



competition commission
south africa

STRATEGIC PLAN 2020/21 – 2024/25

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

MINISTER'S FOREWORD



Mr Ebrahim Patel - Minister of Trade, Industry and Competition

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

MR EBRAHIM PATEL

MINISTER OF TRADE, INDUSTRY AND COMPETITION

ACCOUNTING OFFICER'S STATEMENT

Competition regulation in a post-Covid world

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

The Commission begins the new 5-year cycle with an enlarged mandate: the amendments of various provisions of the Competition Act were promulgated between February and July 2019. The aim of the new provisions are to open up the economy to small and medium enterprises and to Black South Africans. The amendments addresses two structural constraints to economic growth and inclusion: the high levels of concentration in markets and the skewed ownership profile of the economy towards a racial minority. This is a welcome mandate for the competition authorities, which has shaped our crafting of this strategy. Our vision for the next five years remains that of a growing and inclusive economy, but also an economy that is deconcentrated.

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

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

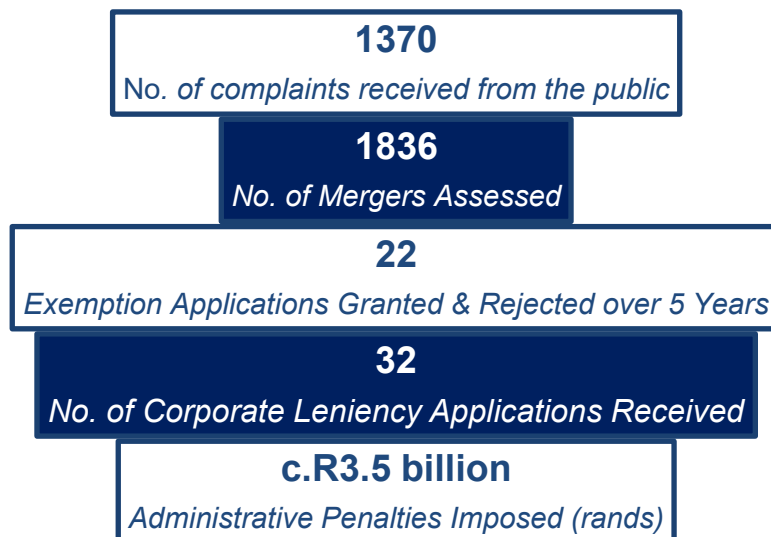
These latest budgetary cuts thus place the Commission in precarious position regarding its continued operations. These budget cuts come at a time when the amount and scope of work that the authority is dealing with has substantially increased. Within two months of the National Disaster declaration, the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

We have thus revised our work program downwards, with plans to undertake less enforcement investigations, advocacy work and market inquiries. Even with these pragmatic changes,

captured in the 2020/21 Annual Performance Plan, the Commission is still faced with numerous existing cases and appeals that it must defend and/or prosecute at the Competition Tribunal, Competition Appeal Court and Constitutional Court. These matters related to prohibited mergers, cartels, abuse of dominance against some of the largest firms nationally and globally. With the sources of funding uncertain, the time is ripe for the funding model of the Commission to be reviewed.

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

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



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

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

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

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

Another recent judgement of note relates to the Constitutional Court's ruling about the timeframe within which cartel investigations can be launched. In September 2015, the Commission referred 37 instances of collusive tendering against Pickfords to the Tribunal for prosecution. Pickfords filed an interlocutory application with the Tribunal. The Tribunal ruled in Pickfords' favour that the Commission could not investigate and prosecute the 14 cartel instances as these stopped three years before the Commission started its investigation on the matter. The Commission's appeal of the decision was dismissed by CAC. The Commission then approached the Constitutional Court for relief which upheld the Commission's appeal that section 67(1) of the Act does not prevent the Commission from investigating and prosecuting cartel conduct that stopped three years before the investigation started. The court further held that it is not necessary for the Commissioner to list all firms in a cartel when initiating a complaint as the complaint is initiated against the restricted practice.

