration fees, the transfer records, labour only track record, trade contractors, down-raiding, tender value limits, grade 1 entry level requirements, the registration of sub-contractors, B-BBEE scorecard and demographic representation and joint ventures.</p> |
| <p><b>NERSA's consultation document on the inquiry into the features of the gas distribution level of the South African piped-gas value chain that may impede the achievement of the objects outlined in section 2(a), 2(b), 2(c), 2(d), 2(e), 2(h) and 2(j) of the Gas Act.</b></p> | <p>The Commission's response focussed on features of the distribution level of the piped-gas value chain that may be causing market failures and may impede the achievement of the objects of the Gas Act.</p>  |
| <p><b>NERSA's amendments to the guidelines used for the assessment of inadequacy of competition in the South African piped-gas industry.</b></p>   | <p>The Commission's recommendations sought to provide guidance on the promotion of entry and the establishment of a new gas supplier in the South African gas supply chain at a scale that would be sufficient to reduce the market power of the vertically integrated dominant firm and that will enable the growth of competing traders in the relevant markets.</p>  |
| <p><b>SACAP's Identification of Work Policy.</b></p>   | <p>The Commission's submission focused on identifying potential competition issues in the policy.</p>   |

Below are the details of the submissions on Draft Agriculture and Agro-Processing Masterplan by the Department of Agriculture, Land Reform and Rural Development; NERSA's amendments to the guidelines used for the assessment of inadequacy of competition in the South African piped-gas industry and the Department of Small Business Development's National Small Enterprise Amendment Bill, 2020.

*i. Draft Agriculture and Agro-Processing Masterplan by the Department of Agriculture, Land Reform and Rural Development*

The Masterplan is a social compact of government, business, labour and other interest groups and their collective effort to address the structural constraints affecting growth and development in the agriculture and agro-processing sectors. It adopts a commodity value chain approach that provides a framework for increased transformation, expansion of markets and access to markets, improving policy certainty and enabling infrastructure for mass commercial and emerging farmer production. The implementation timeline of the Masterplan is the next ten (10) years, that is 2020 to 2030.

The Commission prepared its policy response considering engagements with the officials of DALRRD and the National Agricultural Marketing Council (NAMC). This submission provides input on the following areas of the Masterplan and competition-related issues:

- a) Access to finance
- b) Access to infrastructure
- c) Access to markets
- d) The value chain approach
- e) Policy coordination

These are areas of shared focus between the Commission and the DALRRD. Last year, the Commission published three research papers that examine the barriers to entry and expansion facing emerging farmers in the South African agricultural sector. These barriers to entry and expansion include access to finance, inputs and infrastructure and routes to market. The Commission's proposals in this submission are drawn from this research as well as the Commission's interventions in the sector and recommendations of the Grocery Retail Market Inquiry.

*ii. The Department of Small Business Development's National Small Enterprise Amendment Bill, 2020*

This policy response was submitted to the Department of Small Business Development ("DSBD") on 04 February 2021. The policy response related to a request for a submission by DSBD on the National Small Enterprise Amendment Bill, 2020 ("the Bill") which was submitted to the Commission for comment on 25 January 2021. The DSBD has previously engaged the DTIC and the Commission on the Bill.

The Bill essentially seeks to establish the Office of Small Enterprise Ombud Service ("Ombud") to provide a dispute resolution mechanism for complaints by small enterprises. The Ombud is appointed by the Minister of Small Business Development ("the Minister"). The Bill empowers the Minister, on recommendation by the Ombud, by notice in the Gazette, to declare certain practices in relation to small enterprises to be prohibited unfair trading practices.

The Commission notes that there may be a potential overlap between the practices covered by section 17F(2)(a) of the Bill (as well as the unfair trading practices to be Gazetted by the Minister of Small Business Development) and the practices covered by the recent amendments to sections 8(4) and 9(1)(a)(ii) of the Act,

respectively. Section 17F(2)(a) of the Bill covers complaints relating to any alleged unfairness in relation to a contractual arrangement or other legal relationship, abuse or unjustifiable exercise of power or other improper conduct or undue delay in performing in terms of a contractual agreement or other relationship or practice, or omission which results in improper prejudice to a small enterprise.

The practices contemplated in section 17F(2) of the Bill and possibly in the unfair business practices to be Gazetted by the Minister of Small Business Development are broader in their potential application, and do not have the same narrow scope as the special protections in sections 8(4) and 9(1)(a)(ii) of the Act. Any overlap between the practices covered in the Bill and the practices covered in sections 8(4) and 9(1)(a)(ii) of the Act would be narrow at best. In any event, it is not fatal if there were to be a degree of overlap between the two pieces of legislation as the Act contains mechanisms for the regulation of concurrent jurisdiction between the Commission and other regulators in the form of, inter alia, memoranda of agreements.

The Commission acknowledges that the dispute resolution mechanism set out in chapter 3A of the Bill, which makes provision for formal and informal resolution

of disputes, may provide small businesses an inexpensive, accessible, and flexible procedure for resolution of complaints. The Commission supports the establishment of the Office of the Ombud with the objective of considering and disposing of complaints by small enterprises and in the procedurally fair, informal, economical, and expeditious manner. The Bill therefore complements the existing mechanisms in the Competition Act.

It should also be noted that the risk of a conflict between the legislative texts has been substantially mitigated by the insertion of mechanisms in the Bill to ensure no duplication of actions or conflict with the Competition Act, namely, the fact that the Ombud may take any steps to facilitate and promote inter-agency collaboration including institutional arrangements with the Competition Commission, and the Minister of Small Business Development is enjoined by the Bill to consult with the Minister of Trade Industry and Competition before making regulations regarding the application of section 17T dealing with unfair trading practices.

#### **d) Workshops on Competition Policy**

The Commission hosted four (4) workshops and/or seminars on competition, trade, industrial policy and/or regulatory matters. Below we discuss two workshops/seminars.

#### *i. Workshop on Barriers to Entry and Participation for Women in Business*

The Commission hosted a workshop with women in business on 12 March 2021 titled “Barriers to Entry and Participation for Women in Business”. Seventy-five (75) attendees from women associations and the Commission employees joined the webinar.<sup>2</sup>

The purpose of the workshops was to discuss the following:

- a) The role/mandate of the respective associations in assisting women to access markets.
- b) Challenges and opportunities facing women, specifically the barriers to entry into South African markets.
- c) The policy interventions that can be implemented to support the entry and participation of women in markets.

The workshop consisted of an introductory session with opening remarks by Ms Khanyisa Qobo, Divisional Manager: Advocacy, followed by a presentation by Ms Karabo Motaung, Senior Analyst: Advocacy, who outlined the Commission's mandate, priority sectors, and key interventions that the Commission has worked on to facilitate entry and participation.

<sup>2</sup> These include members from Businesswomen's Association of South Africa and Women in Business Forum from the Durban Chamber of Commerce and Industry.

This was followed by presentations from Dr Maimoona Salim, Vice-Chairperson of the Women in Business Forum for the Durban Chamber of Commerce and Industry and Ms Tshepo Mathabatha, Chairperson of the Businesswomen's Association of South Africa in which they outlined the key barriers their members faced.

The overall objective of the webinar was to set an agenda for further engagements and policy interventions to support women in business.

Key issues that arose include:

- 1) Urgent investment and expansion in the financial sector are required and financing should be accompanied by impact assessments particularly about the type of skills development that could encourage sustainable growth beyond micro-enterprises.
- 2) Funding should be directed to women-owned businesses.
- 3) Financial institutions need to pay more attention to understanding the opportunities in emerging markets. These institutions should train their staff to understand the challenges that women in business face.

- 4) There should be structured non-financial support to facilitate access to finance for entrepreneurs and ultimately enable business growth.
- 5) Co-ordinated credit vetting should be promoted between different levels of financial institutions including microfinance institutions. Alternate mechanisms of determining creditworthiness should be explored to reduce dependence on traditional forms of assessment.
- 6) Education, exposure, and collaboration are very critical for women in business.

ii. Webinar on the Healthcare Block exemption

On 28 August 2020, the Commission hosted a Webinar on the Healthcare Block exemption. The purpose of the Webinar was to engage on the effectiveness of the block exemption. The Webinar attracted various stakeholders within the healthcare sector, the general public, economic and legal practitioners within the competition policy fraternity as well as the employees of both the Competition Commission (Commission) and Competition Tribunal (Tribunal). A total of approximately 60 people joined the Webinar.

In light of the healthcare crisis, the Programme Director started the proceedings by observing a moment

of silence to honour all the healthcare practitioners who were placing their lives on the line day in day out in the fight against the pandemic and those who lost their lives in the fight.

The Webinar began with a presentation by the Commission representative. The presentation was followed by a panel discussion and a Q&A session. The panellists included representatives from the National Department of Health, Hospital Association of South Africa, Netcare, the South African Medical Technology Industry Association, the Board of Healthcare Funders and the Independent Community Pharmacy Association.

Overall, the exemption was welcomed by the various stakeholders who participated in the webinar. There was consensus that the exemption helped alleviate many of the problems of shortages of supplies and consumables and that without the exemption, South Africa would have faced a bleak situation. The engagements revealed that whilst the regulatory aspect of the exemptions were adequate, there were aspects of the exemption that could have been implemented better. Participants agreed that the experiences of the exemption can be used to inform future negotiations, coordination and engagements between the public and private sector in a more effective manner.

### e) 2020/21 Memorandums of Understanding

The Commission concluded the following Memorandum of Understanding during 2020/21 financial year:

**Table 20: 2020/21 Memorandums of Understanding**

| Institution  | Purpose of the MOU  |
|--------------|---|
| <b>SACAP</b> | <ul style="list-style-type: none"> <li>• Effectively coordinate exercise of the Commission's and SACAP's jurisdiction and powers when taking decisions on competition matters within the architectural profession.</li> <li>• Timeously provide each other with necessary information in respect of the investigation of anti-competitive practices, regulation of mergers and acquisitions, as well as research developments or studies within the built environment.</li> <li>• Advocate for professional councils to advocate for compliance with competition law principles including on regulatory policies such as the identification of work and guidelines professional fees.</li> </ul>  |
| <b>AGSA</b>  | <ul style="list-style-type: none"> <li>• To renew the cooperation between the Commission and the AGSA.</li> <li>• The renewal of the Agreement is in light of the amendments to the Public Audit Act No. 25 of 2004 ("Public Audit Act") which prescribe that the Auditor-General may, in addition to identifying collusive tendering in public sectors entities' supply chain management process, refer a suspected Material Irregularity to another public body for investigation.</li> <li>• The Agreement provides the basis for cooperation between the Parties in order to seek ways to complement each other's legal mandates and share technical information and expertise.</li> <li>• The Agreement establishes the manner in which the Parties will interact with each other in respect of referrals of suspected Material Irregularities which may constitute a contravention in terms of the Competition Act No 89 of 1998, as amended ("Competition Act").</li> </ul>  |
| <b>NCC</b>   | <ul style="list-style-type: none"> <li>• Effectively coordinate the exercise of jurisdictional powers when taking decisions;</li> <li>• Apply a consistent interpretation and application of the principles of competition and consumer law when exercising their powers and their respective functions in terms of their enabling legislation;</li> <li>• Promote co-operation between the Commission and NCC ("Parties") in general, including in respect of setting of standards or conditions that affect matters of common interest, any joint investigations, market inquiries and/or research studies that the Parties may agree to undertake; and</li> <li>• timeously provide each other with necessary information in respect of the investigation of anticompetitive practices, regulation of mergers and acquisitions, protection of consumer rights, promotion of informed consumer decision making as well as research developments or studies.</li> <li>• The Commission and the NCC may inform each other of any previous decision/judgment that either of them has previously taken in respect of the anticompetitive practice or conduct involving the same respondent, in so far as it pertains to competition matters.</li> </ul> |



| Institution   | Purpose of the MOU   |
|---------------|--|
| <b>FEDSAS</b> | <ul style="list-style-type: none"> <li>• The Commission and FEDSAS acknowledge that procurement practices of schools may lead to anti-competitive outcomes, such as a reduction of choices for parents of learners, and/or higher prices of school uniforms and other goods and services procured by schools.</li> <li>• This MOU is entered into to establish the manner in which the Commission and FEDSAS will co-operate with each other to enable FEDSAS to, inter alia:               <ul style="list-style-type: none"> <li>• advocate for schools to comply with competition law principles including, inter alia, the School Uniform Guidelines</li> <li>• assist the Commission in monitoring the compliance of schools to the provisions set out in the School Uniform Guidelines</li> <li>• assist the Commission with the resolution of complaints by parents regarding non-compliance of specific schools to the pro-competitive principles governing the school uniform procurement process.</li> </ul> </li> </ul> |
| <b>NASGB</b>  | <ul style="list-style-type: none"> <li>• The Commission and NASGB acknowledge that procurement practices of schools may lead to anti-competitive outcomes, such as a reduction of choices for parents of learners, and/or higher prices of school uniforms and other goods and services procured by schools.</li> <li>• This MOU is entered into to establish the manner in which the Commission and NASGB will co-operate with each other to enable NASGB to, inter alia:               <ul style="list-style-type: none"> <li>• advocate for schools to comply with competition law principles including, inter alia, the School Uniform Guidelines;</li> <li>• assist the Commission in monitoring the compliance of schools to the provisions set out in the School Uniform Guidelines;</li> <li>• assist the Commission with the resolution of complaints by parents regarding non-compliance of specific schools to the pro-competitive principles governing the school uniform procurement process.</li> </ul> </li> </ul>  |
| <b>GBF</b>    | <ul style="list-style-type: none"> <li>• This MOU is entered into to establish the manner in which the Commission and the GBF will co-operate, specifically with regards to inter alia:               <ul style="list-style-type: none"> <li>• advocating for schools to comply with competition law;</li> <li>• promote compliance among schools to the Competition Act and/or any Guidelines issued by the Commission;</li> <li>• where feasible, collaborate on the resolution of complaints arising regarding non-compliance of specific schools within the GBF membership.</li> </ul> </li> </ul>   |

| Institution   | Purpose of the MOU   |
|---------------|--|
| <b>SANASE</b> | <ul style="list-style-type: none"> <li>• The Commission and SANASE acknowledge that procurement practices of schools may lead to anti-competitive outcomes, such as a reduction of choices for parents of learners, and/or higher prices of school uniforms and other goods and services procured by schools.</li> <li>• This MOU is entered into to establish the manner in which the Commission and SANASE will co-operate with each other to enable SANASE to, inter alia:</li> <li>• advocate for schools to comply with competition law principles including, inter alia, the School Uniform Guidelines;</li> <li>• assist the Commission in monitoring the compliance of schools to the provisions set out in the School Uniform Guidelines;</li> <li>• assist the Commission with the resolution of complaints by parents regarding non-compliance of specific schools to the pro-competitive principles governing the school uniform procurement process.</li> </ul> |

#### f) Covid-19 Education & Awareness Initiatives

Table 21: Covid-19 Education and Awareness Initiatives

| Initiative   | Purpose of the initiative  |
|--|--|
| <b>Pamphlets related to the price gouging regulations</b>      | The Commission produced and published two (2) pamphlets related to the price gouging regulations. The pamphlets were aimed at providing education and awareness to consumers and businesses. The consumer pamphlets sought to explain to consumers what the regulations mean and how they can go about alerting the Commission of suspected price gouging. The business pamphlet also explained what the regulations mean for business and how the Commission would apply them. Both pamphlets were published on the Commission's website and social media platforms on 23 June 2020.  |
| <b>Essential Food Price Monitoring reports in this quarter</b> | The Commission produced and published four (4) Essential Food Price Monitoring reports in the financial year. The Commission started monitoring food markets to detect any material upward price movements upstream and understand the causes of such movements. This monitoring has resulted in advocacy with large food companies and fresh produce marketplaces to ensure compliance with the Regulations and the containment of price increases for key essential products (such as bread, rice and flour). It has also been used to understand if certain markets are functioning well, or if issues exist in the value chain that may exacerbate food price inflation. |

# 17. OFFICE OF THE COMMISSIONER

The Office of the Commissioner (OTC) is responsible for providing strategic leadership and oversight in the organisation. The Corporate Governance function, International Relations, Learning & Development and Communications are situated in the OTC. Corporate Governance functions are discussed in detail under Part D.

## 17.1 COMMUNICATING THE WORK OF THE COMMISSION

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

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

The communications function plays a central role in taking the events of the Commission to the public. This includes logistical planning and execution, as well as media arrangements.

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

During the period under review, the Commission issued fifty-four (54) media statements. These solicited over 150 interviews, resulting in extensive media coverage. The coverage generated a comparable commercial worth, called advertising value equivalent (AVE), of at least R 396 581 743. This coverage comprises an AVE value of at least R 79 754 997 for print media coverage; an AVE value of at

least R 76 322 996 for broadcast coverage; and at least R 240 503 750 for online media coverage. This value is calculated by taking the inches, in the case of written word-based platforms, or seconds in the case of broadcast media, and multiplying these figures by the respective platform's advertising rates. The resulting number is the equivalent of what you would have paid if you placed an advertisement for the equivalent value.

The Commission continues to make significant strides with regards to social or new media, which is still one of the fastest growing media platforms worldwide. This means that we are effectively penetrating the youth audience, and we reach internet and social media users timeously. The Commission, for example, live streamed the Annual Conference, which contributed enormously to us widening our reach. More importantly, all this footage is recorded and available on our YouTube channel.



Below is a list of the Commission's social media platforms, and the number of followers or subscribers as at 31 March 2021. Non-subscribers frequently view and participate in the Commission's online events as well. The table below provides the Commission's social media footprint:

**Table 22: Commission mentions and impressions in online media for 2020/21.**

| Type of media    | Q1        | Q2        | Q3        | Q4      | Total Impressions/Reach |
|------------------|-----------|-----------|-----------|---------|-------------------------|
| <b>Twitter</b>   | 1 264 000 | 703 000   | 756 000   | 301 600 | 3 024 600               |
| <b>Facebook</b>  | 116 659   | 2 131 653 | 2 037 278 | 71 130  | 4 356 720               |
| <b>LinkedIn</b>  | 133 287   | 117 525   | 97 475    | 145 513 | 493 800                 |
| <b>Instagram</b> | 5 030     | 134 348   | 206 236   | 8 233   | 353 847                 |

## 17.2 INTERNATIONAL RELATIONS

The Commission participated in, attended and hosted events relating to engagements in various for a including with other African countries under the African Competition Forum (ACF), with Brazil, Russia, India, China and South Africa under BRICS, and in events hosted by the Organisation for Economic Co-operation and Development (OECD) and International Competition Network (ICN). Most of the engagements and collaboration took place under the banner of the ACF and the ICN. The aim of these engagements is to influence international discourse through collaborative research and/or projects on competition policy and draw learnings from other authorities.

Below, we highlight significant developments in the Commission's international relations function during the 2020/21 financial year:

**Table 23: Engagements with international and foreign bodies in 2020/21 financial year**

| Competition body                       | Nature of engagement  |
|--|---|
| <b>African Competition Forum (ACF)</b> | <ol style="list-style-type: none"> <li>1. An ACF Steering Committee Heads discussion on agency operations during the Covid-19 took place on 17 April 2020.</li> <li>2. ACF Capacity Building webinar on crafting a response to Covid-19 took place on 29 May 2020. This webinar, organised in collaboration with the Learning Academy, focused on presentations by members on various enforcement matters during this period, including cases of excessive pricing/price gouging investigated, and other prioritised matters during this period.</li> <li>3. ACF Airlines technical Committee meeting was held on 17 February 2021.</li> <li>4. ACF Steering Committee meeting was held on 24 February 2021.</li> </ol>   |
| <b>OECD</b>                            | <ol style="list-style-type: none"> <li>1. A webinar focused on Covid-19-related challenges in relation to merger review. The discussion included how to conduct competitive assessment of mergers in times of significant and rapid change in market circumstances; how to implement remedies in such a severe crisis; how to evaluate the failing firm defence; and how to manage increased derogation requests for jurisdictions that have standstill obligations.</li> <li>2. The OECD Competition week was held for 7 days, from 08 to 16 June 2020, which included discussions on several topics. The webinars also included Working Party sessions and a Competition Committee meeting.</li> <li>3. OECD Workshop on methodologies to measure market competition was held on 23 February 2021.</li> </ol> |

| Competition body | Nature of engagement  |
|------------------|---|
| <b>BRICS</b>     | <ol style="list-style-type: none"> <li>1. BRICS ad-hoc Working Group on Model Recommendations on Waivers meeting was held on 25 February 2021.</li> <li>2. BRICS response on Covid-19 webinar took place on 27 May 2020. The webinar was aimed at exchanging agency information and sharing experiences related to operations and priorities during Covid-19. A discussion on the BRICS workplan and way- forward for the year was also discussed</li> </ol>  |
| <b>ICN</b>       | <ol style="list-style-type: none"> <li>1. ICN Cartel Webinar on 07 April and 06 October 2020</li> <li>2. Unilateral Conduct teleconference held on 20 May 2020</li> <li>3. ICN Annual Conference held on 14 – 16 September 2020</li> <li>4. ICN Merger control webinar led by CCSA held on 30 September 2020</li> <li>5. ICN UCWG webinar on the “Report on the Results of the ICN Survey on Dominance/Substantial Market Power in Digital Markets “on 27 October 2020</li> <li>6. ICN ITOD webinar held on 07 January 2021.</li> <li>7. Submission of ICN Third Decade Survey</li> <li>8. ICN Cartel Working Group webinar held on 20 January 2021.</li> <li>9. ICN ITOD meeting was held on 04 February 2021.</li> <li>10. ICN MWG Heads of Authorities webinar held on 30 March 2021.</li> <li>11. Submission of the ICN MWG Survey on Procedures.</li> <li>12. Submission of ICN MWG Joint Venture Survey.</li> <li>13. Submission of ICN CWG Cartel Survey.</li> </ol> |

| Competition body | Nature of engagement  |
|------------------|---|
| <b>UNCTAD</b>    | <ol style="list-style-type: none"> <li>1. CCSA participated in the first Cross Border Cartel Working Group. The session was held on 04 February 2021.</li> <li>2. CCSA contributed to the UNCTAD Research on “Competition advocacy during and in the aftermath of the COVID” which will be presented at the Annual Conference in July 2021.</li> <li>3. CCSA participated in the UNCTAD -ECA regional dialogue which was held on 11 March 2021.</li> <li>4. UNCTAD SME contribution on impact on small business.</li> <li>5. UNCTAD eCommerce eWeek took place from 27 April to 01 May 2020, which considered in-depth key digital issues in the context of the Covid-19 pandemic and its economic impact, including on data, gender, trade and logistics, consumer trust, consumer protection, competition, and digital entrepreneurship.</li> <li>6. UNCTAD Webinar: “Competition Issues in times of Covid-19- Is there a role for International Cooperation?” took place on 03 June 2020.</li> <li>7. UNCTAD Webinar on Key Competition and Consumer Protection Priorities for Regional Integration in Africa took place on 17 June 2020. The webinar focused on the experience of regional organisations in the field of Competition and Consumer Protection, and the contribution of the Africa Continental Free Trade Agreement in the field of Competition.</li> </ol> |
| <b>Other</b>     | <ol style="list-style-type: none"> <li>1. CCSA – Barbados introductory meeting was led by the Commission on 27 January 2021.</li> <li>2. Morocco Competition Conference held on 17 March 2021.</li> <li>3. South Africa – EU Competition dialogue held on 29 – 31 March 2021.</li> <li>4. African development Bank AfCFTA webinar was held on 24 November 2020 to discuss the AfCFTA Covid-19 – Acceleration for Trade and Investment including Competition.</li> <li>5. SADC Competition Committee meeting held on 31 March 2021.</li> </ol> <p>The Competition Authority of Kenya (CAK) hosted its 7th Annual Competition Law &amp; Policy Symposium under the theme Competition Policy in Times of Crisis on 25 September 2020 and CCSA participated.</p>  |

### 17.3 LEARNING & DEVELOPMENT

The Commission places great emphasis on developing its people. R1 168 701 was spent on learning and development initiatives during the reporting period. The training budget includes local training, overseas training, conferences, and study loans.

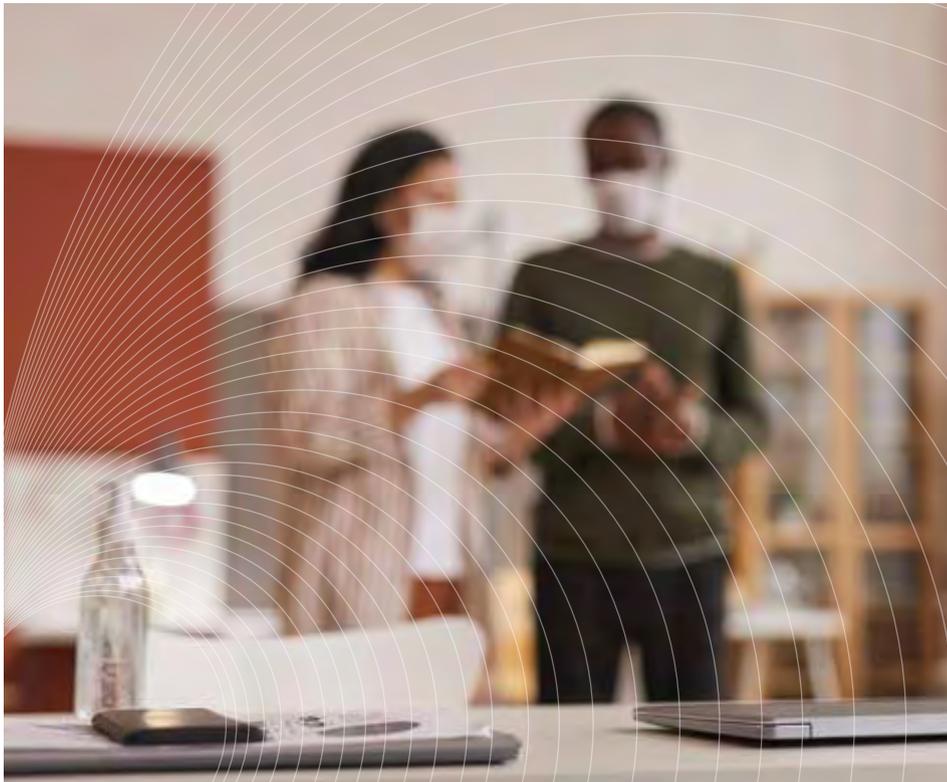
Through the learning academy, The Commission has moved towards a Learning and Development Program that relies heavily on its internal expertise and information resources in the development and delivery of learning programs, whilst continuing to draw from best practices and innovation from outside the Commission. The Commission has invested a significant amount of effort in the development

of learning content and encouraging senior employees to participate in the development of other employees. Some of our senior employees have been involved in either providing content or running training and development programs for international competition authorities.

In line with its aspiration to support the development of its staff, the Commission supports staff to not only do their jobs, but also to grow as individuals. In 2020/21 over 60% of employees were trained through the academy.

#### **a) The Cadets programme**

The sustainability of the Commission hinges on a stable pipeline of talent in the areas of competition law, economics and other disciplines. The Commission revamped the program from the old Graduate Development Program by enhancing the training component and enhancing the experiential learning aspects of the program. Through the new Cadet programme, the law graduates can complete their articles through established partnerships with private law firms. The Commission has enrolled six (6) graduates in the revamped program. The Commission will be looking at continuously updating the program, to accommodate new domains of talent required to execute the mandate of the Commission.



# 18. THE CORPORATE SERVICES DIVISION

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

## 18.1 SUMMARY OF PERFORMANCE AGAINST TARGETS

The Corporate Services Division (CSD) was responsible for three (3) performance targets in the 2020/21 financial year, two targets were met, and one target exceeded.

## 18.2 PERFORMANCE HIGHLIGHTS

### a) *Supporting our human capital*

The Commission is a fast-paced environment driven primarily by dynamic specialists in the areas of law and economics. The Human Capital (HC) function at the Commission provides

strategic and administrative support to the organisation in general, and to line managers in the areas of talent management, talent acquisition, employee relations management, organisational development support, and human capital development. The Commission continues to benefit from the Business Partner model it adopted four years ago, when the HC function moved from administrative support to strategic management of talent, for the realisation of the High-Performance Agency goal.

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

- Improvements were made in talent acquisition processes and policies, to improve both the quality of talent sourced and the turnaround times for talent acquisition at the Commission;
- The institutionalisation of the employment equity committee, with particular focus on setting achievable employment equity targets;
- All Human Capital Management Policies were reviewed during the financial year, to ensure they are in line with best practices and are in line with the changes in legislation; and

- Limited implementation of some aspects of the new organisational structure.

### b) *Performance management*

The performance management system of the Commission continues to be the cornerstone of the realisation of a high-performance agency goal, with individual performance linked to organisational performance. The new Performance Management Policy is in its second year of implementation, with minor adjustments made to improve the management of performance at the Commission. This year saw the introduction of new tools in performance moderation, as the Commission seeks to boost the reliability and objectivity of performance moderation. The Commission continues to embed the culture of high-performance and plans to continue making improvements in this area by building a paperless performance management system that is integrated to its Human Capital Management System.

### c) *Employment equity*

The Commission has made a deliberate effort to comply with the Employment Equity Act (EEA) (No. 55 of 1998) as amended. In terms of the applicable provisions of the EEA, the Commission's 2019 employment equity report was submitted to the Department of Labour. Diagram 1 shows the equity breakdown for the past years, including the year under review. From a gender and national economically active population (EAP) perspective, the Commission performs well. The EAP includes people between the ages of 15 and 64 who are either employed or unemployed, and who are seeking employment.

In the 2020/21 financial year, the equity ratio for female and male representation is 59% and 41%, respectively. People with disabilities represented 1.59% of Commission staff. To achieve the legislated target of 2%, the Commission will increase efforts for employees to declare their disabilities or in the recruitment of disabled employees by giving priority to qualifying disabled applicants for vacant positions, as well as for development opportunities. The Commission has for the first time managed to reach a critical milestone in that the senior management level has achieved 50% male and 50% female representation. The Commission's 2020/21 race and gender profile is as follows:

**Table 24: Commission 2020/21 race profile**

| AF     | CF    | IF    | WF    | AM     | CM    | IM    | WM    |
|--------|-------|-------|-------|--------|-------|-------|-------|
| 49.21% | 2.12% | 4.76% | 2.65% | 36.51% | 0.53% | 1.06% | 3.17% |

### d) *Staff turnover*

As at end of the 2020/21 financial year, the Commission's staff complement stood at 200 employees. There were fourteen (14) terminations of employment during 2020/21 financial year. The Commission's current annual termination rate is significantly lower compared to the previous years. The main reasons cited for resignations were career change/development.

### e) *Employee Retention*

To ensure optimal employee retention the Commission has embarked on two initiatives: Employee Development and Performance Recognition & Incentivisation:

**Employee Development:** In the last financial year the Commission has spent over R1,0 million Rands towards the development of employees. This includes study loans, domestic and international travel for developmental purposes. The Commission also established a Learning Academy, which facilitates and delivers training and discussions on competition-related topics for employees at all levels.

The Commission has also formed partnerships with law firms to facilitate the admission of employees who are not yet admitted as attorneys. This initiative facilitates career growth, in that once admitted, such employees can progress into senior levels within the Commission.

**Performance Recognition & Incentivisation:** The Commission uses the performance management system to make decisions on performance related incentives. To ensure that high performers are incentivised and retained, the performance management policy was enhanced to differentiate performance levels more distinctly. According to the new policy, good performers will be incentivised more than they have been in the past few years, budget permitting.

### f) *Employee relations*

In the year under review, the majority of the Commission's employees were members of the National Education Health and Allied Workers Union. By year-end, the union's representation was 71%, which gave them majority rights, in terms of the amended Chapter III of the Labour Relations Act (No. 66 of 1998).

**g) Facilities management**

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

This section has been involved in planning and preparation for investments in fit-for-purpose space that is effectively managed, complies with occupation health and safety requirements, and supports the conduct of the Commission's functions. These preparations will inform investments planned over the next three years, to improve the effectiveness and efficiency of the Commission.

**h) Information and Communications Technology**

As the world reacts to the Covid-19 pandemic, the Commission also became increasingly reliant on technology to support staff and stakeholders to mitigate the spread of the virus and for business continuity. Remote working and collaboration tools (project management tools, video conferencing, real time

document revision and cloud storage and sharing tools) became essential systems, with new demands placed on networks and datacentre infrastructure.

With restrictions on individual movement being introduced staff are routinely working from home and need the right tools to support them. The Commission migrated to Office 365 and including MS teams, transition to online meetings and document collaboration was a smooth process. Furthermore, as staff work remotely, several security measures and daily updates on systems were implemented.

The Commission also introduced a digital signing system to ensure secure document signing and approvals. Extensive training was provided on various ICT tools including Microsoft Teams, Zoom, planner, forms etc. The Commission continues to explore other ICT systems and services to ensure business continuity.

**i) Records Management**

The Commission's Records Management function continued to provide an efficient service to external clients and internal clients; to support the core and support functions of the Commission. The focus area during the year under review was on the improvement of our policies to improve

alignment and compliance with regulatory framework affecting information at the Commission's disposal. The Commission has put in place plans to improve the effectiveness and efficiency of this function in the next few years, through investment in capacity and improving the technology supporting this function.

**j) Information Resources Centre (IRC)**

The IRC provides and maintains access to a rich set of databases \which include international and local legal databases, various business and marketing resources that are well-used, and a well-maintained print collection (that includes a respectable and current book collection that has been augmented with 39 new titles during the year under review). The IRC issues resources to employees (with 347 publications issued during the year) and provides support to employees conducting research (with about 324 requests for information finalised during the year under review). Employees were kept abreast of new information resources through bulletins (with more than nine (9) circulated during the financial year).

## PERFORMANCE AGAINST TARGETS: 2020/21

Table 25: 2020/21 Performance Against Targets Set

| PERFORMANCE MEASURE                          |         |   | ACHIEVEMENT AGAINST TARGETS |               |                |                     |
|--|---------|---|-----------------------------|---------------|----------------|---------------------|
| Outputs                                      | KPI No. | Performance Indicator   | Accountable Program         | Annual Target | Annual Results | Reason for Variance |
| <b>a) Mergers and Acquisitions decisions</b> | 1.      | Average turnaround time for Phase 1 merger investigations.                        | M&A                         | ≤ 20 days     | 18 days        | Target Met.         |
|  | 2.      | Average turnaround time for Phase 2 merger investigations.                        | M&A                         | ≤ 45 days     | 37 days        | Target Met.         |
|  | 3.      | Average turnaround time for Phase 3 intermediate and small merger investigations. | M&A                         | ≤ 60 days     | 55 days        | Target Met.         |
|  | 4.      | Average turnaround time for 90% of Phase 3 large merger investigations.           | M&A                         | ≤ 120 days    | 93 days        | Target Met.         |
|  | 5.      | % of imposed merger remedies and conditions monitored.                            | M&A                         | 100%          | 100%           | Target Met.         |

| PERFORMANCE MEASURE               |         |  | ACHIEVEMENT AGAINST TARGETS |               |                |  |
|-----------------------------------|---------|--|-----------------------------|---------------|----------------|--|
| Outputs                           | KPI No. | Performance Indicator  | Accountable Program         | Annual Target | Annual Results | Reason for Variance  |
| <b>b) Covid-19 investigations</b> | 6.      | No. of Covid-19 investigations completed within 12 months.   | Advocacy, Cartels & MCD     | 1500          | 1764           | Target Exceeded.<br>The Commission received a high volume of Covid-19 complaints and had to fast-track many complaints which increased the number of completed investigations. |
|                                   | 7.      | % of Covid-19 cases won at the Tribunal and the courts.  | LSD                         | 90%           | 100%           | Target Exceeded.<br>The Commission won all its Covid-19 cases at the Tribunal.   |
|                                   | 8.      | Average turnaround time for referral of Covid-19 matters to the Tribunal, after Commission decision. | LSD                         | 10 days       | 3 days         | Target Exceeded.<br>The Commission prioritized and fast-tracked referrals of Covid-19 investigation.   |
|                                   | 9.      | % of Covid-19 exemptions applications completed within 3 months.                                     | LSD & ERB                   | 100%          | N/A            | Target Not Applicable.<br>The Commission did not receive any Covid-19 exemption applications.  |
|                                   | 10.     | Assessment of impact of stimulus measures on markets.  | Advocacy & ERB              | 1             | 1              | Target Met.  |
|                                   | 11.     | Report on Food Prices.   | ERB                         | 4             | 4              | Target Met.  |
|                                   | 12.     | Monitoring of anti-competitive conduct in Government procurement.                                    | Cartels                     | 100%          | 100%           | Target Met.  |
|                                   | 13.     | No. of Covid-19 Education & Awareness initiatives  | Advocacy & OTC              | 2             | 3              | Target Exceeded.<br>The Commission conducted two awareness initiatives to reach both consumers and business with respect to price gouging.                                     |