The Commission referred a case against Rooibos Ltd to the Tribunal for prosecution. Rooibos Ltd, South Africa's largest processor of rooibos tea, had secured for itself significant volumes of the tea farmed out of South Africa's Cederberg region which is known worldwide for its production of the unique caffeine-free tea containing high levels of anti-oxidants. Rooibos Ltd did this by introducing exclusionary contracting strategies in its dealings with rooibos farmers for

the period 2014-2018. Specifically, farmers were required to supply up to half of their production to Rooibos Ltd. The Commission found that Rooibos Ltd's conduct forcibly locked farmers into supplying Rooibos Ltd and prevented its rivals from accessing supplies of rooibos tea for processing. The Commission observed that since the introduction of the exclusionary agreements Rooibos Ltd's volumes of rooibos tea purchased from farmers, which were in serious decline at the time, significantly escalated and its main rival's purchases of rooibos tea either declined or stagnated, thus threatening the competitive process in this market. This matter is yet to be finalized with the Tribunal.

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

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

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

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

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

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

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

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

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

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

of Agriculture Forestry and Fisheries (DAFF) in July 2015.

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

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

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

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

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

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

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

In conclusion, it is indeed our commitment to ensure that our plans for the next five years yield positive outcomes for the economy of South Africa.

Tembinkosi Bonakele
Competition Commissioner

Official Sign-Off


It is hereby certified that this Strategic Plan:

- Was developed by the management of the Competition Commission under the guidance of Minister of Trade, Industry and Competition.
- Considers all the relevant policies, legislation and other mandates for which the Competition Commission is responsible.
- Accurately reflects the Impact, Outcomes and Outputs which the Competition Commission will endeavour to achieve over the period 2020/21 – 2024/25.

Signature:  _____

Mr. Amos Moledi, Chief Financial Officer

Date: 29/06/2020


Signature: _____

Mr. Tembinkosi Bonakele, Commissioner

Date: 29/06/2020

Signature: _____

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

Date: _____

Abbreviations

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

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INTRODUCTION

In December 2019 the World Health Organization (WHO) reported a cluster of pneumonia cases in Wuhan City, China. The '*Severe Acute Respiratory Syndrome Coronavirus 2*' (SARS-CoV-2) was confirmed as the causative agent of what we now know as 'Coronavirus Disease 2019' (Covid-19). Since then, the virus has spread to more than 100 countries, including South Africa. During March 2020, the WHO declared Covid-19 outbreak as a global pandemic.

On 15 March 2020, President Cyril Ramaphosa declared national state of disaster in terms of the National Disaster Management Act, 2002. On 23 March 2020, the President announced measures to combat the spread of the Covid-19 in South Africa and to mitigate its economic and social impact, including a national lockdown. The lockdown follows government regulations that limited public gatherings, travel from high-risk countries and the sale of alcohol. In addition, borders were closed to reduce the rate of infection from those travelling into South Africa from other countries. A quarantine was also enforced on inbound travellers and returning citizens.

The South African government's economic response to Covid-19 has included the following:

- A broad range of measures to mitigate the worst effects of the pandemic on businesses, on communities and on individuals. The measures included tax relief, the release of disaster relief funds, an increase in the value of social grants, emergency procurement, wage support through the UIF and funding to small businesses.
- Further, a social and economic support package of R500 billion was allocated. The fund is aimed at stabilizing the economy, addressing the extreme decline in supply and demand and protecting jobs.
- The third intervention is an economic strategy aimed at driving the recovery of the economy as the country emerges from the pandemic. Central to the economic recovery strategy will be measures to stimulate growth.

The goal of the interventions by Government is to steadily increase economic activity while putting measures in place to reduce the transmission of the virus and provide adequate care for those who become infected and need treatment. Furthermore, on Thursday 19 March 2020, the Minister of Trade, Industry and Competition, Mr Ebrahim Patel (the "Minister"), published the Consumer and Customer Protection and National Disaster Management Regulations and Directions (the "Regulations"). These Regulations are geared at protecting consumers from exploitative prices that are not justifiable by costs (price gouging) arising from the demand and supply shocks of the disaster. A list of products deemed to be "essential" were catalogued in

the Regulations. The Competition Commission and the National Consumer Commission are the agencies empowered to investigate and prosecute cases of exploitative (or excessive) pricing in terms of paragraph 4 of the Regulations.

The impact of the national state of disaster and the nationwide lockdown has necessitated the need to review the Commission's 2020-2025 Strategic Plan and 2020/21 Annual Performance Plan to ensure that both plans respond to the Covid-19 pandemic and continued service delivery in the current financial year. The current national response to Covid-19 has impacted the Commission's operating environment significantly, hence the need to revise the Strategic Plan and the Annual Performance Plans.

This Strategic Plan is comprised of three sections as follows:

- a) Part A: Our Mandate – which deals with the mandate of the Commission as per the Competition Act and all other applicable legislation and policies.
- b) Part B: Situational Analysis- this section provides an analysis of developments in the external and internal operating environment, providing a context in which the conditions in which the strategy has been developed.
- c) Part C: Our Strategic Focus – this section deals with the Vision, Mission, Goals, Values which the Commission has set for the next five years. The Strategic Risks are also identified.

PART A: OUR MANDATE

1. CONSTITUTIONAL MANDATE

Section 22 of the Constitution of South Africa guarantees every citizen the right to “Freedom of trade, occupation and profession”. It states that: *“Every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law.”*

Although the Bill of Rights does not expressly reference competition, section 22 of the Constitution has been interpreted by the Constitutional Court as being consistent with a competitive regime in matters of trade and the recognition of the protection of competition as being in the public welfare. In line with this, the Competition Act, 1998 (Act No, 89 of 1998) established the Competition Commission to promote and protect competition in the economy.

2. LEGISLATIVE & POLICY MANDATE

2.1 Legislative Mandate

The Competition Commission is one of three institutions established in the Competition Act (Act No. 89 of 1998) (“Act”) alongside the Competition Tribunal and The Competition Appeal Court. The Competition Commission is an investigative and prosecutorial authority, the Tribunal is an adjudicative authority and the Competition Appeal Court is an appeal body over competition matters.

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

- a) To promote the efficiency, adaptability and development of the economy;
- b) To provide consumers with competitive prices and product choices;
- c) To promote employment and advance the social and economic welfare of South Africans;
- d) To expand opportunities for South African participation in world markets and recognize the role of foreign competition in the Republic;
- e) To ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy; and

- f) To promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons.

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

- a) Implement measures to increase market transparency;
- b) Implement measures to develop public awareness of the provisions of this Act.
- c) Investigate and evaluate alleged contraventions of Chapter 2;
- d) Grant or refuse applications for exemption in terms of Chapter 2;
- e) Authorize, with or without conditions, prohibit or refer mergers of which it receives notice in terms of Chapter 3;
- f) Negotiate and conclude consent orders in terms of section 63;
- g) Refer matters to the Competition Tribunal, and appear before the Tribunal, as required by this Act;
- h) Negotiate agreements with any regulatory authority to co-ordinate and harmonize the exercise of jurisdiction over competition matters within the relevant industry or sector, and to ensure the consistent application of the principles of this Act;
- i) Participate in the proceedings of any regulatory authority;
- j) Advise, and receive advice from, any regulatory authority;
- k) Over time, review legislation and public regulations, and report to the Minister concerning any provision that permits uncompetitive behaviour; and
- l) Deal with any other matter referred to it by the Tribunal.

2.2 Amendments to The Competition Act

The Competition Amendment Act was gazette in February 2019, with some sections being promulgated in July 2019. The amendments aim to, amongst other things, introduce provisions that clarify and improve the determination of prohibited practices relating to (1) restrictive horizontal and vertical practices, (2) abuse of dominance and price discrimination, (3) strengthening the penalty regime, (4) introducing greater flexibility in the granting of exemptions that promote transformation and growth, strengthening the role of market inquiries and merger processes in the promotion of competition and economic transformation – through addressing the structures and de-concentration of markets, (5) protecting and stimulating the growth of small and medium-sized businesses and firms owned and controlled by historically disadvantaged persons, while at the same time protecting and promoting employment and employment security. The amendments to the Competition Act have direct impact on the

Commission's operations.

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

i. Price Discrimination

The new provision in section 9(1)(a)(ii) stipulates that *“an action by a dominant firm, as the seller of goods or services, is prohibited price discrimination, if it is likely to have the effect of impeding the ability of small and medium businesses or firms controlled or owned by historically disadvantaged persons, to participate effectively”*. Section 9(3) states that where the Commission has established a *prima facie* case of a contravention then *“the dominant firm must show that its action does not impede the ability of small and medium enterprises and firms controlled or owned by historically disadvantaged persons to participate effectively”*. There is also an avoidance provision in section 9(1A) which makes it a contravention for a dominant firm to refuse to sell to small and medium businesses or firms controlled or owned by historically disadvantaged persons in order to circumvent the provisions in section 9(1)(a)(ii).