| PERFORMANCE MEASURE   |         |   | ACHIEVEMENT AGAINST TARGETS |               |                |   |
|---|---------|---|-----------------------------|---------------|----------------|---|
| Outputs   | KPI No. | Performance Indicator   | Accountable Program         | Annual Target | Annual Results | Reason for Variance   |
| <b>a) Investigation of Abuse of dominance and restrictive practices</b> | 14.     | No. of abuse of dominance and restrictive cases initiated in prioritized sectors.   | Market Conduct              | 5             | 36             | Target Exceeded.<br>The Commission received information from the National Treasury which resulted in initiation of 32 regarding government procurement of PPEs.   |
| <b>b) Market Conduct investigations</b>                                 | 15.     | % of market conduct investigations completed within 18 months.  | Market Conduct & Advocacy   | ≥60%          | 94%            | Target Met.   |
| <b>c) Exemption application decisions</b>                               | 16.     | % of exemption applications completed within 12 months.   | Market Conduct              | ≥75%          | 100%           | Target Met.   |
| <b>d) Cartel investigations</b>   | 17.     | No. of cartel investigations completed.   | Cartels                     | 5             | 28             | Target Exceeded.<br>There were no trials of cartel cases at the Tribunal due to Covid-19, therefore the Commission expedited completion of cartel investigations. |
| <b>e) Cartel prosecutions</b>   | 18.     | % of cartel cases won at the Tribunal and the courts.   | Cartels & LSD               | ≥75%          | 86%            | Target Met.   |
| <b>f) Prosecution of Abuse of dominance and restrictive practices</b>   | 19.     | % of market conduct cases won at the Tribunal and the courts in relation to abuse of dominance, restrictive practices and exemption litigation. | LSD                         | ≥70%          | 100%           | Target Met.   |
| <b>g) Merger litigation</b>   | 20.     | % of merger decisions upheld by Tribunal and/or courts.   | LSD                         | ≥75%          | 100%           | Target Met.   |



| PERFORMANCE MEASURE  |         |  | ACHIEVEMENT AGAINST TARGETS |               |                |  |
|--|---------|--|-----------------------------|---------------|----------------|--|
| Outputs  | KPI No. | Performance Indicator  | Accountable Program         | Annual Target | Annual Results | Reason for Variance  |
| <b>a) Domestic outreach initiatives</b>                                    | 21.     | No. of education, training and outreach initiatives conducted on amendments. | Advocacy & ERB              | 2             | 3              | Target Exceeded.<br>Publication of Buyer Power Guidelines required that the Commission conduct training on same (Buyer Power webinar). |
|  | 22.     | Number of awareness publications on the Competition Act.                     | Advocacy & OTC              | 4             | 4              | Target Met.  |
| <b>b) External Guidelines on the application of the Act</b>                | 23.     | No. of Guidelines on the application of the Act issued to stakeholders.      | LSD & ERB                   | 2             | 2              | Target Met.  |
| <b>c) Advisory Opinions</b>  | 24.     | % of advisory opinions issued within 60 days.                                | LSD                         | 90%           | N/A            | Target Not Applicable.<br>Final regulations on advisory opinions have not been gazetted.   |
| <b>a) Market inquiries</b>   | 25.     | No. of market inquiries initiated.   | Market Conduct              | 1             | 1              | Target Met.  |
|  | 26.     | No. of market inquiries completed.   | Market Conduct              | 1             | 1              | Target Met.  |
|  | 27.     | No. of implementation Reports on Market Inquiry recommendations.             | Advocacy & ERB              | 4             | 4              | Target Met.  |
| <b>b) Industry Scoping Studies</b>   | 28.     | No. of industry scoping studies conducted in prioritized sectors.            | ERB                         | 0             | N/A            | Target Not Applicable.   |
| <b>c) Impact assessments on Commission decisions or competition policy</b> | 29.     | No. of impact assessment studies completed.                                  | ERB                         | 1             | 1              | Target Met.  |

| PERFORMANCE MEASURE  |         |   | ACHIEVEMENT AGAINST TARGETS |               |                |  |
|--|---------|---|-----------------------------|---------------|----------------|--|
| Outputs  | KPI No. | Performance Indicator   | Accountable Program         | Annual Target | Annual Results | Reason for Variance  |
| <b>d) Advocacy in priority sectors</b>                             | 30.     | No. of advocacy cases completed in priority sectors.  | Advocacy                    | 4             | 4              | Target Met.  |
| <b>a) Strategic Partnerships with relevant stakeholders</b>        | 31.     | No. of workshops or seminars on competition, trade, industrial policy and/or regulatory matters hosted. | Advocacy                    | 4             | 4              | Target Met.  |
|  | 32.     | No. of strategic activities undertaken in collaboration with universities.                              | OTC                         | 0             | N/A            | Target Not Applicable.   |
| <b>b) Policy Responses</b>   | 33.     | No. of submissions or responses to policy or regulation.  | Advocacy                    | 4             | 11             | Target Exceeded.<br>There were more policy/regulatory developments in priority sectors arising than anticipated.   |
| <b>c) Research &amp; Thought Leadership</b>                        | 34.     | No. of research and thought leadership insights published.  | ERB                         | 2             | 3              | Target Exceeded.<br>Competition regulation under national disaster enabled opportunity to conduct more research. The Commission conducted research in Merger Threshold Determination; Mergers in a Failing Industry; and Failing firms, business rescue and reorganization in antitrust. |
| <b>d) Collaboration with Regional &amp; International partners</b> | 35.     | No. of research projects and/or publications undertaken with African, BRICS and international partners. | OTC                         | 0             | N/A            | Target Not Applicable.   |



| PERFORMANCE MEASURE                                     |         |  | ACHIEVEMENT AGAINST TARGETS |               |                |  |
|---|---------|--|-----------------------------|---------------|----------------|--|
| Outputs   | KPI No. | Performance Indicator                                    | Accountable Program         | Annual Target | Annual Results | Reason for Variance  |
| <b>a) Audit Outcome</b>                                 | 36.     | Audit Opinion.   | Finance                     | Clean Audit   | Clean Audit    | Target Met.  |
| <b>a) Conducive Facilities &amp; Efficient Security</b> | 37.     | Relocate staff to appropriate office space.              | CSD                         | 0             | N/A            | Target Not Applicable.   |
|   | 38.     | % implementation of the OHS compliance plan.             | CSD                         | 100%          | 100%           | Target Met.  |
| <b>a) Talent Management</b>                             | 39.     | % of HR spend in learning and development.               | CSD                         | 0.5%          | 1%             | Target Exceeded.<br>There was a high demand for study loans in the financial year. |
|   | 40.     | % retention rate of staff complement.                    | CSD                         | ≥90%          | 98.5%          | Target Met.  |
|   | 41.     | % of staff reached through training academy initiatives. | OTC                         | ≥50%          | 61%            | Target Met.  |

CORPORATE  
GOVERNANCE

D



# 19. CORPORATE GOVERNANCE

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

## 19.1 DECISION-MAKING STRUCTURES

The Commissioner, Mr Tembinkosi Bonakele, is the accounting authority of the Commission and is appointed by the Minister of the Department of Trade, Industry and Competition (DTIC). The Commissioner is responsible for general administration, managing and directing the activities of the Commission, supervising staff, and for performing any functions assigned to him in terms of the Competition Act and the Public Finance Management Act (No. 1 of 1999) (PFMA).

### a) *Commission Meeting*

The Commission Meeting is the highest decision-making structure in relation to case-related work of the Commission. The Commission meeting is chaired by the Commissioner, who is assisted by the Deputy Commissioners to carry out the functions of the Commission. The Commission Meeting ordinarily meets on

a fortnightly basis with the Chief Legal Counsel, Chief Economist, and Divisional Managers responsible for dealing with the statutory, case-related work. During the reporting period, the Commissioners consisted of the Commissioner, Deputy Commissioner, and 2 acting Deputy Commissioners.

The Commission held thirty-six (36) Commission Meetings during the period under review. The core functions of the Commission Meeting are to receive recommendations, and to make decisions on cases, as well as provide guidance and direction in the conduct of investigations.

The Commissioners receive updates on important cases, adopt policies and procedures regarding the conduct of cases, and receive reports and give direction on advocacy and communication relating to the work of the Commission, as prescribed by the Act.

### b) *The Executive Committee and Sub-Committees*

The Commission's executive committee (EXCO) is chaired by the Commissioner, and comprises the Deputy Commissioner and Divisional Managers, including the Chief Financial Officer. The heads of departments (Information Technology, Ombud, HR, Communications, and Registry) form part of the extended EXCO, and participate in EXCO meetings when invited by the Commissioner. The EXCO advises the Commissioners on decision-making on the administrative and operational aspects of their functions.

The EXCO held eleven (11) meetings during the period under review. The key functions of the EXCO are to undertake strategic and business planning, monitor the implementation of strategic and business plans, and to mobilise and allocate financial and human resources. The EXCO also plays an oversight role over the management of human resources, information technology, security and facilities management, and risk management. It is responsible for approving policies relating to operations, and provides leadership and sets the tone for the overall operations of the Commission. The company secretary advises the EXCO on compliance with relevant legislation and regulations.



The EXCO has established five committees to assist it in performing its oversight function, and to provide it with guidance on matters falling within the terms of reference of the respective committees.

Performance against targets is discussed on a quarterly basis at the EXCO meetings, in order to monitor expenditure, activities and progress. The Commission submits quarterly reports to the DTIC, in terms of the PFMA. The EXCO has established five committees to assist it in performing its oversight function, and to provide it with guidance on matters falling within the terms of reference of the respective committees. The five committees are referred to below.

**c) *The Management Committee***

The EXCO is assisted by the Management Committee, which is chaired by the Deputy Commissioner and meets on a biannual basis. The Management Committee comprises all management of the Commission, including members of EXCO and a layer of management below EXCO, which is representative of all functions, including Heads of Departments. The management committee held 4 meetings during the financial year.

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

#### **d) Technology and Information (T&I) Committee**

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

#### **e) Finance Committee**

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

- recommending the annual organisational budget to EXCO for adoption;
- ensuring the organisational budget is aligned with the Commission's strategic plan and government priorities;

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

The finance committee held seven (7) meetings during the period under review.

#### **f) Human Capital Committee**

The Human Capital (HC) Committee comprises select EXCO members, and is tasked with oversight over the implementation of the HC strategy and ensuring that policies are developed, implemented and reviewed. The HC committee met six (6) times during the period under review.

#### **g) Employment Equity Committee**

The Employment Equity Committee comprises of Commission employees who represent all levels in the organisation, who are selected in line with the provisions of the Employment Equity Act. The

Committee oversees the transformational agenda of the Commission. Its objectives are to do an analysis of the employee profile, play a consultative role in setting targets for transformation, and identify and resolve barriers to transformation. The Committee held four (4) meetings during the financial year.

#### **h) Risk and Governance Committee**

The Risk and Governance Committee comprises select EXCO members, and representatives from respective functions. It is tasked with oversight over governance and risk management, and was chaired by the Chief Financial Officer. The Committee met 4 times during the period under review.

## **19.2 OVERSIGHT COMMITTEES**

### **a) Audit and Risk Committee**

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

### **b) Remuneration Committee**

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

## 19.3 COMPLIANCE WITH LEGISLATION

### **a) Public Finance Management Act, 1999 and National Treasury Regulations**

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

- quarterly reports on the Commission's expenditure, budget variance, activities and performance against set targets;
- monthly expenditure reports;
- annual performance plan for the period 2020/2021; and
- annual report

### **b) Skills Development Act, 1998**

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

### **c) Skills Development Levies Act, 1999**

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

### **d) Employment Equity Act, 1998**

The Commission submitted its employment equity report.

### **e) Unemployment Insurance Act, 2001**

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

### **f) Occupational Health and Safety Act, 1993**

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

### **g) Income Tax Act, 1962**

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

### **h) Levies and taxes**

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

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

# AMONG THE FIRST RESPONDERS

Our back story of commitment, creativity and triumph in a time of crisis



## WE ALL REMEMBER WHERE WE WERE, IN EARLY MARCH 2020, WHEN WE FIRST HEARD THAT **COVID HAD LANDED IN SOUTH AFRICA**

**N**yadzani Mabasa, a senior analyst in the Market Conduct Division, said that she was driving back home from the office, listening to the news on 702. She remembers not being shaken by the news because patient zero was in Hillcrest, KZN, and his fellow travelers were well contained. But she questioned her confidence just two days later when a Covid case was confirmed in Sandton, much closer to home.

Nandi Mokoena, the Commission's training advisor, said she was at a children's sports event when she noticed parents, who'd been sitting silently side by side till then, taking out their phones and sharing – with alarm and concern – whatever they were reading.

The news had broken. And we waited to hear if South Africa would join the growing number of countries that were closing their borders and locking down.

As with past global tragedies – previous times when all the world's population was united in fear, disbelief and grief – tragic events bring about unfortunate casualties but, from their ashes, also raise courageous heroes. For the most part these have been firefighters, paramedics and other medical staff. Our global Covid experience has been the same and by now medical staff the world over have been honoured for their brave fight against this ever-evolving sickness. Anyone who has experienced Covid or been affected by it would agree that we can never thank our medical staff enough for the work they do or sympathise enough for the casualties they've faced.

The 'first responders' was a term made popular by the 9/11 tragedy in the United States. It referred to the heroes who arrived first to that dreadful scene of choking dust and death where 2 996 people lost their lives in a war they didn't start. Unlike 9/11 though, Covid added a devastating economic crisis to our health crisis and this one had its own first responders. Although we could not say who all of them were, we know that South Africa's Competition Commission was one. ▶



*So last year I turned 30! And ever since I was a baby I'd never had any significant celebration in honour of me. I had planned a long-table birthday dinner to celebrate the milestones I had achieved so far. Unfortunately, due to COVID, I had to cancel all my birthday plans. But I still felt that I needed to celebrate life, so I dressed up and did a photo shoot. – Queen Khetsi*



*A masked gathering for the mama-to-be: Korkoi Ayayee!*

We mention 'South Africa' because not all competition agencies in the world approached the economic element of the Covid crisis with the same level of urgency, commitment and creativity as the SA Commission.



This was last year during lockdown, around April. My wife and I, with the help of a few neighbours, managed to feed three families. – Donation Shitubane

One foreign competition agency said, in a meeting about our respective Covid responses, that they considered price gouging to be a temporary imbalance of market forces which would set itself right over time. Although every one of the competition agencies undoubtedly had their reasons for responding as they did, justified in their jurisdictions, thankfully South Africa saw price gouging in a different way: as an economic crisis threatening to benefit a few but make it even harder for the poor to ride the Covid wave and survive.

Soon after the first Covid cases emerged in South Africa, the country followed others and went into strict lockdown. While this new mixture of fear, anxiety and even excitement grew, the Commission was receiving more complaints than it had ever received in its 20-year history. 770 complaints by the first week of April, to be precise. This, for an agency that receives about 300 complaints a year! So by the time we started taking stock of all the cases coming through, it was clear we would need a solid plan to deal with them. One completely different from our usual way of doing things. Looking back on the difficult choices the Commission had to make in a short space of time, Tembinkosi Bonakele, the Competition Commissioner, said that nothing could have prepared us for Covid19. "The organisation we had and how it worked would not help us. Companies needed to cooperate in the wake of an unprecedented disruption of global supply chains, panic buying and sudden demand

**"If Covid19 was a disruptor, it would take the disruption of our organisation to confront it. I knew that what we were about to do would either enhance our response and resilience or destroy us. There was no middle route. But in the end I am glad we took the risks we took."**



This is me remembering how things were before lockdown, when we dressed professionally for work. Now we're all working from home in traditional lockdown gear. – Grapper Nyambi

for PPE and essential food, as well as the resultant increase in pricing.

The work we did made us a pioneer competition agency and our work became a source of strength and emotional refuge amidst a crisis that none of our predecessors ever confronted."

By the end of March 2021 we'd received just over 2000 complaints from the public, all of them complaining about the astronomical increase in the price of food, sanitisers, face masks and other essentials. Since all new complaints come through our Registry Department which is headed by Samson 'Bra Sam' Mamba, and land first in the Advocacy Division for screening, it fell to Khanyisa



To join a new division with everyone on mute and not being able to see colleagues' faces was, to be honest, quite unnerving. To counteract this, for our second divisional meeting, I requested all MCD colleagues to please ensure that they are in their Sunday-best outfits and to have their videos on at the start of the meeting. I took this photo to celebrate this moment and small victory. – Thembaletu Buthelezi

Qobo – the Advocacy Division's manager – to come up with a solution. Yet there were so many challenges to overcome. For one thing all Commission staff were, by now, working from home – some without the infrastructure and support they needed to investigate such a high number of cases, a number that was increasing by the hour.

Also, the Covid related complaints were getting lost in our existing system for numbering and allocating cases. We couldn't tell, just by looking at the case names and numbers, which ones related to Covid and which were ordinary competition cases. The distinction was important because – given the pressure on consumers and Minister Patel's obligation to report daily to cabinet and to the public on his department's response to Covid – we knew we'd have to prioritise the investigation of the Covid complaints above ordinary competition cases. One more challenge was that we simply didn't have enough investigators in the Advocacy Division to process and screen so many complaints, especially under time pressure.

And so it was that, amidst the Covid anxiety we all faced, Khanyisa had to pull essential staff back into the office in order to devise a plan for the Commission's Covid response.

By then the other divisions had seconded nine principal analysts and their teams to the joint team of investigators that Khanyisa had established. Khanyisa recalls, with great pride and appreciation, how the

staff met the urgency of the moment and the dedication they showed.

Although the Commission's staff were well accustomed to working under pressure, the team remembers that this experience wasn't business as usual for them. "We never rested. One day after lockdown we had to pull all our resources to work day and night."

Two more managers, Bukhosibakhe Majenge and James Hodge, joined the core team to lead the Commission's response to the unfolding economic crisis. Under the guidance of Khanyisa, Bakhe and James the team tackled the rising challenges one problem at a time. "We battled to find our balance at first but I think we finally cracked it with the price gouging complaint against Dischem", said Bakhe, the chief legal counsel. He remembers that the team started investigating the Dischem case on Good Friday but after that every day of the week became a work-day for them, forgetting which were weekends or public holidays. Their efforts paid off though because once this team had stamped their authority over the retailers, the Commission saw a marked reduction in price gouging complaints and behaviour.

**"It was all hands-on-deck from the get-go; our team of highly skilled, highly committed principals met the challenge head-on. While the Covid lockdown sent many people the world over into self-preservation mode, our staff worked with little regard to the boundaries set by job descriptions, seniority, working hours or their own convenience."**

Khanyisa created a weekend roster to make sure there was always someone on call to deal with public queries and other work-related issues. The team also set up an internal WhatsApp group so as not to miss any developments happening outside of working hours. As a final measure, we let the public know that they could now send in their complaints by simply calling the Commission on a specially created phone number. When that number immediately started ringing off the hook, from dawn to midnight,



Our manager, James, had these masks made last year and gifted them to us as a reminder of what we achieved during lockdown. – Nomsa Mokoena



At my home workstation during lockdown – Makgale Mohlala

**Reflecting on the lockdown period Makgale said he felt quite personally that "consumers were under attack by retailers and we had to step in to protect them."**

we switched from allowing voice calls to encouraging complaints by SMS rather. Together with our IT department, the Registry department created a new case numbering system to make Covid cases easily identifiable and, in that way, make it easier to prioritise them. The team divided the 2000-odd cases into complaints against wholesalers, retailers and independents which helped to maintain a level of consistency in our approach to each category. Amos Moledi, our finance manager, bought cell phones for the nine principal analysts leading investigations: an urgent response to an immediate crisis that enabled investigations to proceed, whilst awaiting the time-consuming procurement processes to unfold for the more long-term telecommunication solutions that were eventually implemented to enable remote-working.

Makgale Mohlala, manager of our Cartels Division, dived deep into the action early on, attending the Government's Corona Command Council briefings and reporting on the Commission's Covid response.

Makgale's team in the Cartels Division also threw themselves fully into Covid complaints focusing mainly on cases against retailers. With not a moment to breathe though, the same team was soon roped into complaints against corrupt tender practices by firms looking to overcharge the government for PPE procurement. All South African agencies working on any matters of Covid related corruption were called to form part of the Fusion Centre where they exchanged information to further aid their respective investigations. This new endeavour saw many complaints referred to the Commission from the police and the Special Investigative Unit.

It was all-hands-on-deck with every division in the Commission lending staff and other resources to the Covid response team. The Mergers Division for instance, which is led by Tamara Paremoer, also availed staff to the Covid response team even as it was facing changes of its own challenges. While their team is accustomed to assessing mergers based on the market efficiencies that they are likely to bring about, our Mergers Division staff were seeing a marked decline in merger activity coupled with a worrying increase in mergers taking place under business rescue procedures or because the target firms were in financial distress.

This entire operation unfolded with the oversight and guidance of Commissioner Tembinkosi Bonakele and Deputy Commissioner Hardin Ratshisusu. Part of

their direct responsibility was to provide weekly updates and statistics reports to Minister Patel which the minister, in turn, used for his cabinet briefings and to inform further government actions in the fight against Covid. Mapato Ramokgopa, the manager in the Office of the Commissioner – who was also involved in the investigations – was central in keeping the lines of communication clear between the Commission, the DTIC and also with members of Parliament who were keeping oversight on the DTIC's entities. The Commissioners also worked with the government at large, to formulate and action its broader response to the pandemic, particularly with block exemptions granted to various industries.

The National Consumer Commission was also required to look at Covid-19 conduct relating to price gouging under Minister Patel's regulations. The Commissioners therefore had discussions with the NCC and both institutions decided early on to coordinate their respective investigations and activities. The two organisations held weekly meetings to exchange information and ideas. The two entities also referred to each other complaints that would fall within their respective jurisdiction for further consideration.

Hardin's lasting impression of that time in our lives was of a ship wading through uncharted seas yet steered, by seniors and executives, with precision and a deep sense of purpose. "At times, in our weekly briefings, I would marvel at the eagerness with which our staff took the Covid challenge head-on. I may not have known all the other difficulties they were facing at the time, but I know Covid brought all of us some level of personal hardship. So I was impressed to see our work come together in the way that it did and it really gave me a sense of pride and fulfillment to lead this dedicated team to the outcomes everyone has now seen."

But while most of us had our heads buried deep in the here and now during that time, Hardin felt that the Commission's Covid response also had implications for our ways of working into the future.



At the start of the hard lockdown, I started a new gardening hobby to take my mind off the pandemic. This picture shows my successful harvest in July 2021. – Seabelo Molefe



Some of the bright sides for me were seeing, often, the family person in my colleagues: getting the kids in on video calls or seeing someone in their bath robe because they were working odd hours. – James Hodge

*"I think the way we pulled together as a team, under enormous pressure, showed what is possible even for our day to day work in the future" he said. "Although our time frames for investigating and prosecuting cases were unusually short during the lockdown period, we demonstrated that quicker turn-around times are indeed possible and I think this experience holds in it the seeds of a new way of thinking about tomorrow."*

# GREED, BY ANY OTHER NAME

Although the new systems devised by staff started showing results almost as soon as they started investigating them, in time it became apparent that the Commission needed a standard approach for analysing the many complaints we had received.

While competition practitioners were well familiar with the concept of 'excessive pricing' on goods and services, a new term was developing to describe the act of charging very high prices on essential goods as a result of the Covid outbreak: price gouging. The phrase alone denoted something more stark and egregious than the concept of 'excessive pricing' which competition courts were more familiar with. It sounded unjustifiable, just in its phrasing, and suggested that consumers at the receiving end of the practice had been exploited in some way. Indeed, over the next few months competition lawyers would debate intensely over the appropriateness of this concept on the competition law stage, with some arguing it simply didn't belong or that it wasn't provided for in our law.

James and Bakhe led the charge here by developing guidelines and practice notes for the investigators and prosecuting teams, to aid the uniform interpretation of the regulations that had been passed by Minister Ebrahim Patel at the start of South Africa's Covid response.

We had to break some rules too. Given the urgency of the economic crisis South Africa found itself in – we decided to shorten the time taken up by the legal procedures that parties had to go through for matters to be investigated and ultimately heard in the Tribunal. Amid protesting voices from the legal fraternity, weekends became 'working days' and 14-day time frames turned into 48 hours for responding to the Commission's information requests. We also expanded our prosecutorial approach, requiring businesses that had been found guilty of price gouging to donate essential goods to those in need instead of having to pay an administrative penalty to the national fiscus. In this way the

Commission raised R17 million in donations to communities in need, further helping them to weather the Covid storm.

Although the Commission was more accustomed to taking on cases of abuse of dominance against large, established firms, we could not ignore the injustice of 500% and above mark-up's being charged for masks by one respondent in a Covid complaint: Babelegi Workwear and Industrial Supplies. By ordinary economic principles Babelegi was not a dominant firm for purposes of bringing an excessive pricing or price gouging case against it. But we also recognised that these were no ordinary economic times. We argued before the courts that Babelegi held significant market power over consumers under the market conditions brought about by Covid and lockdown. In particular, regulations had limited the geographic options for consumers to shop at and the products Babelegi stocked had become "must-have" products for every person in the country. We brought this case to the Tribunal at break-neck speed and made our arguments with the hope that the Tribunal would see things our way. Within a few short weeks the Tribunal had made a decision in our favour, followed by the Competition Appeal Court which also found in our favour. This all-important decision set a new standard for assessing excessive pricing complaints in the Competition Act albeit in times of crisis. As a deterrent factor, the Babelegi decision was key to spreading the message far and wide that the Commission would not hesitate to prosecute any firm looking to take undue advantage of consumers in this difficult time where they have so few options.

The Babelegi judgment was a victory for the Commission and for consumers in more ways than one. Firstly, the Commission deliberately published the outcome of the investigation and prosecution of the case in order to deter other firms that were considering engaging in Babelegi's profiteering strategies. Although we will never be able to measure the deterrent effect of our efforts, we did see a levelling-out of prices for essential goods as well as a notable reduction in complaints about excessive pricing of essential goods. Secondly, the investigation and prosecution of this case bore testament to the Commission's ability to sift through a mine of information, prioritise for impact, work effectively in teams and adapt its mindset in order to achieve the best possible outcome. It was a testament to the flexibility of the organisation and its sense of national duty when called upon to act. All

this while navigating an already high case load and wading through unsettling times.

Now retired Judge President Dennis Davis recognised the team's extraordinary efforts in the Competition Appeal Court judgment on the Babelegi case.

He also commended the Commission's courage and resolve to take the Babelegi matter up and see it through on consumers' behalf saying:

*"It is a legitimate, indeed a commendable exercise of the authority for government in general and competition authorities in particular to be concerned about price gouging as firms seek to prey on desperate consumers in a time of disaster."*

The whole experience left a lasting impression on James, our chief economist, who played a leading role in developing the economic theories that informed our approach to all the Covid cases.

Looking back on our Covid year he said,

*"If there was any doubt as to the enormous strength of this institution, I think this year has put any doubts away. It's got incredible people who pulled together, who care about outcomes in this country and social justice. And who work hard to achieve that. This, in a context where people were dealing with death and other personal difficulties."*

# WITH THE SKILL OF A JUGGLER

As weekdays morphed into weekends and weekends into public holidays, the Commission's Covid plan took shape and teams settled well into their makeshift roles. You would be forgiven for thinking these teams had everything under control on the home front. Far from it. Like everybody else in the country life was carrying on under the strangest, most unfamiliar circumstances.

The parents in the team had become school teachers, master chefs, pharmacists and nurses during this time and these were also roles that didn't keep demarcated hours. Those that lived alone said they felt more and more isolated, struggling to find the motivation for team work.

Binu Idiculla, our IT manager, had to juggle the pressure of adapting our IT systems to a new remote working environment while caring for his son who was one of the early medical practitioners to contract the Coronavirus in June 2020. So little was known about the disease at the time that Binu could only hope that the precautions they were taking were sufficient – asking their son to move back home for his treatment; moving their son to a separate space in the home; serving his food on paper plates and paper cups; texting, instead of visiting, to check if he was doing ok. All this was competing with Binu's resolve to be the first to log on to our IT systems every morning and often amongst the last to log off at night. And while Binu needed all hands-on-deck from the IT team, the unfortunate reality is that Covid sometimes affected some members in his team and their families, leaving them unable to give their all to work.

Everyone working at the Commission faced some or many challenges just to get their work done as expected, given the public pressure on the organisation to respond promptly to the economic crisis that was unfolding. Just as most of us turn to doctors when our bodies don't function properly, employees often turn to HR when we're not able to work optimally. Londiwe Mncube, the Commission's human capital manager, said she felt under-prepared when Commission

staff turned to her in 'alarming numbers' to address problems that even she was facing for the first time. Even though she was expecting her third baby, without the usual excitement for going to the hospital and none of the celebration she'd had for her first two, Londi and her team responded to novel staff crises as best they could: from adapting policies for remote working to supporting suicidal staff in their time of need.

*Mziwodumo Rubushe, our employee Ombudsman, deserves special mention here for his work in partnering with our human capital team to deliver much needed mental wellness support to everyone at the Commission when we were coming apart at the seams.*

The 2020/21 financial year was meant to be the first year of a new five-year strategy for the Commission. The Commission had spent several months in 2019 planning for a five-year horizon, which plan was to be implemented from the beginning of April 2020. But Covid quickly changed all that. All the plans we had for the new financial year had to be reviewed to consider the massive changes in the economic environment and outlook. Selelo Ramohlola, whose responsibilities include facilitating the Commission's strategy development, immediately facilitated the process with the executives and the staff to revise the institutional strategy and divisional business plans. "We suspended some of our planned targets for 2020/21 and prioritised Covid-19, given its dire effects", she said. And so the Commission gave priority to enforcement, prosecution and advocacy programmes related to price gouging complaints and developed a new set of performance indicators and targets for this purpose.

*In a world of back to back meeting and chasing deadlines, virtual coffee breaks were a good team building activity and a way to check in on each other. – Karabo Motaung*



# THE TRUTH LIES SOMEWHERE IN BETWEEN

It's easy, when we look back on a year like 2020, to see it only through the lens of the health crisis coupled with the devastating loss that occurred and forever changed our lives.

As difficult as it was though, life continued, presenting a mix of good and bad memories. Some couples got married while others got divorced. While Covid deaths were counted every day on the news, 12 babies – born to Commission staff – took their first breath. We could go on about the happy, sad, scary, courageous, painfully slow and lightning-fast year that 2020 was for all of us.

What the Commission's story shows is that every member of the Commission's team deserves to be acknowledged and celebrated. We stepped up in a big way when we were called to the scene, leaving South Africa with the confidence to trust us should we ever be called on in this way again.



*On a happier note, Nelly Sakata – one of the nine principal analysts leading the Covid response team – said she became a 'grandmother' three times over during the Covid year, owing to the babies born to her team members. Binu, our IT manager, said our IT department also had a most productive (ahern!) year, with two babies being born in this period.*

*Mziwodumo Rubushe and his team led the charge for mental wellness during lockdown. Here he is at his home work station.*

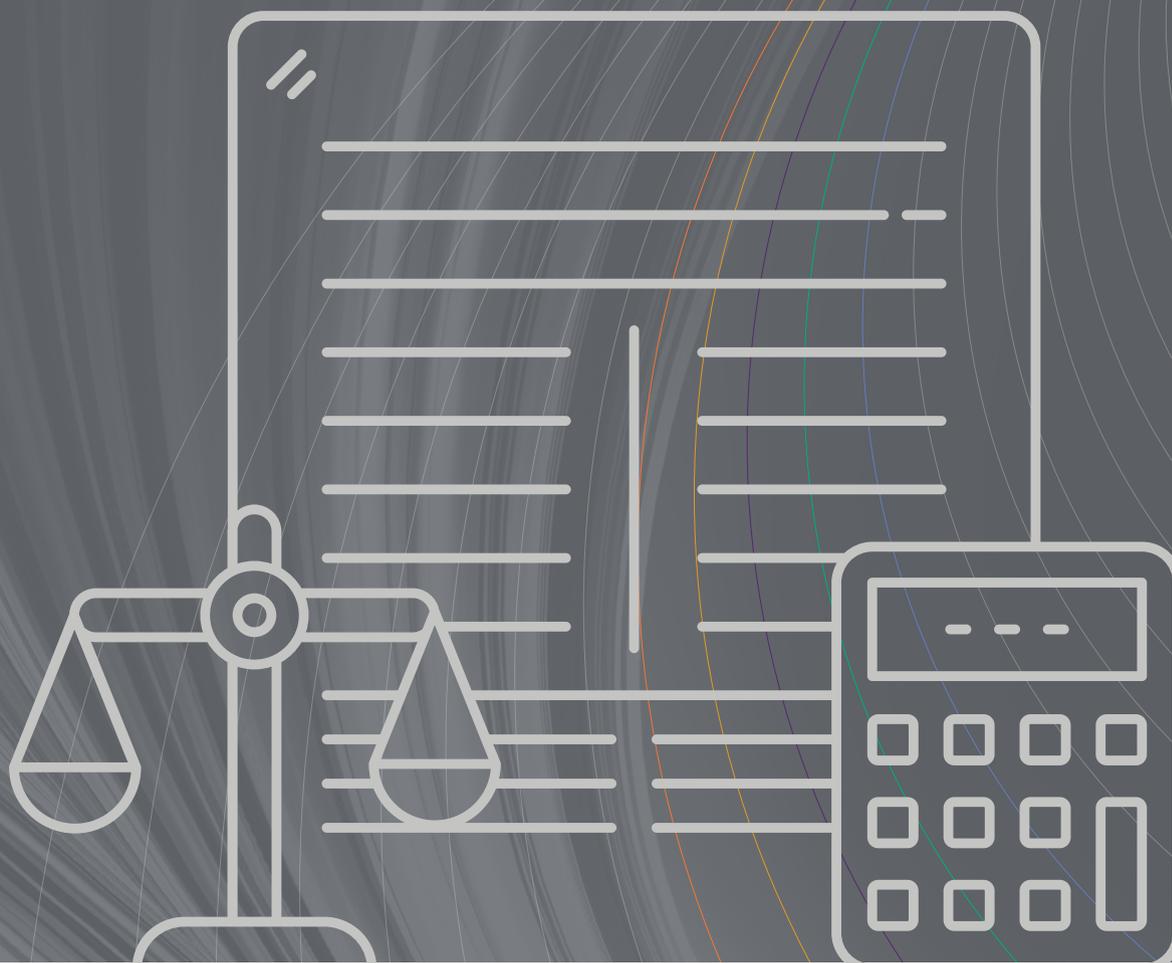




# ANNUAL FINANCIAL STATEMENTS



# E



# ACCOUNTING AUTHORITY'S RESPONSIBILITIES AND APPROVAL

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

The Commissioner is required by the Public Finance Management Act (Act 1 of 1999), to maintain adequate accounting records and is responsible for the content and integrity of the annual financial statements and related financial information included in this report. It is the responsibility of the Commissioner to ensure that the annual financial statements fairly present the state of affairs of the Commission as at the end of the financial year and the results of its operations and cash flows for the period then ended. The external auditors are engaged to express an independent opinion on the annual financial statements and were given unrestricted access to all financial records and related data.

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

The annual financial statements are based upon appropriate accounting policies consistently applied and supported by reasonable and prudent judgements and estimates.

The Commissioner acknowledges that he is ultimately responsible for the system of internal financial control established by the Commission and places considerable importance on maintaining a strong control environment. To enable the Commissioner to meet these responsibilities, the Commissioner sets the standards for internal control aimed at reducing the risk of error or deficit in a cost effective manner. The standards include the proper delegation of responsibilities within a clearly defined framework, effective accounting procedures and adequate segregation of duties to ensure an acceptable level of risk. These controls are monitored throughout the Commission and all employees are required

to maintain the highest ethical standards in ensuring the Commission's business is conducted in a manner that in all reasonable circumstances is above reproach. The focus of risk management in the Commission is on identifying, assessing, managing and monitoring all known forms of material risk across the Commission. While operating risk cannot be fully eliminated, the Commission endeavours to minimise it by ensuring that appropriate infrastructure, controls, systems and ethical behaviour are applied and managed within predetermined procedures and constraints.

The Commissioner is of the opinion, based on the information and explanations given by management, that the system of internal control provides reasonable assurance that the financial records may be relied on for the preparation of the annual financial statements. However, any system of internal financial control can provide only reasonable, and not absolute, assurance against material misstatement or deficit.

The Commissioner has reviewed the Commission's cash flow forecast for the year to 31 March 2022 and, in the light of this review and the current financial position,

he is satisfied that the Commission has or has access to adequate resources to continue in operational existence for the foreseeable future.

The Commission is wholly dependent on the DTIC for continued funding of operations. The annual financial statements are prepared on the basis that the Commission is a going concern and that the DTIC has neither the intention nor the need to liquidate or curtail materially the scale of the Commission.

The external auditors are responsible for independently reviewing and reporting on the Commission's annual financial statements. The annual financial statements have been examined by the Commission's external auditors and their report is presented on page 9.

The annual financial statements set out on page 9, which have been prepared on the going concern basis, were approved by the Commissioner on 31 July 2021 and were signed on its behalf by:



**Mr. T. Bonakele**  
Commissioner



# REPORT OF THE AUDITOR GENERAL

TO PARLIAMENT ON THE COMPETITION COMMISSION

## REPORT ON THE AUDIT OF THE FINANCIAL STATEMENTS

### Opinion

1. I have audited the financial statements of the Competition Commission set out on pages 158 to 199, which comprise the statement of financial position as at 31 March 2021, the statement of financial performance, statement of changes in net assets, cash flow statement and the statement of comparison of budget and actual amounts for the year then ended, as well as notes to the financial statements, including a summary of significant accounting policies.
2. In my opinion, the financial statements present fairly, in all material respects, the financial position of the Competition Commission as at 31 March 2021, and its financial performance and cash flows for the year then ended in accordance with the Standards of Generally Recognised Accounting Practice (Standards of GRAP) and the requirements of the and the Public Finance Management Act 1 of 1999 (PFMA).