The new definitions say: *“Small business means a small firm determined by the Minister by notice in the Gazette, or if no determination has been made, as set out in the National Small Business Act, 1996 (Act No. 102 of 1996). Medium-sized business means a medium-sized firm as determined by the Minister by notice in the Gazette. Small and medium business means either a small business or a medium-sized business”*.

ii. Excessive Pricing

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

iii. Abuse of Buyer Power

The new provision of section 8(4) states that: *“It is prohibited for a dominant firm in a sector*

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

iv. Margin Squeeze and Predatory Pricing

The amendment in section 8(1)(d) states that: *“It is prohibited for a dominant firm to engage in any of the following exclusionary acts, unless the firm concerned can show technological efficiency or other pro-competitive gains which outweigh the anti-competitive effect of its Act: (iv) selling goods or services at predatory prices; (vi) engaging in a margin squeeze.”* The definitions now include the following for clarity:

- a) **“predatory prices”** means prices for goods or services below the firm’s average avoidable cost or average variable cost;
- b) **“average avoidable cost”** means the sum of all costs, including variable costs and product-specific fixed costs, that could have been avoided if the firm had not produced an identified amount of additional output; and
- c) **“average variable cost”** means the sum of all the costs that vary with an identified quantity of a particular product, divided by the total produced quantity of that product.
- d) **“margin squeeze”** occurs when the price at which a vertically integrated firm, which is dominant in an input market, sells a downstream product, and the price at which it sells the key input to competitors, is too small to allow downstream competitors to participate effectively.

v. Exemption Applications

The amendment in section 10(3)(b)(ii) states that: *“The Commission may grant an exemption only if the agreement or practice concerned, or category of agreements or practices concerned, contributes to the promotion of the effective entry into, participation in and expansion within a market by small and medium business, or firms controlled or owned by historically disadvantaged persons”.*

The amendment in section 10(10) states that: *“The Minister may, after consultation with the Commission, and in order to give effect to the purposes of this Act as set out in section 2, issue regulations in terms of section 78 exempting a category of agreements or practices from the application of this Chapter”.*

vi. Merger Provisions

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

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

“(h) the extent of ownership by a party to the merger in another firm or other firms in related markets;

(i) the extent to which a party to the merger is related to another firm or other firms in related markets, including through common members or directors; and

(j) any other mergers engaged in by a party to the merger for such period as may be stipulated by the Competition Commission.”

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

“(c) the ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to effectively enter into, participate in and or expand within the market;

(e) the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market.”

The amendment to section 17(1)(c) states that: “Within 20 business days after notice of a decision by the Competition Tribunal in terms of [a merger], an appeal from that decision may be made to the Competition Appeal Court, subject to its rules, by the Minister on matters raised in terms of [public interest], where the Minister participated in the Commission’s or Tribunal’s proceedings in terms of section 18 or on application for leave to appeal to the Competition Appeal Court”.

vii. Market Inquiries

The amendments to 43A(3) read together with 43B(1), 43C(1) and (2) and with the powers in 43D(1) state that: *“The Commission may conduct a market inquiry at any time, subject to [certain procedural rules], if it has reason to believe that any feature or combination of features of a market for any goods or services impedes, distorts or restricts competition within that market; or to market for goods or services includes:*

- a) The structure of the market, including levels of concentration and barriers to entry in a market;*
- b) The outcomes observed in the market, such as ownership, prices, innovation, employment, and the ability of national industries to compete in international markets; and*
- c) The conduct in that or any related market.*

In a market inquiry, the Commission must decide whether any feature, including structure and levels of concentration, of each relevant market for any goods or services impedes, restricts or distorts competition within that market. In making its decision in terms of subsection (1)(a), the Commission must have regard to the impact of the adverse effect on competition on small and medium businesses, or firms controlled or owned by historically disadvantaged persons. Subject to the provisions of any law, the Commission may, in relation to each adverse effect on competition, take action to remedy, mitigate or prevent the adverse effect on competition”.

viii. Administrative Penalties

The amendment to section 59(1) states that: *“The Competition Tribunal may impose an administrative penalty only for a prohibited practice”* and then proceeds to list all provisions in terms of sections 4,5,8 and 9. The amendments to sections 59(2A), 59(3)(d) and 3A state:

An administrative penalty imposed in terms of subsection (1) may not exceed 25 per cent of the firm’s annual turnover in the Republic and its exports from the Republic during the firm’s preceding financial year if the conduct is substantially a repeat by the same firm of conduct previously found by the Competition Tribunal to be a prohibited practice.