### Basis for opinion

3. I conducted my audit in accordance with the International Standards on Auditing (ISAs). My responsibilities under those standards are further described in the auditor-general's responsibilities for the audit of the financial statements section of my report.
4. I am independent of the public entity in accordance with the International Ethics Standards Board for Accountants' *International code of ethics for professional accountants (including International Independence Standards)* (IESBA code) as well as other ethical requirements that are relevant to my audit in South Africa. I have fulfilled my other ethical responsibilities in accordance with these requirements and the IESBA code.
5. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

### Emphasis of matter

6. I draw attention to the matter below. My opinion is not modified in respect of this matter.

### Irregular expenditure

7. As disclosure in note 28 to the financial statements, the public entity submitted an application for condonement of all incurred irregular expenditure as a result of awarding contracts without following proper supply chain management processes as previously reported to the National Treasury. The National Treasury condoned the irregular expenditure incurred during the 2017/18, 2018/19, 2019/20 and 2020/21 financial years amounting to R140 785 000.

### Responsibilities of the accounting authority for the financial statements

8. The accounting authority is responsible for the preparation and fair presentation of the financial statements in accordance with the Standards of GRAP and the requirements of the PFMA, and for such internal control as the accounting authority determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

9. In preparing the financial statements, the accounting authority is responsible for assessing the public entity's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless the appropriate governance structure either intends to liquidate the public entity or to cease operations, or has no realistic alternative but to do so.

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

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

## **REPORT ON THE AUDIT OF THE ANNUAL PERFORMANCE REPORT**

### **Introduction and scope**

12. In accordance with the Public Audit Act 25 of 2004 (PAA) and the general notice issued in terms thereof, I have a responsibility to report on the usefulness and reliability of the reported performance information against predetermined objectives for selected strategic goals presented in the annual performance report. I performed procedures to identify material findings but not to gather evidence to express assurance.
13. My procedures address the usefulness and reliability of the reported performance information, which must be based on the public entity's approved performance planning

documents. I have not evaluated the completeness and appropriateness of the performance indicators included in the planning documents. My procedures do not examine whether the actions taken by the public entity enabled service delivery. My procedures do not extend to any disclosures or assertions relating to the extent of achievements in the current year or planned performance strategies and information in respect of future periods that may be included as part of the reported performance information. Accordingly, my findings do not extend to these matters.

14. I evaluated the usefulness and reliability of the reported performance information in accordance with the criteria developed from the performance management and reporting framework, as defined in the general notice, for the following selected strategic goal presented in the public entity's annual performance report for the year ended 31 March 2021:



| Strategic goal   | Pages in the annual performance report |
|--|--|
| <b>Strategic Goal 1 : Enforcing and regulating towards economic growth and enhanced economic participation</b> | 121 – 126                              |

15. I performed procedures to determine whether the reported performance information was properly presented and whether performance was consistent with the approved performance planning documents. I performed further procedures to determine whether the indicators and related targets were measurable and relevant, and assessed the reliability of the reported performance information to determine whether it was valid, accurate and complete.

16. I did not identify any material findings on the usefulness and reliability of the reported performance information for this strategic goal:

- Strategic Goal 1: Enforcing and regulating towards economic growth and enhanced economic participation

### Other matter

17. I draw attention to the matter below.

### Achievement of planned targets

18. Refer to the annual performance report on pages 121 to 126 for information on the achievement of planned targets for the year and management's explanations provided for the under/over achievement of targets.

## REPORT ON THE AUDIT OF COMPLIANCE WITH LEGISLATION

### Introduction and scope

19. In accordance with the PAA and the general notice issued in terms thereof, I have a responsibility to report material findings on the public entity's compliance with specific matters in key legislation. I performed procedures to identify findings but not to gather evidence to express assurance.

20. I did not identify any material findings on compliance with the specific matters in key legislation set out in the general notice issued in terms of the PAA.

## OTHER INFORMATION

21. The accounting authority is responsible for the other information. The other information comprises the information included in the annual report. The other information does not include the financial statements, the auditor's report and those selected strategic goals presented in the annual performance report that have been specifically reported in this auditor's report.

22. My opinion on the financial statements and findings on the reported performance information and compliance with legislation do not cover the other information and I do not express an audit opinion or any form of assurance conclusion on it.

23. In connection with my audit, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements and the selected strategic goals presented in the annual performance report, or my knowledge obtained in the audit, or otherwise appears to be materially misstated.

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

## INTERNAL CONTROL DEFICIENCIES

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

## OTHER REPORTS

26. I draw attention to the following engagements conducted by various parties which had, or could have, an impact on the matters reported in the public entity's financial statements, reported performance information, compliance with applicable legislation and other related matters. These reports did not form part of my opinion on the financial statements or my findings on the reported performance information or compliance with legislation.

27. The Economic Development Department initiated a forensic investigation that would cover a period of three financial years, from the year ended 31 March 2016 to the year ended 31 March 2018. The aim of the investigation is to determine whether there was irregular expenditure incurred by the Commission, its causes and whether the Commission is implementing effective to address. The investigation commenced during the financial year ended 31 March 2019 and was finalised in the current financial year. There are no specific matters to report pertaining to the report. Auditor-General



Pretoria  
31 July 2021

# ANNEXURE

## AUDITOR-GENERAL'S RESPONSIBILITY FOR THE AUDIT

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

### Financial statements

2. In addition to my responsibility for the audit of the financial statements as described in this auditor's report, I also:
  - identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error; design and perform audit procedures responsive to those risks; and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control

- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the public entity's internal control
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the accounting authority
- conclude on the appropriateness of the accounting authority's use of the going concern basis of accounting in the preparation of the financial statements. I also conclude, based on the audit evidence obtained, whether a material uncertainty exists relating to events or conditions that may cast significant doubt on the ability of the Competition Commission to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements about the material uncertainty or, if such disclosures are inadequate, to modify my opinion on the financial statements. My conclusions are based on the information available to me at the date of this auditor's

report. However, future events or conditions may cause a public entity to cease operating as a going concern

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

### Communication with those charged with governance

3. I communicate with the accounting authority regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.
4. I also provide the accounting authority with a statement that I have complied with relevant ethical requirements regarding independence, and to communicate with them all relationships and other matters that may reasonably be thought to bear on my independence and, where applicable, actions taken to eliminate threats or safeguards applied.

# AUDIT AND RISK COMMITTEE REPORT

The Audit and Risk Committee is pleased to present its report for the financial year ended March 3, 2021, in compliance with Treasury Regulations 3.1.9 and 27.1.7 issued in terms of the PFMA, 1999, and King IV Code of good governance. (“The Committee”) is established as an independent statutory committee in terms of the PFMA. The committee functions within approved terms of reference, which are reviewed annually to ensure their continued relevance, and complies with relevant legislation, regulation and governance codes.

## AUDIT AND RISK COMMITTEE MEMBERS AND ATTENDANCE

During the year under review, the Committee consisted of three (3) independent Non-Executive Members appointed by the Commissioner. The Committee attended 5 meetings, which were also attended by the Auditor General South Africa, Outsourced Internal Auditors and members of Executive Management in an Ex-officio capacity, led by the Commissioner. The Membership is constituted as follows: –

| Name of member         | Number of meetings attended | Number of meetings held |
|------------------------|-----------------------------|-------------------------|
| <b>Ms. M Ramataboe</b> | 5                           | 5                       |
| <b>Mr. N Mhlongo</b>   | 5                           | 5                       |
| <b>Ms. R Kalidass</b>  | 5                           | 5                       |

## AUDIT AND RISK COMMITTEE RESPONSIBILITY

The Committee reports that it has adopted a formal Terms of Reference and that It has complied with its responsibilities as set out in the Terms of Reference and has discharged all its duties as contained therein.

The primary role of the Committee is to assist the Commissioner and Management in discharging oversight responsibilities of the financial reporting process and related audit activities, the system of internal controls, risk management process and systems, and compliance with laws and regulations.

In the current reporting period, the committee’s work included amongst other, reviewing the financial planning process, quarterly and in-year financial reporting from management, the audit process and related audit findings, Risk Management including business Continuity. This included recommending appropriate accounting



policies for the Bank; reviewing any significant assumptions and judgements made by management; reviewing annual and quarterly financial reports prior to approval by the Commissioner and reviewing filings of quarterly reports to the relevant authorities; reviewing internal audit reports and tracking all audit findings; approving audit fees as well as reviewing internal audit and external audit mandates for independence, objectivity and effectiveness.

The Committee ensured co-operation between the internal audit function and the external auditors in relation to: the external auditors relying on work done by the internal auditor for purposes of work set out in the audit plan; we are of the view that Combined Assurance adds demonstrable value; and the adequacy, reliability and accuracy of financial information provided by management to such other users of the information.

## **THE EFFECTIVENESS OF INTERNAL CONTROL**

During the year under review the internal control environment of the Commission continued to improve increasing the probability of achievement of strategic

objectives. The out-sourced Internal Audit function conducted audit reviews in line with approved Internal Audit Plan, and audit findings from previous years were resolved.

Based on the work of Internal Audit the Committee was able to provide the internal control assurances and to engage with the Commissioner. In-Committee meetings were held with the Commissioner to advise on identified weaknesses, for these to be closed proactively before they can have negative impact on the Commission's performance.

It is important to note that the National Treasury condoned all previous Irregular Expenditure and that the Commission had no current irregular expenditure, Unauthorised or Fruitless and wasteful expenditure.

## **MANAGEMENT AND MONTHLY/ QUARTERLY REPORTS**

We can confirm that quarterly reports were submitted to the National Treasury and that we are satisfied with the content and quality of monthly and quarterly reports during the year under review as required by the PFMA.

## **EVALUATION OF ANNUAL FINANCIAL STATEMENTS**

The Committee has:

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

The Committee is pleased to report that there were no material findings in the Annual Financial Statements and the Committee concurs fully with the AGSA report and the clean audit opinion of the Auditor General South Africa on the Annual Financial Statements. The Committee further recognizes the importance of maintaining the clean audit, and the responsibility required of management to be consistent in the next period.

## INTERNAL AUDIT FUNCTION

The Committee is responsible for ensuring that the internal audit function is independent and has the necessary resources, skills, standing and authority within the Commission to enable it to discharge its responsibilities effectively. The Internal Auditors have unrestricted access to the Committee.

The Committee reviews and approves the Internal Audit Plan annually. Internal audit's activities are measured against the approved internal audit plan and the out-sourced Internal Audit tables progress reports in this regard to the Committee.

The outsourced Internal Audit service provider is responsible for the delivery of an Annual Audit Plan. The annual Audit Plan for the current reporting period was executed satisfactorily.

Internal Audit also performed a wide range of operational, financial, compliance and information-technology audits including follow-up. In addition to these planned audits, the unit also attended to certain management and Committee requests.

## ENTERPRISE RISK ENTERPRISE RISK MANAGEMENT (ERM)

The Committee is responsible for the oversight of the Commission's risk management systems and activities.

In the current reporting period, the Committee reviewed the ERM policies and strategy. Business Continuity reports were submitted, and it was noted that some areas were not completed due to demand of the Covid-19 investigations on the Commission. Significant work was done by the Commission on Covid-19. The number of investigations increased and the outcomes were also successful.

The Committee has reviewed the risk registers on a quarterly basis and has made recommendations for the improvement of the registers. Moreover, a culture of risk management needs to be embedded in the daily activities of the Commission to ensure effective enterprise wide risk management. The Committee will monitor progress regarding this, in following reporting period.

## AUDITOR-GENERAL OF SOUTH AFRICA

The Committee, in consultation with the management, agreed to the terms of the Auditor General South Africa's engagement letter, audit strategy and audit fees in respect of the 2021/2022 financial year.

The Committee also monitored the implementation of the action plans to address matters arising from the Management Report issued by the Auditor-General South Africa (AGSA) for the 2021/2022 Financial Year.

The Committee has also had in committee meetings with the Auditor-General of South Africa.

The Committee has reviewed the Annual Report and is satisfied that it aligned to the annual financial statements.

The Committee concurs and accepts the conclusions of the Auditor-General on the annual financial statements and is of the opinion that the audited annual financial statements and annual performance information report be accepted and read together with the report of the Auditor-General South Africa.



**Maemili Ramataboe**

Chairperson of the Audit and Risk  
Committee Competition Commission

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

## Statement of Financial Position

|  | Note(s) | 2021<br>R'000  | 2020<br>R'000 |
|--|---------|----------------|---------------|
| <b>ASSETS</b>                                    |         |                |               |
| <b>Current Assets</b>                            |         |                |               |
| Inventories                                      | 5       | 1 256          | 1 272         |
| Receivables from exchange transactions           | 6       | 3 188          | 3 276         |
| Cash and cash equivalents held on behalf of DTIC | 10      | 13 911         | 8 675         |
| Cash and cash equivalents                        | 7       | 106 367        | 39 643        |
|  |         | <b>124 722</b> | <b>52 866</b> |
| <b>Non-Current Assets</b>                        |         |                |               |
| Property, plant and equipment                    | 3       | 19 351         | 18 170        |
| Intangible assets                                | 4       | 1 384          | 1 401         |
|  |         | <b>20 735</b>  | <b>19 571</b> |
| <b>Total Assets</b>                              |         | <b>145 457</b> | <b>72 437</b> |
| <b>LIABILITIES</b>                               |         |                |               |
| <b>Current Liabilities</b>                       |         |                |               |
| Finance lease obligation                         | 8       | 866            | –             |
| Payables from exchange transactions              | 11      | 25 432         | 20 478        |
| Provisions                                       | 9       | 30 820         | 15 059        |
| Penalties payable to DTIC                        | 10      | 13 911         | 8 675         |
|  |         | <b>71 029</b>  | <b>44 212</b> |
| <b>Non-Current Liabilities</b>                   |         |                |               |
| Finance lease obligation                         | 8       | 1 172          | –             |
| <b>Total Liabilities</b>                         |         | <b>72 201</b>  | <b>44 212</b> |
| <b>Net Assets</b>                                |         | <b>73 256</b>  | <b>28 225</b> |
| Accumulated surplus                              |         | 73 256         | 28 225        |

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

## Statement of Financial Performance

|   | Note(s) | 2021<br>R'000    | 2020<br>R'000    |
|---|---------|------------------|------------------|
| <b>REVENUE</b>                                  |         |                  |                  |
| <b>Revenue from exchange transactions</b>       |         |                  |                  |
| Fees earned                                     | 13      | 53 377           | 65 476           |
| Other income                                    | 14      | 1 210            | 427              |
| Interest received                               | 15      | 7 284            | 7 953            |
| <b>Total revenue from exchange transactions</b> |         | <b>61 871</b>    | <b>73 856</b>    |
| <b>Revenue from non-exchange transactions</b>   |         |                  |                  |
| <b>Transfer revenue</b>                         |         |                  |                  |
| Government grants & subsidies                   | 16      | 302 586          | 295 438          |
| <b>Total revenue</b>                            |         | <b>364 457</b>   | <b>369 294</b>   |
| <b>EXPENDITURE</b>                              |         |                  |                  |
| Employee related costs                          | 17      | (234 504)        | (224 091)        |
| Administrative expenses                         | 18      | (5 066)          | (7 839)          |
| Depreciation and amortisation                   | 3&4     | (4 187)          | (4 969)          |
| Finance costs                                   | 19      | (273)            | (293)            |
| Lease rentals on operating lease                | 12      | (18 258)         | (27 595)         |
| Loss on disposal of assets                      | 3       | (1 334)          | (53)             |
| Operating expenses                              | 20      | (55 803)         | (67 544)         |
| <b>Total expenditure</b>                        |         | <b>(319 425)</b> | <b>(332 384)</b> |
| <b>Surplus for the year</b>                     |         | <b>45 032</b>    | <b>36 910</b>    |

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

## Statement of Changes in Net Assets

|  | Accumulated<br>surplus<br>R'000 | Total<br>net assets<br>R'000 |
|--|---------------------------------|------------------------------|
| Opening balance as previously reported       | (8 688)                         | (8 688)                      |
| <b>Balance at 01 April 2019 as restated*</b> | <b>(8 688)</b>                  | <b>(8 688)</b>               |
| Changes in net assets                        |                                 |                              |
| Surplus for the year                         | 36 913                          | 36 913                       |
| Surplus for the year                         | 36 913                          | 36 913                       |
| Opening balance as previously reported       | 28 225                          | 28 225                       |
| <b>Balance at 01 April 2020</b>              | <b>28 225</b>                   | <b>28 225</b>                |
| Surplus for the year                         | 45 032                          | 45 032                       |
| Total changes                                | 45 032                          | 45 032                       |
| <b>Balance at 31 March 2021</b>              | <b>73 256</b>                   | <b>73 256</b>                |

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

## Cash Flow Statement

|   | Note(s) | 2021<br>R'000  | 2020<br>R'000  |
|---|---------|----------------|----------------|
| <b>CASH FLOWS FROM OPERATING ACTIVITIES</b>             |         |                |                |
| <b>Receipts</b>   |         |                |                |
| Rendering of services                                   |         | 54 161         | 65 476         |
| Grants  |         | 302 586        | 295 438        |
| Interest received                                       |         | 7 284          | 7 953          |
| Other income  |         | 1 210          | 284            |
|   |         | 365 241        | 369 151        |
| <b>Payments</b>   |         |                |                |
| Employee costs  |         | (218 687)      | (224 091)      |
| Suppliers   |         | (78 715)       | (107 560)      |
| Finance costs   |         | (273)          | (293)          |
|   |         | (297 675)      | (331 944)      |
| <b>Net cash flows from operating activities</b>         | 21      | <b>67 566</b>  | <b>37 207</b>  |
| <b>Cash flows from investing activities</b>             |         |                |                |
| Purchase of property, plant and equipment               | 3       | (3 406)        | (1 013)        |
| Purchase of other intangible assets                     | 4       | –              | (790)          |
| <b>Net cash flows from investing activities</b>         |         | <b>(3 406)</b> | <b>(1 803)</b> |
| <b>Cash flows from financing activities</b>             |         |                |                |
| Finance lease payments                                  |         | 2 564          | (830)          |
| <b>Net increase in cash and cash equivalents</b>        |         | <b>66 724</b>  | <b>34 574</b>  |
| Cash and cash equivalents at the beginning of the year  |         | 39 643         | 5 069          |
| <b>Cash and cash equivalents at the end of the year</b> | 7       | <b>106 367</b> | <b>39 643</b>  |

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

## Statement of Comparison of Budget and Actual Amounts

|  | Approved<br>budget<br>R'000 | Adjustments<br>R'000 | Final<br>Budget<br>R'000 | Actual<br>amounts on<br>comparable<br>basis<br>R'000 | Difference<br>between<br>final budget<br>and actual<br>R'000 | Reference<br>R'000 |
|--|-----------------------------|----------------------|--------------------------|--|--|--------------------|
| <b>STATEMENT OF FINANCIAL PERFORMANCE</b>  |                             |                      |                          |  |  |                    |
| <b>REVENUE</b>   |                             |                      |                          |  |  |                    |
| <b>Revenue from exchange transactions</b>  |                             |                      |                          |  |  |                    |
| Fees earned  | 83 686                      | (49 881)             | 33 805                   | 53 377   | 19 572   | Note 29            |
| Other income   | –                           | –                    | –                        | 1 210  | 1 210  |                    |
| Interest received  | 2 000                       | 3 034                | 5 034                    | 7 284  | 2 250  | Note 29            |
| <b>Total revenue from exchange transactions</b>  | <b>85 686</b>               | <b>(46 847)</b>      | <b>38 839</b>            | <b>61 871</b>  | <b>23 032</b>  |                    |
| <b>Revenue from non-exchange transactions</b>  |                             |                      |                          |  |  |                    |
| <b>Transfer revenue</b>  |                             |                      |                          |  |  |                    |
| Government grants & subsidies  | 331 559                     | (28 973)             | 302 586                  | 302 586  | –  |                    |
| <b>Total revenue</b>   | <b>417 245</b>              | <b>(75 820)</b>      | <b>341 425</b>           | <b>364 457</b>                                       | <b>23 032</b>  |                    |
| <b>EXPENDITURE</b>   |                             |                      |                          |  |  |                    |
| Employee related costs   | (240 479)                   | 1 090                | (239 389)                | (234 504)  | 4 885  | Note 29            |
| Administrative expenses  | (20 267)                    | (2 193)              | (22 460)                 | (5 066)  | 17 394   | Note 29            |
| Depreciation and amortisation  | (5 335)                     | –                    | (5 335)                  | (4 187)  | 1 148  |                    |
| Finance costs  | –                           | –                    | –                        | (273)  | (273)  |                    |
| Lease rentals on operating lease   | (15 260)                    | (3 771)              | (19 031)                 | (18 258)   | 773  |                    |
| Loss on disposal of assets   | –                           | –                    | –                        | (1 334)  | (1 334)  |                    |
| Operating expenses   | (135 904)                   | 80 694               | (55 210)                 | (55 803)   | (593)  | Note 29            |
| <b>Total expenditure</b>   | <b>(417 245)</b>            | <b>75 820</b>        | <b>(341 425)</b>         | <b>(319 425)</b>                                     | <b>22 000</b>  |                    |
| <b>Actual Amount on Comparable Basis<br/>as Presented in the Budget and Actual<br/>Comparative Statement</b> |                             |                      |                          |  |  |                    |
|  | –                           | –                    | –                        | 45 032   | 45 032   |                    |

ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

# ACCOUNTING POLICIES

## 1. BASIS OF PREPARATION

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

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

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

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

### 1.1 Going concern assumption

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

### 1.2 Materiality

Material omissions or misstatements of items are material if they could, individually or collectively, influence the decisions or assessments of users made on the basis of the financial statements. Materiality depends on the nature or size of the omission or misstatement judged in the surrounding circumstances. The nature or size of the information item, or a combination of both, could be the determining factor.

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

### 1.3 Significant judgements and sources of estimation uncertainty

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

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

**Trade receivables**

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

**Determination of impairment of non-financial assets**

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

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

**Impairment of non-cash generating assets**

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

If there is any indication that an asset may be impaired, the recoverable service amount is estimated for the individual asset.

If it is not possible to estimate the recoverable service amount of the individual asset, the recoverable service amount of the cash generating unit to which the asset belongs is determined.

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

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

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

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

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

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

**Provisions**

Provisions were raised and management determined an estimate based on the information available. Additional disclosure of these estimates of provisions are included in note 9 – Provisions.

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

**Contingent liabilities**

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

**Lease classification**

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

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

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

**Depreciation and amortisation**

The Commission's management determines the estimated useful lives and related depreciation charges for the Commission's property, plant and equipment and intangible assets. This estimate is based on industry norm. Management will increase the depreciation charge where useful lives are less than previously estimated useful lives.

**Trade receivables (impairment of financial assets)**

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

**Performance bonus**

Performance bonus to employees and management is determined based on the performance of the Commission subject to availability of funds. This bonus is at management's discretion and is decided annually. The bonus is based on performance and is evaluated using a rating method on an annual basis.

**Impairment of cash generating assets**

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

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

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

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

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

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

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

### 1.4 Property, plant and equipment

Property, plant and equipment are tangible non-current assets that are held for use in the production or supply of goods or services, or for administrative purposes, and are expected to be used during more than one period.

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

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

Property, plant and equipment is initially measured at cost.

The cost of an item of property, plant and equipment is the purchase price and other costs attributable to bring the asset to the location and condition necessary for it to be capable of operating in the manner intended by management. Trade discounts and rebates are deducted in arriving at the cost.

Where an asset is acquired through a non-exchange transaction, its cost is its fair value as at date of acquisition.

Where an item of property, plant and equipment is acquired in exchange for a non-monetary asset or monetary assets, or a combination of monetary and non-monetary assets, the asset

acquired is initially measured at fair value (the cost). If the acquired item's fair value was not determinable, it's deemed cost is the carrying amount of the asset(s) given up.

Property, plant and equipment is carried at cost less accumulated depreciation and any impairment losses.

Property, plant and equipment are depreciated on the straight-line basis over their expected useful lives to their estimated residual value.

The useful lives of items of property, plant and equipment have been assessed as follows:

| Item   | Depreciation method | Average useful life |
|--|---------------------|---------------------|
| Furniture and fittings   | Straight-line       | 12 – 21 years       |
| Motor vehicles   | Straight-line       | 5 – 8 years         |
| Office equipment   | Straight-line       | 8 – 20 years        |
| IT equipment   | Straight-line       |                     |
| <ul style="list-style-type: none"> <li>• Computer equipment</li> </ul> |                     | 3 – 17 years        |
| <ul style="list-style-type: none"> <li>• Servers</li> </ul>            |                     | 5 – 9 years         |
| <ul style="list-style-type: none"> <li>• GPS</li> </ul>                |                     | 3 – 14 years        |
| Leasehold improvements   | Straight-line       | 3 years             |
| Cellphones   | Straight-line       | 2 – 6 years         |
| Leased assets  | Straight-line       | Period of the lease |

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

The Commission assesses at each reporting date whether there is any indication that the Commission expectations about the residual value and the useful life of an asset have changed since

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

the preceding reporting date. If any such indication exists, the Commission revises the expected useful life and/or residual value accordingly. The change is accounted for as a change in an accounting estimate.

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

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

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

The Commission separately discloses expenditure to repair and maintain property, plant and equipment in the notes to the financial statements (see note 3).

### 1.5 Intangible assets

An intangible asset is recognised when:

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

The Commission assesses the probability of expected future economic benefits or service potential using reasonable and supportable assumptions that represent management's best estimate of the set of economic conditions that will exist over the useful life of the asset.

Where an intangible asset is acquired through a non-exchange transaction, its initial cost at the date of acquisition is measured at its fair value as at that date.

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

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

| Item              | Depreciation method | Average useful life |
|-------------------|---------------------|---------------------|
| Computer software | Straight-line       | 3 – 21 years        |

Intangible assets are derecognised:

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

The gain or loss arising from the derecognition of intangible assets is included in surplus or deficit when the asset is derecognised (unless the Standard of GRAP on leases requires otherwise on a sale and leaseback).

### 1.6 Financial instruments

#### *Initial recognition and measurement*

A financial instrument is any contract that gives rise to a financial asset of one entity and a financial liability or a residual interest of another entity.

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

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

Credit risk is the risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation.

Currency risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in foreign exchange rates.

Derecognition is the removal of a previously recognised financial asset or financial liability from an Commission's Statement of Financial Position.

The effective interest method is a method of calculating the amortised cost of a financial asset or a financial liability (or group of financial assets or financial liabilities) and of allocating the interest income or interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments or receipts through the expected life of the financial instrument or, when appropriate, a shorter period to the net carrying amount of the financial asset or financial liability. When calculating the effective interest rate, the Commission shall estimate cash flows considering all contractual terms of the financial instrument (for example, prepayment, call and similar options) but shall not consider future credit losses. The calculation includes all fees and points paid or received between parties to the contract that are an integral part of the effective interest rate (see the Standard of GRAP on Revenue from Exchange Transactions), transaction costs, and all other premiums or discounts. There is a presumption that the cash flows and the expected life of a group of similar financial instruments can be estimated reliably. However, in those rare cases when it is not possible to reliably estimate the cash flows or the expected life of a financial instrument (or group of financial instruments), the Commission shall use contractual cash flows over the full contractual term of the financial instrument (or group of financial instruments).

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

A financial asset is:

- cash;
- a residual interest of another entity; or
- a contractual right to:
  - receive cash or another financial asset from another entity; or
  - exchange financial assets or financial liabilities with another entity under conditions that are potentially favourable to the entity.

A financial liability is any liability that is a contractual obligation to:

- deliver cash or another financial asset to another entity; or
- exchange financial assets or financial liabilities under conditions that are potentially unfavourable to the entity.

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates.

Liquidity risk is the risk encountered by the Commission in the event of difficulty in meeting obligations associated with financial liabilities that are settled by delivering cash or another financial asset.

Loan commitment is a firm commitment to provide credit under pre-specified terms and conditions.

Loans payable are financial liabilities, other than short-term payables on normal credit terms.

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. Market risk comprises three types of risk: currency risk, interest rate risk and other price risk.

Other price risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices (other than those arising from interest rate risk or currency risk), whether those changes are caused by factors specific to the individual financial instrument or its issuer, or factors affecting all similar financial instruments traded in the market.

A financial asset is past due when a counterparty has failed to make a payment when contractually due.

A residual interest is any contract that manifests an interest in the assets of the Commission after deducting all of its liabilities.

A residual interest includes contributions from owners, which may be shown as:

- equity instruments or similar forms of unitised capital;
- a formal designation of a transfer of resources (or a class of such transfers) by the parties to the transaction as forming part of the Commission's net assets, either before the contribution occurs or at the time of the contribution; or
- a formal agreement, in relation to the contribution, establishing or increasing an existing financial interest in the net assets of the Commission.

Transaction costs are incremental costs that are directly attributable to the acquisition, issue or disposal of a financial asset or financial liability. An incremental cost is one that would not have been incurred if the Commission had not acquired, issued or disposed of the financial instrument.

### ***Subsequent measurement of financial assets and financial liabilities***

The subsequent measurement of financial instruments is stated below:

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

### ***Receivables from exchange transactions***

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

### ***Cash and cash equivalents***

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

### ***Payables from exchange transactions***

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

### ***Offsetting***

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

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

**Impairment of financial assets**

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

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

**Derecognition**

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

**1.7 Leases**

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

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

**Finance leases – lessee**

Finance leases are recognised as assets and liabilities in the Statement of Financial Position at amounts equal to the fair value of the leased property or, if lower, the present value of the minimum lease payments. The corresponding liability to the lessor is included in the Statement of Financial Position as a finance lease obligation.

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

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

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

**Operating leases – lessee**

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

**1.8 Inventories**

Inventories are initially measured at cost except where inventories are acquired through a non-exchange transaction, then their costs are their fair value as at the date of acquisition.

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

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

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

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

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

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

### 1.9 Impairment of cash-generating assets

Cash-generating assets are assets used with the objective of generating a commercial return. Commercial return means that positive cash flows are expected to be significantly higher than the cost of the asset.

Impairment is a loss in the future economic benefits or service potential of an asset, over and above the systematic recognition of the loss of the asset's future economic benefits or service potential through depreciation (amortisation).

Carrying amount is the amount at which an asset is recognised in the Statement of Financial Position after deducting any accumulated depreciation and accumulated impairment losses thereon.

A cash-generating unit is the smallest identifiable group of assets used with the objective of generating a commercial return that generates cash inflows from continuing use that are largely independent of the cash inflows from other assets or groups of assets.

Costs of disposal are incremental costs directly attributable to the disposal of an asset, excluding finance costs and income tax expense.

Depreciation (Amortisation) is the systematic allocation of the depreciable amount of an asset over its useful life.

Fair value less costs to sell is the amount obtainable from the sale of an asset in an arm's length transaction between knowledgeable, willing parties, less the costs of disposal.

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

Useful life is either:

- the period of time over which an asset is expected to be used by the Commission; or
- the number of production or similar units expected to be obtained from the asset by the Commission.

Judgements made by management in applying the criteria to designate assets as cash-generating assets or non-cash-generating assets, are as follows:

### 1.10 Employee benefits

Employee benefits are all forms of consideration given by the Commission in exchange for service rendered by employees.

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

Termination benefits are employee benefits payable as a result of either:

- the Commission's decision to terminate an employee's employment before the normal retirement date; or
- an employee's decision to accept voluntary redundancy in exchange for those benefits.

Other long-term employee benefits are employee benefits (other than post-employment benefits and termination benefits) that are not due to be settled within twelve months after the end of the period in which the employees render the related service.

### **Short-term employee benefits**

Short-term employee benefits are employee benefits (other than termination benefits) that are due to be settled within twelve months after the end of the period in which the employees render the related service.

Short-term employee benefits include items such as:

- wages, salaries and social security contributions;
- short-term compensated absences (such as paid annual leave and paid sick leave) where the compensation for the absences is due to be settled within twelve months after the end of the reporting period in which the employees render the related employee service;
- bonus, incentive and performance related payments payable within twelve months after the end of the reporting period in which the employees render the related service; and
- non-monetary benefits (for example, medical care, and free or subsidised goods or services such as housing, cars and cellphones) for current employees.

When an employee has rendered service to the entity during a reporting period, the entity recognises the undiscounted amount of short-term employee benefits expected to be paid in exchange for that service:

- as a liability (accrued expense), after deducting any amount already paid. If the amount already paid exceeds the undiscounted amount of the benefits, the Commission recognises that excess as an asset (prepaid expense) to the extent that the prepayment will lead to, for example, a reduction in future payments or a cash refund; and
- as an expense, unless another Standard requires or permits the inclusion of the benefits in the cost of an asset.

The expected cost of compensated absences is recognised as an expense as the employees render services that increase their entitlement or, in the case of non-accumulating absences, when the absence occurs. The Commission measures the expected cost of accumulating compensated absences as the additional amount that the Commission expects to pay as a result of the unused entitlement that has accumulated at the reporting date.

The Commission recognises the expected cost of bonus, incentive and performance related payments when the Commission has a present legal or constructive obligation to make such payments as a result of past events and a reliable estimate of the obligation can be made. A present obligation exists when the Commission has no realistic alternative but to make the payments.

### **1.11 Provisions and contingencies**

Provisions are recognised when:

- the Commission has a present obligation as a result of a past event;

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

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

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

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

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

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

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

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

A provision is used only for expenditures for which the provision was originally recognised. Provisions are not recognised for future operating surplus.

If an entity has a contract that is onerous, the present obligation (net of recoveries) under the contract is recognised and measured as a provision.

Contingent assets and contingent liabilities are not recognised. Contingencies are disclosed in note 30.

### 1.12 Commitments

Items are classified as commitments when the Commission has committed itself to future transactions that will normally result in the outflow of cash.

Disclosures are required in respect of unrecognised contractual commitments.

Commitments represent goods/services that have been ordered, but no delivery has taken place at the reporting date. These amounts are not recognised in the Statement of Financial Position as a liability or as expenditure in the Statement of Financial Performance as the Annual Financial Statement are prepared on an accrual basis of accounting, but are however disclosed in the Notes to the Annual Financial Statements.

### 1.13 Revenue from exchange transactions

Revenue is the gross inflow of economic benefits or service potential during the reporting period when those inflows result in an increase in net assets, other than increases relating to contributions from owners.

An exchange transaction is one in which the Commission receives assets or services, or has liabilities extinguished, and directly gives approximately equal value (primarily in the form of goods, services or use of assets) to the other party in exchange.

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

### **Measurement**

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

## **1.14 Revenue from non-exchange transactions**

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

Transfers are inflows of future economic benefits or service potential from non-exchange transactions, other than taxes.

### **Recognition**

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

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

### **Measurement**

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

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

Receivables that arise from statutory (non-contractual) arrangements are initially measured in accordance with this accounting policy, as well as the accounting policy on Statutory Receivables. The entity applies the accounting policy on Statutory Receivables for the subsequent measurement, derecognition, presentation and disclosure of statutory receivables.

Interest is recognised using the effective interest rate method for financial instruments, and using the nominal interest rate method for statutory receivables. Interest levied on transactions arising from exchange or non-exchange transactions is classified based on the nature of the underlying transaction.

## **1.15 Borrowing costs**

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

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

## 1.16 Accounting by principals and agents

### **Identification**

An agent is an entity that has been directed by another entity (a principal), through a binding arrangement, to undertake transactions with third parties on behalf of the principal and for the benefit of the principal.

A principal is an entity that directs another entity (an agent), through a binding arrangement, to undertake transactions with third parties on its behalf and for its own benefit.

A principal-agent arrangement results from a binding arrangement in which one entity (an agent), undertakes transactions with third parties on behalf, and for the benefit of, another entity (the principal).

### **Identifying whether an entity is a principal or an agent**

When the entity is party to a principal-agent arrangement, it assesses whether it is the principal or the agent in accounting for revenue, expenses, assets and/or liabilities that result from transactions with third parties undertaken in terms of the arrangement.

The assessment of whether the Commission is a principal or an agent requires the Commission to assess whether the transactions it undertakes with third parties are for the benefit of another entity or for its own benefit.

### **Recognition**

The entity, as a principal, recognises revenue and expenses that arise from transactions with third parties in a principal-agent arrangement in accordance with the requirements of the relevant Standards of GRAP.

The Commission, as an agent, recognises only that portion of the revenue and expenses it receives or incurs in executing the transactions on behalf of the principal in accordance with the requirements of the relevant Commission.

The Commission recognises assets and liabilities arising from principal-agent arrangements in accordance with the requirements of the relevant Standards of GRAP.

## 1.17 Comparative figures

Where necessary, comparative figures have been reclassified to conform to changes in presentation in the current year.

## 1.18 Fruitless and wasteful expenditure

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

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

## 1.19 Irregular expenditure

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

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

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

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

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

Irregular expenditure that was incurred and identified during the current financial year and for which condonement is being awaited at year end must be recorded in the irregular expenditure register. Where no losses were incurred and value for money was achieved and the transgression was free of fraudulent, corrupt or other criminal conduct, the Commission must disclose the amount of irregular expenditure to be condoned in the note to the financial statements.

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

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

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

### 1.20 Budget information

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

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

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

The approved budget covers the fiscal period from 2020/04/01 to 2021/03/31.