When determining an appropriate penalty, the Competition Tribunal must consider the market circumstances in which the contravention had an impact upon small and medium businesses and firms owned or controlled by historically disadvantaged persons. In determining the extent of the administrative penalty to be imposed, the Competition Tribunal may increase the administrative penalty to include the turnover of any firm or firms that control the respondent, where the controlling firm or firms knew or should reasonably have known that the respondent was engaging in the prohibited conduct”.

ix. Regulations

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

2.3 Covid-19 Competition Regulations

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

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

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

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

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

The Regulations *only apply to essential products* that are listed in Annexure A and B of the regulations.

The Regulations are effective from 19 March 2020 and only apply to a price increase that occurs during the period of the national disaster. The *consequences for parties found to have contravened*

the regulations are:

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

2.4 Relevant Policies

Over and above the legislative mandate, the Commission derives some of its mandate from the government policies and pronouncements that are made from time to time. Below are the most relevant:

2.4.1 The National Development Plan

The National Development Plan (NDP) is the vision and long-term plan for South Africa. It is the framework under which Government develops its policies and programs, geared at stimulating a social pact among South Africans for economic growth and job-creation, with the aim of eliminating poverty and reducing inequality by 2030.

Economic regulatory agencies such as the Commission have a critical role to play in this regard and are a critical partner in ensuring inclusive economic growth. The following are the specific areas or themes in the NDP wherein the Commission has a role to play:

- i. South Africa to increase its trade and export opportunities to growth, with a growth target set for 5% per annum.
- ii. Contributing to the lowering of the costs of transport and logistics and investing in remedies to address spatial divides.
- iii. Promote competition in regulated markets and to advance specifically identified sectors which have high growth potential.
- iv. Competition authorities consider proposing 'ethical pacts' to the business sector to cover abuse-of-dominance and restrictive practices.
- v. Engagement between the competition authorities and policy makers, particularly on the implications of regulation in certain sectors and for the alignment of sector prioritization.

2.4.2 The 7-Point Plan

During the State of the Nation Address of 2019, the President announced that the new administration will focus on 7 priorities to drive economic growth. As an economic regulatory agency, the Commission will support the implementation of the 7 Point Plan. Below are the key themes of this 7-point plan:

- i. Economic transformation and job creation
- ii. Education, skills and health
- iii. Consolidating the social wage through reliable and quality basic services
- iv. Spatial integration, human settlements and local government
- v. Social cohesion and safe communities
- vi. A capable, ethical and developmental state and
- vii. A better Africa and World

In this regard, the Commission will use its regulatory framework and policies to contribute the Economic Transformation and Job Creation pillar of this plan.

2.4.3 The New Growth Path

The New Growth Path (NGP) is South Africa's economic growth framework that seeks to place jobs at the center of economic policy. It is premised on the restructuring of the South African economy to improve its performance in terms of labour absorption as well as the composition and rate of growth. The NGP sets a target of 5 million jobs to be created by 2020 and sets out several jobs' drivers:

- i. Public investment in infrastructure
- ii. Target labor absorbing activities across main economic sectors- agricultural and mining value chains, manufacturing and services
- iii. Opportunities in new economies in knowledge and green economies
- iv. Investing in social capital in social economy and public services (this includes health, education and policing)
- v. Fostering rural development and regional integration through spatial development.