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

The Statement of comparative and actual information has been included in the annual financial statements as the recommended disclosure when the annual financial statements and the budget are on the same basis of accounting as determined by National Treasury.

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

### 1.21 Related parties

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

The Commission is exempt from disclosure requirements in relation to related party transactions if that transaction occurs within normal supplier and/or client/recipient relationships on terms and conditions no more or less favourable than those which it is reasonable to expect the Commission to have adopted if dealing with that individual entity or person in the same circumstances and terms and conditions are within the normal operating parameters established by that reporting entity's legal mandate.

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

### 1.22 Events after reporting date

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

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

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

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

### 1.23 Penalties and settlements

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

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

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

## ANNUAL FINANCIAL STATEMENTS FOR THE YEAR ENDED 31 MARCH 2021

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

In terms of Section 40(1) of the Competition Act, the settlement amounts and the administrative penalties are not listed as a source of finance for the Commission nor are the amounts of revenue defined in terms of GRAP 23. As such these amounts are not recognised in the Statement of Financial Performance. Furthermore, the outstanding amounts do not meet the liability definition in terms of GRAP 1 and are therefore not recognised in the Statement of Financial Position of the Commission.

***Penalties levied and received***

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

***For penalties levied but not yet received***

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

# NOTES TO THE ANNUAL FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 MARCH 2021

## 2. NEW STANDARDS AND INTERPRETATIONS

### 2.1 Standards and interpretations issued, but not yet effective

The Commission has not applied the following standards and interpretations, which have been published and are mandatory for the Commission's accounting periods beginning on or after 01 April 2021 or later periods:

| Standard/Interpretation:  | Effective date:<br>Years beginning on or after    | Expected impact:   |
|---|---|--|
| Guideline: The Application of Materiality to Financial Statements | Still to be determined by the Minister of Finance | The Guideline is not authoritative but entities are encouraged to consider it when preparing financial statements. |
| GRAP 104 (amended): Financial Instruments                         | Still to be determined by the Minister of Finance | Unlikely there will be a material impact.  |

### 3. PROPERTY, PLANT AND EQUIPMENT

|                        | 2021               |   |                   | 2020               |   |                   |
|------------------------|--------------------|---|-------------------|--------------------|---|-------------------|
|                        | Cost/<br>Valuation | Accumulated<br>depreciation<br>and<br>accumulated<br>impairment | Carrying<br>value | Cost/<br>Valuation | Accumulated<br>depreciation<br>and<br>accumulated<br>impairment | Carrying<br>value |
|                        | R'000              | R'000   | R'000             | R'000              | R'000   | R'000             |
| Furniture and fittings | 6 609              | (3 315)   | 3 294             | 6 854              | (3 106)   | 3 748             |
| Motor vehicles         | 4 430              | (2 156)   | 2 274             | 4 430              | (1 756)   | 2 674             |
| Office equipment       | 3 897              | (2 024)   | 1 873             | 3 761              | (1 702)   | 2 059             |
| IT equipment           | 17 000             | (7 558)   | 9 442             | 16 532             | (7 283)   | 9 249             |
| Leasehold improvements | –                  | –   | –                 | 2 228              | (1 953)   | 275               |
| Cellphones             | 101                | (26)  | 75                | 87                 | (11)  | 76                |
| Leased assets          | 3 375              | (982)   | 2 393             | 3 110              | (3 021)   | 89                |
| <b>Total</b>           | <b>35 412</b>      | <b>(16 061)</b>   | <b>19 351</b>     | <b>37 002</b>      | <b>(18 832)</b>   | <b>18 170</b>     |

#### Reconciliation of property, plant and equipment – 2021

|                        | Opening<br>balance<br>R'000 | Additions<br>R'000 | Disposals<br>R'000 | Depreciation<br>R'000 | Total<br>R'000 |
|------------------------|-----------------------------|--------------------|--------------------|-----------------------|----------------|
| Furniture and fittings | 3 748                       | –                  | (94)               | (360)                 | 3 294          |
| Motor vehicles         | 2 674                       | –                  | –                  | (400)                 | 2 274          |
| Office equipment       | 2 059                       | 216                | (17)               | (385)                 | 1 873          |
| IT equipment           | 9 249                       | 3 132              | (975)              | (1 964)               | 9 442          |
| Leasehold improvements | 275                         | –                  | (163)              | (112)                 | –              |
| Cellphones             | 76                          | 58                 | (42)               | (17)                  | 75             |
| Leased assets          | 89                          | 3 279              | (43)               | (932)                 | 2 393          |
|                        | <b>18 170</b>               | <b>6 685</b>       | <b>(1 334)</b>     | <b>(4 170)</b>        | <b>19 351</b>  |

**Reconciliation of property, plant and equipment – 2020**

|                        | Opening<br>balance<br>R'000 | Additions<br>R'000 | Disposals<br>R'000 | Depreciation<br>R'000 | Total<br>R'000 |
|------------------------|-----------------------------|--------------------|--------------------|-----------------------|----------------|
| Furniture and fittings | 4 107                       | 57                 | –                  | (416)                 | 3 748          |
| Motor vehicles         | 3 098                       | –                  | –                  | (424)                 | 2 674          |
| Office equipment       | 2 230                       | 187                | –                  | (358)                 | 2 059          |
| IT equipment           | 10 604                      | 439                | (53)               | (1 741)               | 9 249          |
| Leasehold improvements | 658                         | 255                | –                  | (638)                 | 275            |
| Cellphones             | 4                           | 75                 | –                  | (3)                   | 76             |
| Leased assets          | 824                         | –                  | –                  | (735)                 | 89             |
|                        | <b>21 525</b>               | <b>1 013</b>       | <b>(53)</b>        | <b>(4 315)</b>        | <b>18 170</b>  |

**Pledged as security**

None of the property, plant and equipment is pledged as security. There are no future contractual commitments for acquisition of property, plant and equipment.

None of the property, plant and equipment was sold, the assets were scrapped as disposal method during the financial year.

**Expenditure incurred to repair and maintain property, plant and equipment**

Expenditure incurred to repair and maintain property, plant and equipment included in Statement of Financial Performance

|                         | 2021<br>R'000 | 2020<br>R'000 |
|-------------------------|---------------|---------------|
| Repairs and maintenance | 501           | 456           |

#### 4. INTANGIBLE ASSETS

|                   | 2021                        |  |                            | 2020                        |  |                            |
|-------------------|-----------------------------|--|----------------------------|-----------------------------|--|----------------------------|
|                   | Cost/<br>Valuation<br>R'000 | Accumulated<br>amortisation<br>and<br>accumulated<br>impairment<br>R'000 | Carrying<br>value<br>R'000 | Cost/<br>Valuation<br>R'000 | Accumulated<br>amortisation<br>and<br>accumulated<br>impairment<br>R'000 | Carrying<br>value<br>R'000 |
| Computer software | 3 183                       | (1 799)  | 1 384                      | 3 593                       | (2 192)  | 1 401                      |

##### Reconciliation of intangible assets – 2021

|                   | Opening<br>balance<br>R'000 | Amortisation<br>R'000 | Total<br>R'000 |
|-------------------|-----------------------------|-----------------------|----------------|
| Computer software | 1 401                       | (17)                  | 1 384          |

##### Reconciliation of intangible assets – 2020

|                   | Opening<br>balance<br>R'000 | Additions<br>R'000 | Amortisation<br>R'000 | Total<br>R'000 |
|-------------------|-----------------------------|--------------------|-----------------------|----------------|
| Computer software | 1 266                       | 790                | (655)                 | 1 401          |

##### Pledged as security

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

#### 5. INVENTORIES

|  | 2021<br>R'000 | 2020<br>R'000 |
|--|---------------|---------------|
| Consumable stores                                    | 1 256         | 1 272         |
| Inventories recognised as an expense during the year | 123           | 110           |

## 6. RECEIVABLES FROM EXCHANGE TRANSACTIONS

|                  | 2021<br>R'000 | 2020<br>R'000 |
|------------------|---------------|---------------|
| Prepaid expenses | 1 310         | 990           |
| Sundry Debtors   | 1 878         | 2 286         |
|                  | <b>3 188</b>  | <b>3 276</b>  |

### Sundry debtors is made up of the following:

|                  |              |              |
|------------------|--------------|--------------|
| Accrued interest | 567          | 1 009        |
| Deposits         | 668          | 668          |
| Other            | 643          | 609          |
|                  | <b>1 878</b> | <b>2 286</b> |

### Trade and other receivables pledged as security

None of the trade and other receivables are pledged as security.

## 7. CASH AND CASH EQUIVALENTS

|                                       | 2021<br>R'000  | 2020<br>R'000 |
|---------------------------------------|----------------|---------------|
| Cash and cash equivalents consist of: |                |               |
| Bank balances                         | 106 357        | 39 625        |
| Cash on hand                          | 10             | 18            |
|                                       | <b>106 367</b> | <b>39 643</b> |

The bank accounts for the Commission are held with the banks approved by the National Treasury in line with Treasury Regulation 31.2.

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

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

## 8. FINANCE LEASE OBLIGATION

|  | 2021<br>R'000 | 2020<br>R'000 |
|--|---------------|---------------|
| <b>Minimum lease payments due</b>              |               |               |
| – within one year                              | 1 093         | –             |
| – in second to fifth year inclusive            | 1 275         | –             |
|  | 2 368         | –             |
| less: future finance charges                   | (330)         | –             |
| <b>Present value of minimum lease payments</b> | <b>2 038</b>  | <b>–</b>      |
| Non-current liabilities                        | 1 172         | –             |
| Current liabilities                            | 866           | –             |
|  | <b>2 038</b>  | <b>–</b>      |

The Commission is leasing equipment on a finance lease. The lease agreement does not impose any restrictions.

The average lease term is 3 years and the average effective borrowing rate is 13%. The current lease contract is effective June 2020 until May 2023.

The Commission's obligations under finance leases are secured by the lessor's charge over the leased assets. Refer note 3.

## 9. PROVISIONS

### Reconciliation of provisions – 2021

|                   | Opening<br>balance<br>R'000 | Additions<br>R'000 | Utilised during<br>the year<br>R'000 | Total<br>R'000 |
|-------------------|-----------------------------|--------------------|--------------------------------------|----------------|
| Leave provision   | 10 059                      | 12 649             | (10 888)                             | 11 820         |
| Performance bonus | 5 000                       | 14 000             | –                                    | 19 000         |
|                   | <b>15 059</b>               | <b>26 649</b>      | <b>(10 888)</b>                      | <b>30 820</b>  |

**Reconciliation of provisions – 2020**

|                   | Opening<br>balance<br>R'000 | Additions<br>R'000 | Utilised during<br>the year<br>R'000 | Total<br>R'000 |
|-------------------|-----------------------------|--------------------|--------------------------------------|----------------|
| Leave provision   | 9 651                       | 9 668              | (9 260)                              | 10 059         |
| Performance bonus | 5 000                       | 4 211              | (4 211)                              | 5 000          |
|                   | <b>14 651</b>               | <b>13 879</b>      | <b>(13 471)</b>                      | <b>15 059</b>  |

**Leave provision**

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

**Performance bonus**

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

**10. PENALTIES PAYABLE TO DTIC****Penalties received and penalties payable**

The Commission collects the penalties imposed by the Tribunal on behalf of the DTIC in terms of section 49D of the Competition Act, therefore the Commission is the acting agent to the DTIC. This is the principal – agent arrangement and is accounted for in terms of GRAP 109: Accounting by Principals and Agents

|                           | 2021<br>R'000 | 2020<br>R'000 |
|---------------------------|---------------|---------------|
| Opening balance           | 8 675         | 33 244        |
| Penalties collected       | 78 307        | 185 056       |
| Less: Amount paid to DTIC | (73 071)      | (209 625)     |
|                           | <b>13 911</b> | <b>8 675</b>  |

An amount of R78.3 million was collected in the current year and R73.1 million was paid over to the DTIC as at 31 March 2021. The balance of R13.9 million (2020: R8.7 million) is still to be paid to the DTIC in the next financial year. The penalties payable are held in the Commission's bank account and are represented by Cash and Cash Equivalents held on behalf of DTIC disclosed under current assets on the Statement of Financial Position.

|  | 2021<br>R'000  | 2020<br>R'000  |
|--|----------------|----------------|
| Outstanding penalties amount at beginning of the year.                       | 948 669        | 1 062 943      |
| Add: Amounts of settlements and penalties levied by the Competition Tribunal | 23 035         | 70 782         |
| Less: Amounts collected by the Competition Commission                        | (78 307)       | (185 056)      |
|  | <b>893 397</b> | <b>948 669</b> |

Section 64(3) states that proceedings under subsection (2) may not be initiated more than three (3) years after the imposition of the administrative penalty. A total of R23.0 million (2019: R70.8 million) was levied by the Competition Tribunal in the current financial year.

The closing balance of R893.4 million as at 31 March 2021, included a total amount of R220.5 million of which fined entities are behind the agreed payment terms. This may result in a material loss to the National Revenue Fund. Management has effected collection processes to recover the outstanding amounts in default. Some of the defaulters have requested a deferral payment arrangement due to financial challenges and those requests are being considered by Management.

The penalties collected by the Commission on behalf of the DTIC are disclosed in the Statement of Financial Position under current assets and liabilities as cash and cash equivalents held on behalf of DTIC and penalties payable to DTIC respectively. The Commission does not have additional resources held on behalf of the principal other than the disclosed.

**11. PAYABLES FROM EXCHANGE TRANSACTIONS**

|                          | 2021<br>R'000 | 2020<br>R'000 |
|--------------------------|---------------|---------------|
| Trade payables           | 19 925        | 14 914        |
| Sundry payables          | 359           | 361           |
| Accrued expenses         | 3 860         | 5 203         |
| Operating lease payables | 1 288         | –             |
|                          | <b>25 432</b> | <b>20 478</b> |

**12. LEASE RENTALS ON OPERATING LEASE**

|                     | 2021<br>R'000 | 2020<br>R'000 |
|---------------------|---------------|---------------|
| <b>Premises</b>     |               |               |
| Contractual amounts | 18 130        | 27 592        |
| <b>Equipment</b>    |               |               |
| Contractual amounts | 128           | 3             |
|                     | <b>18 258</b> | <b>27 595</b> |

**13. FEE INCOME**

|             | 2021<br>R'000 | 2020<br>R'000 |
|-------------|---------------|---------------|
| Fees earned | 53 377        | 65 476        |

**14. OTHER INCOME**

|                                    | 2021<br>R'000 | 2020<br>R'000 |
|------------------------------------|---------------|---------------|
| Insurance recovered                | 65            | 115           |
| Refunds, SETA grant and recoveries | 1 041         | 256           |
| Study bursaries recovered          | 104           | 56            |
|                                    | <b>1 210</b>  | <b>427</b>    |

**15. INTEREST RECEIVED**

| <b>Interest revenue</b>                  | 2021<br>R'000 | 2020<br>R'000 |
|--|---------------|---------------|
| Interest received on short term deposits | 7 284         | 7 953         |

**16. GOVERNMENT GRANTS AND SUBSIDIES**

| <b>Operating grants</b>         | 2021<br>R'000 | 2020<br>R'000 |
|---------------------------------|---------------|---------------|
| Government grants and subsidies | 302 586       | 295 438       |

The Commission receives an operational grant allocation from the DTIC in quarterly instalments of the total allocation. However, in this current financial year the department transferred the total allocation to the Commission in June 2020 in line with the cash flow projections.

## 17. EMPLOYEE RELATED COSTS

|  | 2021<br>R'000  | 2020<br>R'000  |
|--|----------------|----------------|
| Basic                                    | 194 993        | 201 101        |
| Performance bonus                        | 14 000         | 4 211          |
| Medical aid                              | 7 918          | 7 529          |
| Clothing allowance                       | 71             | 161            |
| Danger allowance                         | 53             | 58             |
| Group life and pension administration    | 3 519          | 3 390          |
| Cell phone and data allowance            | 5 575          | 1 272          |
| Home office allowance                    | 1 534          | –              |
| Recruitment fees                         | 362            | 78             |
| Other staff related costs                | 6 479          | 6 291          |
|  | <b>234 504</b> | <b>224 091</b> |
| <b>Accounting Authority's emoluments</b> |                |                |
| Annual remuneration                      | 2 351          | 2 172          |
| Subsistence and cellphone allowance      | 65             | 110            |
| Group life and pension administration    | 44             | 38             |
| Other                                    | 16             | 562            |
|  | <b>2 476</b>   | <b>2 882</b>   |
| <b>Executive Committee's emoluments</b>  |                |                |
| Annual remuneration                      | 18 761         | 21 841         |
| Cellphone and data allowance             | 498            | 139            |
| Group life and pension administration    | 350            | 347            |
| Other                                    | 755            | 2 400          |
|  | <b>20 364</b>  | <b>24 727</b>  |
| <b>Other employees</b>                   |                |                |
| Annual remuneration                      | 177 847        | 175 282        |
| Performance bonus                        | 14 000         | 4 211          |
| Cellphone and data allowance             | 6 579          | 1 131          |
| Group life and pension administration    | 3 126          | 3 091          |
| Other                                    | 6 796          | 3 726          |
| Other – non payroll costs                | 3 316          | 9 041          |
|  | <b>211 664</b> | <b>196 482</b> |

**18. ADMINISTRATIVE EXPENSES**

|   | 2021<br>R'000 | 2020<br>R'000 |
|---|---------------|---------------|
| General and administrative expenses         | 3 271         | 6 108         |
| Auditors remuneration – external audit fees | 1 795         | 1 731         |
|   | <b>5 066</b>  | <b>7 839</b>  |

**19. FINANCE COSTS**

|                              | 2021<br>R'000 | 2020<br>R'000 |
|------------------------------|---------------|---------------|
| Leased assets (photocopiers) | 273           | 293           |

**20. OPERATING EXPENSES**

|  | 2021<br>R'000 | 2020<br>R'000 |
|--|---------------|---------------|
| Audit and Risk and Remuneration committee fees | 239           | 492           |
| Advertising                                    | 96            | 419           |
| Internal audit fees                            | 842           | 342           |
| Consulting and professional fees               | 4 817         | 13 524        |
| Case related costs – Legal                     | 37 928        | 30 044        |
| Security                                       | 1 922         | 3 272         |
| Subscriptions and membership fees              | 169           | 1 630         |
| Training                                       | –             | 216           |
| Travel and accommodation                       | 131           | 3 525         |
| Education and awareness                        | 1 772         | 7 015         |
| Maintenance, repairs and running costs         | 4 038         | 3 683         |
| Publications                                   | 406           | 842           |
| Meeting refreshments                           | 28            | 539           |
| Workshops                                      | 171           | 17            |
| Other expenses                                 | 3 244         | 1 984         |
|  | <b>55 803</b> | <b>67 544</b> |

## 21. CASH GENERATED FROM OPERATIONS

|  | 2021<br>R'000 | 2020<br>R'000 |
|--|---------------|---------------|
| Surplus                                | 45 032        | 36 910        |
| <b>Adjustments for:</b>                |               |               |
| Depreciation and amortisation          | 4 187         | 4 969         |
| Loss on disposal of assets             | 1 334         | 53            |
| Movements in provisions                | 15 761        | 408           |
| Other non-cash items – finance leases  | (3 806)       | –             |
| <b>Changes in working capital:</b>     |               |               |
| Inventories                            | 16            | (110)         |
| Receivables from exchange transactions | 88            | (283)         |
| Payables from exchange transactions    | 4 954         | (4 740)       |
|  | <b>67 566</b> | <b>37 207</b> |

## 22. COMMITMENTS

|  | 2021<br>R'000 | 2020<br>R'000 |
|--|---------------|---------------|
| <b>Already contracted for but not provided for</b>         |               |               |
| Existing contracts – goods and services                    | 5 888         | 4 134         |
| <b>Not yet contracted for and authorised by Commission</b> |               |               |
| Other goods and services                                   | 3 037         | 852           |
| <b>Total capital commitments</b>                           |               |               |
| Already contracted for but not provided for                | 5 888         | 4 134         |
| Not yet contracted for and authorised by the Commission    | 3 037         | 852           |
|  | <b>8 925</b>  | <b>4 986</b>  |

**Total commitments**

|                                | 2021<br>R'000 | 2020<br>R'000 |
|--------------------------------|---------------|---------------|
| <b>Total commitments</b>       |               |               |
| Authorised capital expenditure | 8 925         | 4 986         |

This committed expenditure relates to multiple contracts entered into by the Commission and will be financed by the available cash reserves.

**Operating leases – as lessee (expense)**

|                                     | 2021<br>R'000 | 2020<br>R'000 |
|-------------------------------------|---------------|---------------|
| <b>Minimum lease payments due</b>   |               |               |
| – within one year                   | 13 709        | –             |
| – in second to fifth year inclusive | 15 080        | –             |
| – later than five years             | –             | –             |
|                                     | <b>28 789</b> | <b>–</b>      |

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

**23. RELATED PARTIES****Relationships**

|   |                                      |
|---|--------------------------------------|
| The Competition Tribunal                          | Public entity in the national sphere |
| The Department of Trade, Industry and Competition | Executive authority                  |
| Public Investment Corporation                     | Public entity in the national sphere |
| Members of key management                         | Members of the executive committee   |

|   | 2021<br>R'000 | 2020<br>R'000 |
|---|---------------|---------------|
| <b>Related party balances</b>   |               |               |
| <b>Amounts included in trade receivables (trade payables) regarding related parties</b> |               |               |
| The Competition Tribunal  | (1 515)       | (2 027)       |
| The Department of Trade, Industry and Competition                                       | (1 065)       | (24)          |
| Public Investment Corporation   | (132)         | (2 853)       |
| National Prosecuting Authority  | 311           | –             |
| <b>Related party transactions</b>   |               |               |
| <b>The Department of Trade, Industry and Competition</b>                                |               |               |
| Rental expense  | 12 463        | 11 330        |
| Telephone and internet costs  | 133           | 243           |
| Government grant received   | 302 586       | 295 438       |
| Penalties collected on behalf of and transferred to related parties                     | 78 307        | 185 057       |
| <b>The Competition Tribunal</b>   |               |               |
| Filing fees   | 13 208        | 15 279        |
| Facility fees   | 1 516         | 886           |
| Other administration related costs  | –             | 236           |
| <b>Public Investment Corporation</b>  |               |               |
| Rental expense  | 4 247         | 16 939        |
| <b>National Prosecuting Authority</b>   |               |               |
| Secondment agreement  | 1 038         | –             |
| <b>Safety and Security Sector Education and Training Authority</b>                      |               |               |
| Mandatory grant   | 595           | 250           |

**Remuneration of executive management – 2021**

| <b>Name</b>  | <b>Basic salary<br/>R'000</b> | <b>Other benefits<br/>received<br/>R'000</b> | <b>Total<br/>R'000</b> |
|--|-------------------------------|--|------------------------|
| Commissioner – Mr T Bonakele   | 2 476                         | –  | 2 476                  |
| Deputy Commissioner – Mr H Ratshisusu  | 2 392                         | 2  | 2 394                  |
| Divisional Manager: Market Conduct – Ms N Nontombana (resigned 28 February 2021) | 1 989                         | 120  | 2 109                  |
| Divisional Manager: Human Capital – Mr A Gwabeni (resigned 31 May 2020)          | 356                           | 173  | 529                    |
| Divisional Manager: Legal Services – Mr B Majenge                                | 2 128                         | –  | 2 128                  |
| Divisional Manager: Cartels – Mr M Mohlala                                       | 2 163                         | –  | 2 163                  |
| Divisional Manager: Advocacy – Ms K Qobo   | 1 887                         | –  | 1 887                  |
| Company Secretary – Mr M Msibi   | 1 506                         | –  | 1 506                  |
| Divisional Manager: Economic Research Bureau – Mr J Hodge                        | 2 104                         | –  | 2 104                  |
| Chief Financial Officer – Mr A Moledi  | 1 875                         | –  | 1 875                  |
| Divisional Manager: Mergers and Acquisitions – Ms T Paremoer                     | 1 862                         | –  | 1 862                  |
| Acting Divisional Manager: Office of the Commissioner – Ms M Ramokgopa           | 1 806                         | –  | 1 806                  |
|  | <b>22 544</b>                 | <b>–</b>                                     | <b>22 839</b>          |

**Remuneration of executive management – 2020**

| <b>Name</b>   | <b>Basic salary<br/>R'000</b> | <b>Other benefits<br/>received<br/>R'000</b> | <b>Total<br/>R'000</b> |
|---|-------------------------------|--|------------------------|
| Commissioner – Mr T Bonakele  | 2 796                         | 86   | 2 882                  |
| Deputy Commissioner – Mr H Ratshisusu   | 2 354                         | 52   | 2 406                  |
| Divisional Manager: Economic Research Bureau – Dr L Mncube (resigned 31 March 2020)                         | –                             | 201  | 201                    |
| Divisional Manager: Market Conduct – Ms N Nontombana  | 2 131                         | 1  | 2 132                  |
| Divisional Manager: Human Capital – Mr A Gwabeni  | 2 115                         | –  | 2 115                  |
| Chief Financial Officer – Mr M Kgauwe (resigned 14 March 2019)  | –                             | 134  | 134                    |
| Divisional Manager: Legal Services – Mr B Majenge   | 2 043                         | 1  | 2 044                  |
| Divisional Manager: Cartels – Mr M Mohlala  | 2 222                         | 19   | 2 241                  |
| Divisional Manager: Advocacy – Ms K Qobo  | 1 986                         | 25   | 2 011                  |
| Divisional Manager: Mergers and Acquisitions – Ms L Mabidikane (resigned 30 June 2019)                      | 417                           | 44   | 461                    |
| Company Secretary – Mr M Msibi  | 1 476                         | –  | 1 476                  |
| Divisional Manager: Economic Research Bureau – Mr J Hodge   | 2 067                         | 8  | 2 075                  |
| Chief of Staff – Mr D Maimela (contract ended 30 June 2019)   | 326                           | 74   | 400                    |
| Chief of staff: Commissioner office – Ms Z Mqolomba (appointed 1 July 2019 and contract ended January 2020) | 836                           | 19   | 855                    |
| Acting Chief Financial Officer – Mr A Moledi (from May to November 2019)                                    | 1 154                         | 91   | 1 245                  |
| Chief Financial Officer – Mr A Moledi (appointed 01 December 2019)  | 613                           | –  | 613                    |
| Divisional Manager: Mergers and acquisitions – Ms T Paramoer (appointed 01 November 2019)                   | 835                           | 8  | 843                    |
| Acting Divisional Manager: Office of the Commissioner - Ms M Ramokgopa (appointed 15 December 2019)         | 593                           | –  | 593                    |
|   | <b>23 964</b>                 | <b>763</b>                                   | <b>24 727</b>          |

## 24. RISK MANAGEMENT

### Financial risk management

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

### Liquidity risk

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

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

|                                     | Carrying amount<br>R '000  | Total cash flow<br>R '000       | Contractual cash flow within 1 year<br>R '000 | Contractual cash flow between 2 and 5 years<br>R '000 |
|-------------------------------------|----------------------------|---------------------------------|---|---|
| <b>At 31 March 2021</b>             |                            |                                 |   |   |
| Payables from exchange transactions | 25 432                     | 25 432                          | 25 432  | –   |
|                                     |                            |                                 |   |   |
|                                     | Less than 1 year<br>R '000 | Between 1 and 2 years<br>R '000 | Between 2 and 5 years<br>R '000               | Over 5 years<br>R '000                                |
| <b>At 31 March 2020</b>             |                            |                                 |   |   |
| Payables from exchange transactions | 20 478                     | 20 478                          | 20 478  | –   |
|                                     |                            |                                 |   |   |
|                                     | Less than 1 year<br>R '000 | Between 1 and 2 years<br>R '000 | Between 2 and 5 years<br>R '000               | Over 5 years<br>R '000                                |
| <b>At 31 March 2021</b>             |                            |                                 |   |   |
| Cash and cash equivalents           | 106 367                    | –                               | –   | –   |
| Trade and other receivables         | 3 188                      | –                               | –   | –   |
|                                     |                            |                                 |   |   |
|                                     | Less than 1 year<br>R '000 | Between 1 and 2 years<br>R '000 | Between 2 and 5 years<br>R '000               | Over 5 years<br>R '000                                |
| <b>At 31 March 2020</b>             |                            |                                 |   |   |
| Cash and cash equivalents           | 39 643                     | –                               | –   | –   |
| Trade and other receivables         | 3 276                      | –                               | –   | –   |

### Credit risk

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

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

|                             | 2021<br>R'000 | 2020<br>R'000 |
|-----------------------------|---------------|---------------|
| Cash and cash equivalents   | 106 367       | 39 643        |
| Trade and other receivables | 3 188         | 3 276         |

### Market risk

Market risk is the risk that changes in the market prices, such as the interest rates which will affect the value of the financial assets of the Commission. The Commission is not exposed to market risk.

### Interest rate risk

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

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

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

## 25. GOING CONCERN

We draw attention to the fact that at 31 March 2021, the Commission had an accumulated surplus of R73.2 million and that the Commission's total assets exceed its liabilities by R73.2 million.

The annual financial statements have been prepared on the basis of accounting policies applicable to a going concern. This basis presumes that funds will be available to finance future operations and that the realisation of assets and settlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business.

The ability of the Commission to continue as a going concern is dependent on a number of factors. The most significant of these is that the DTIC continue to provide funding for the ongoing operations.

## 26. EVENTS AFTER THE REPORTING DATE

No events identified to be reported.

## 27. FRUITLESS AND WASTEFUL EXPENDITURE

|  | 2021<br>R'000 | 2020<br>R'000 |
|--|---------------|---------------|
| Opening balance as previously reported | 263           | 23            |
| <b>Opening balance as restated</b>     | <b>263</b>    | <b>23</b>     |
| Add: Expenditure identified – current  | –             | 240           |
| <b>Closing balance</b>                 | <b>263</b>    | <b>263</b>    |

The balance of R263,000 relates to payment to a fraudulent bank account for R23,000; multiple travel related incidents for R74,474; SARS interest charged for R122,108; and traffic fines for R43,560.

## 28. IRREGULAR EXPENDITURE

|   | 2021<br>R'000  | 2020<br>R'000  |
|---|----------------|----------------|
| Opening balance as previously reported    | 130 595        | 110 810        |
| Add: Irregular expenditure – current year | 10 190         | 19 785         |
| <b>Opening balance as restated</b>        | <b>140 785</b> | <b>130 595</b> |
| Less: irregular expenditure condoned      | (140 785)      | –              |
| <b>Closing balance</b>                    | <b>–</b>       | <b>130 595</b> |

During the financial year, the Commission submitted an application for condonement of all incurred irregular expenditure as a result of awarding contracts without following proper supply chain management process as previously reported to the National Treasury in line with the National Treasury guidelines on irregular expenditure.

The National Treasury condoned the irregular expenditure incurred during 2017/18, 2018/19, 2019/20 and 2020/21 financial year for the respective amounts of R71.6 million; R39.2 million; R19.8 million; and R10.2 million.

## 29. BUDGET DIFFERENCES

### Material differences between budget and actual amounts

#### 29.1 Fee income

The fee income is above the budgeted amount due to more mergers which were filed than it was anticipated.

#### 29.2. Interest received – investment

Interest received is higher than budgeted amount due to invested government grant which was transferred as once off lumpsum during the financial year.

#### 29.3. Employee related costs

The variance is due to vacancies which were not filled during the year due to covid 19 restrictions.

#### 29.4. Administrative expenses

The variance is due to covid 19 restrictions which resulted in certain activities that were put on hold.

## 29.5. Operating expenses

The variance is not material, however the operational expenditure budget was significantly reduced as a result of budget cut by the National Treasury in response to the health crisis.

## 30. CONTINGENT ASSETS AND LIABILITIES

### Cases before the courts in which costs were awarded against the Commission.

|                | 2021<br>R'000 | 2020<br>R'000 |
|----------------|---------------|---------------|
| Amount claimed | 800           | 2 755         |

There are pending cases before the courts emanating from ongoing investigations by the Commission. The outcome thereof may result in legal costs awarded against the Commission. The estimated amount of legal costs incurred and claim amount is R800,000; however, for some of the cases the costs are unknown and were not yet confirmed at the reporting date.

### Cases before the courts in which costs were awarded in favour of the Commission.

There are pending cases before the courts emanating from ongoing investigations by the Commission. The outcome thereof may result in legal costs awarded in favour of the Commission. The legal costs incurred and claim amounts for these cases are unknown and were not yet confirmed at the reporting date.

## 31. CHANGES IN ACCOUNTING POLICY

The annual financial statements have been prepared in accordance with Standards of Generally Recognised Accounting Practice on a basis consistent with the prior year.

The useful lives of some of the assets in the computer equipment, computer software, furniture & fittings and motor vehicle classes were reassessed as they had been fully depreciated and are still in use. The effect of the reassessment amounts to R469,932 against the depreciation and accumulated depreciation.





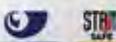


## HUMAN RIGHTS MONTH 2021

### WEBINAR INVITATION



DATE:  
Friday, 20 March 2021  
TIME:  
12:00 - 14:00  
PLATFORM:  
Zoom  
GUEST SPEAKER:  
Thembeka Ngwenyoni



The Year of Charlotte Maxeke:  
Presiding the right to life in the age of vaccination and price gouging

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## MONTH 2020

CELEBRATING  
SOUTH AFRICA'S LIVING  
HUMAN TREASURES



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## WEBINAR

16 Days of Activism  
for **No Violence**  
Against **Women and**  
**Children 2020**

#16Days2020

DATE: Friday, 04 December 2020 | TIME: 13:00 - 14:00

KEY NOTE SPEAKER: Buti Kuvwini,  
Social Work Policy Manager - Transnational Organised Crime (NOC) Unit working  
at the National Department of Social Development

PANEL MEMBERS:  
Sipho Muzweni, Competition Commission  
Simplice Gumbi, Competition Commission and  
Thabo Khumalo, Competition Commission

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## CUT-OFF DATE FOR SUBMISSIONS AND ONLINE SURVEY

### ONLINE MARKETS INQUIRY

FRIDAY 18 JUNE 2021  
16H30

[CLICK HERE FOR DETAILS](#)



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## ESSENTIAL FOOD PRICING MONITORING REPORT

SEPTEMBER 2020



Competition Commission  
South Africa

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The 2021 Antitrust Writing Awards Jury has chosen  
Competition Commission South Africa's

### "BUYER POWER ENFORCEMENT GUIDELINES"

as the winning Soft Law Article in the subcategory  
"Unilateral Conduct"

This decision comes after a five-month process involving more than  
50 international antitrust experts reviewing more than 600 articles.  
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W: [www.compcom.co.za](http://www.compcom.co.za)



### THINGS YOU NEED TO KNOW ABOUT THE AUTOMOTIVE AFTERMARKET GUIDELINES



The Competition Commission  
GAZETTED THE GUIDELINES FOR  
COMPETITION IN THE AUTOMOTIVE  
AFTERMARKET  
on 29 January 2021



The Guidelines are directed at  
PROMOTING COMPETITION IN THE  
AUTOMOTIVE AFTERMARKET,  
specifically to promote  
ECONOMIC ACCESS, INCLUSION AND  
GREATER SPREAD OF OWNERSHIP FOR  
HDI'S (Historically Disadvantaged Individuals)

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The Competition Commission and Competition Tribunal proudly present the 14<sup>th</sup> Annual Competition Law, Executive and Policy Conference on the topic: **"COMPETITION IN A CRISIS: COMPETITION POLICY, REGULATION AND ENFORCEMENT IN UNPRECEDENTED TIMES"**

**ONLY 1 DAY LEFT**

DATE: 3-4 November 2020 | TIME: 09:00  
 FORBAY: Zoom (Link to be shared on registration)

**CLICK HERE TO REGISTER**

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The Commission's Executive Committee wishes to congratulate Commissioner Tembeka Bonakele on his recent appointment as the University of Fort Hare Council Member.

The Executive also extends its best wishes to the newly appointed Council as they journey the path of Fort Hare's renewal and repositioning.

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EDITION 60 | DECEMBER 2020

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**21 YEARS OF COMPETITION REGULATION AND INCLUSION**

JUDGE DENNIS DAVIS, RETIRING JUDGE PRESIDENT OF THE COMPETITION APPEAL COURT

COMPETITION DURING A CRISIS

"COMPETITION IN THE DIGITAL ECONOMY" REPORT LAUNCHED

PARLIAMENT RECEIVES AN UPDATE ON REGULATION FOR ECONOMIC GROWTH

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**COMPETITION IN THE DIGITAL ECONOMY: SECOND EDITION**



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**WOMEN'S MONTH 2020**



Khanyisa Gobo  
 Manager, Advocacy Division





**#IAmGenerationEquality**

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ACCESS TO HEALTH CARE AND COMPETITION

“Half of the world's population lacks access to **essential health services**, whereas **100 million people** are still pushed into **extreme poverty** because of health expenses,

- World Health Organisation



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**PUBLIC COMMENTS ARE INVITED ON THE COMMISSION'S FORESTRY SECTOR IMPACT STUDY**

Submissions should be sent to Mr Yongama Njisane ([yongaman@compcom.co.za](mailto:yongaman@compcom.co.za))

Registering for a viewing: [www.compcom.co.za](http://www.compcom.co.za)

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1 SEPTEMBER 2020 - 2 OCTOBER 2020





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