In addition to job drivers, the NGP identifies institutional and policy drivers which will move the economy towards growth, decent work and equity. Competition policy is one of the microeconomic policy drivers identified, as a tool to support an inclusive economy. The role identified in the NGP for competition policy and the areas of alignment are as follows:

- i. Targeting and addressing monopoly pricing on wage goods and basic industrial inputs
- ii. Review of administered prices to ensure that they do not increase above inflation without compelling reason
- iii. Targeted interventions to contain other volatile or rapidly rising costs and spikes e.g. healthcare or basic food items.
- iv. Job-creation and saving
- v. SMME Promotion
- vi. Economic development and poverty alleviation
- vii. Export-promotion

2.4.4 Industrial Policy Action Plan

The 10th iteration of the Industrial Policy Plan (IPAP) was issued in the 2018/19 financial year. The key objectives of the IPAP are for South Africa to achieve inclusive growth through manufacturing growth and beneficiation. In this regard, the IPAP seeks to bring about significant structural change in the economy, reverse the threat of de-industrialization and strengthen and diversify South Africa's manufacturing base through beneficiation. The IPAP considers competition policy as one of the important pillars of industrial development. The latest iteration of the IPAP does not have a competition chapter or a specific work program for the competition authorities. There are however policy overlaps within specific sectors, for which there is scope for alignment, particularly healthcare, agro-processing, telecoms, construction and infrastructure and energy.

Further, there are transversal areas in which competition and industrial policy alignment could be improved. In particular, the area of (public) procurement and the impact of standards-setting on competition are highlighted. The key themes of IPAP are summarized below:

Table 1: Industrial Policy Action Plan (IPAP)

Key themes of IPAP
1. Grow the economy.
2. Strengthen efforts to raise aggregate domestic demand - mainly through localization of public procurement and intensified efforts to persuade the private sector to support localization and local supplier development.
3. Step up South Africa's export effort
4. Create and reinforce policy certainty and program alignment.
5. Strengthen ongoing efforts to build a less concentrated, more competitive economic and manufacturing environment in which barriers to entry for new entrants are lowered.
6. Build a stronger system of industrial finance and incentives to support and secure higher levels of private sector investment in the productive sectors of the economy and grow exports.
7. Press ahead with technology-intensive, value-adding beneficiation projects which fully leverage SA's comparative resource endowment advantage into a global competitive advantage.
8. Optimize technology transfer and diffusion and, working closely with the Department of Science and Technology, further ramp up the effort to commercialize 'home-grown' R&D in key sectors.
9. Support the further strengthening of energy-efficient production and carbon mitigation efforts and measures in a manner that allows for sustainable adaptation by all the energy-intensive sectors of the economy
10. Understand, grasp and prepare for the foreseeable effects of the Digital Industrial Revolution and emergent disruptive technologies, collaboratively adapting SA's productive and services sectors to meet the challenges, including those relating to employment displacement.

2.4.5 Medium Term Strategic Framework (MTSF)

The Medium-Term Strategic Framework (MTSF) is designed by Cabinet to guide Government and its entities in its planning and to ensure the achievement of common outcomes at a national level. The 2014-2019 MTSF identifies 14 key outcomes which departments and entities must align with and pursue, as outlined below.

Table 2: Medium Term Strategic Framework (MTSF) Outcomes

The MTSF Outcomes
1. Decent employment through inclusive growth;
2. A skilled and capable workforce to support an inclusive growth path;
3. An efficient, competitive and responsive economic infrastructure network;
4. Responsive, accountable, effective and efficient local government;
5. An efficient, effective and development-oriented public service;
6. Quality basic education;
7. A long and healthy life for all South Africans;
8. All people in South Africa are and feel safe;
9. Vibrant, equitable, sustainable rural communities contributing towards food security for all;
10. Sustainable human settlements and improved quality of household life;
11. Protect and enhance our environmental assets and natural resources;
12. Create a better South Africa and contribute to a better Africa and a better world;
13. A comprehensive, responsive and sustainable social protection system; and
14. A diverse, socially cohesive society with a common national identity.

The Commission's strategy responds particularly to two of the MTSF Outcomes, namely,

- i. "Decent employment through inclusive growth"; and.
- ii. "An efficient, competitive and responsive economic infrastructure network"

2.5 The Commission's work in relation to National Masterplans

For over a decade now, the South African Government has been developing industry-specific "masterplans", which serve as a blueprint for the growth and development of the particular sector. These Masterplans are developed in partnership with a variety of stakeholders, including Industry and Labour; they have specific performance areas and targets towards which role-players must contribute.

As an economy-wide regulator, the Commission has a vested interest in the design and roll-out of sectoral Masterplans. Where possible, the Commission will participate in the development of the plans. As such, it is participating and contributing in the Digital Economy Masterplan process, led by the Department of Communications & Digital Technologies. The Commission has identified the digital economy as a priority area for the next five years and

anticipates that this is the new economic frontier for South Africa, as it is for other countries globally. As the economy shifts from the physical to the virtual, our enforcement and advocacy work will be geared at ensuring that there is greater inclusion and participation of small players, whilst abuse of dominance conduct is addressed and market concentration is minimized.

The Commission is also paying attention to the Agriculture Masterplan being developed by the Department of Agriculture, Forestry and Fisheries. Food and agro-processing will remain a priority sector of the 2020/21-24/25 strategy period- with a continued focus on unlocking barriers to entry and participation of black and emerging farmers.

Finally, the Department of Trade, Industry and Competition is currently developing masterplans for various value chains, including Poultry and Steel. The Commission also made contributions in crafting of the Sugar Masterplan. The Commission's work in the Automotive aftermarkets is greatly affected by the Automotive Masterplan, which is a compact between industry and Government on the manufacturing (upstream) segment of the value chain. Although concluded, the Commission aims to participate and contribute in future revisions of the Plan. Our experience in the sector points to the need for a total value chain strategy in the sector, including the aftermarkets.

3. INSTITUTIONAL POLICIES & STRATEGIES OVER THE FIVE-YEAR PLANNING PERIOD

In determining its priority sectors for enforcement, advocacy and market inquiries, the Commission draws extensively from the priority areas identified in the national economic policies, to ensure the alignment between the focus areas of the Commission and those of Government.

The Commission's strategic response to Government's policies and planning outcomes for the strategy period 2020/21-2024/25 includes the following:

- a) Considering socio-economic outcomes in case analysis, particularly in cases which have a large impact on the price of goods, public access to resources and market entry for small firms and historically disadvantaged individuals;
- b) Designing conditions and remedies which address employment, market concentration and other socio-economic challenges, and monitoring compliance thereof;

- c) Expanding the opportunities for South African participation in world markets, in line with the promotion of economic growth using enforcement, exemptions and merger instruments;
- d) Continued advocacy and enforcement in regulated sectors to drive competitive conduct;
- e) The Commission's selection of its priority sectors to include those with high-growth and jobs potential;
- f) Considering the linkages between trade policy and competition policy in its work. This includes ensuring alignment of the Commission's priority sectors to IPAP-designated sectors and pursuing Market Inquires in economically strategic sectors;
- g) Collaborations and partnerships to be pursued with other state actors on economic policy;
- h) Continued advocacy and training work with municipalities, trade unions and the general public, particularly on bid-rigging and competition awareness.

4. RELEVANT COURT RULINGS

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

Table 3: Key Court Rulings 2014/15 -2019/20

Item	Case	Contribution to Jurisprudence
Abuse of dominance		
1.	Competition Commission v Media 24	Average total cost (ATC) plus intention has no place in the scheme of section 8(c) of the Act. Average Avoidable Cost (AAC) may be regarded as an appropriate cost benchmark for a predation case based on section 8(c) of the Act
2.	Competition Commission v Computicket	Likely foreclosure test, i.e. foreclosure may be actual or potential.
3.	Sasol v Competition Commission	A price that is significantly less than the economic value falls short of being an excessive price.
4.	Uniplate v Competition Commission	The test of likely foreclosure also requires factual evidence of that likely foreclosure.
Cartel		

5.	Bank of America Merrill Lynch & Others v Competition Commission	The Competition Appeal Court confirmed that South African competition authorities have jurisdiction to prosecute international cartels which have an effect within South Africa
6.	Competition Commission v Primedia (Pty) Ltd & Avusa Limited	Element of Implementation required for collusive agreements entered into before the Competition Act came into force.
7.	Competition Commission v Omnico (Pty) Ltd & Coolheat Cycles Agencies	Passive participation in cartel conduct / distancing oneself from conduct.
Cartel - Initiation		
8.	Omnia Fertiliser Limited v Competition Commission	Restatement of Yara principles - valid referral of complaint on the basis of a tacit initiation.
9.	Power Construction	Validity of industry wide initiation. Re-affirm the principles in Woodlands that it is permissible to add a firm to an existing complaint, and Yara/Omnia principles that an initiation does not require any formality.
10.	Mondi Limited & Another v Competition Commission	Access to the record of the decision to initiate pending review.
Leniency		
11.	Blinkwater Mill (Pty) Ltd v Competition Commission	Confirmation of Commission's discretion in applying its Corporate Leniency Policy.
12.	Competition Commission v Allens Meshco	A marker and leniency applications are separate and distinct from one another.
Single Economic Entity		
13.	Delatoy Investment v Competition Commission	A "group of firms" may constitute a "firm".
Characterization		
14.	Dawn Consolidated Holdings (Pty) Ltd and Others v Competition Commission	Development of the principle of characterization.
	Africa Pest Prevention CC v the Competition Commission	Characterization on the basis that an individual representing two different firms cannot collude with herself.
Administrative Penalty/Settlement		
15.	Competition Commission and ArcelorMittal South Africa Limited	Highest penalty imposed on a single firm in a settlement agreement.

16.	Competition Commission v Life Healthcare Group & Joint Medical Holdings Ltd	Highest penalty imposed for failure to notify and prior implementation of a merger.
17.	School Uniforms	The Commission entered into settlement agreements with major school groups which undertook to conduct their school uniform procurement processes in a fair and competitive manner.
18.	Competition Commission v Law Society of the Northern Provinces	Consent Agreement in terms of which the law society agreed to repeal its anti-competitive rules and guidelines.
19.	Competition Commission v Vodacom	Consent Agreement in terms of which Vodacom agrees to reduce its retail data prices, zero-rating public sites, provide access to free basic data and enhance data pricing transparency to its customers.
20.	Competition Commission v Wesgrow Potatoes (Pty) Ltd and HZPC Holland B.V	Settlement Agreement provided a remedy in terms of which seed growers will be able to access the Mondial seed potato variety.
21.	Competition Commission v Foskor (Pty) Ltd	Tribunal confirmed that a consent agreement may be amended by the Commission and a respondent due to changed market circumstances. However, such an amendment requires confirmation by the Tribunal.
Merger Notification		
22.	Competition Commission v Hosken Consolidated Limited and Tsogo Sun Holdings Ltd	Once a firm has acquired control over another firm in any of the instances contemplated by section 12(2)(a) – (g), the crossing of a further “bright line” does not result in the acquisition of control it did not have before.
23.	SOS SABC & Multichoice v Competition Commission	Confirmation of Commission’s powers to investigate the notifiability of mergers.
Merger control – conditions		
24.	Joyson/Takata merger	Merger control cannot be used to preserve the Commission’s ability to enforce its cartel prosecutorial functions, in unique circumstances such as when the target firm is likely to exit the market absent the merger.
Mergers – Public interest		

25.	Sibanye / Lonmin merger	Assessment of merger specific retrenchments – confirmation of Momentum principles, in that a rational process has to be followed in order to determine the number of potential job losses.
Mergers - Analysis		
26.	Imerys SA (Pty) Ltd and Andalusite Resources (Pty) Ltd v Competition Commission	If a merger raises a substantial prevention or lessening of competition, the choice whether to prohibit or approve the merger with conditions is an exercise of true discretion by the Tribunal.
Civil claims for loss or damage		
27.	Premier Foods (Pty) LTD v Norman Manoim NO, Competition Commission and Others	Victims of collusive conduct may obtain certificates to institute civil claims for loss or damage if relevant firm has been cited and there is an adverse finding against such firm.
Access to information		
28.	Group 5 v the Competition Commission	The term “any person” in Commission’s Rule 15 includes a litigant, and a litigant is entitled to access the Commission’s record, save for any documents that are restricted ¹ .
29.	Competition Commission v Standard Bank (ZACC)	Commission Rule 15 which is a public access right does not apply to requests for documents in Tribunal proceedings, as such requests must be dealt with using Tribunal Rules.
Tribunal Rules		
30.	Goodyear v the Competition Commission	The Tribunal’s rules do not alter substantive law. They remain subordinate to the Act. Tribunal’s rules do not have the legislative standing to negate an agreement reached between the Commission and the complainant to extend the period of investigation in terms of the Act.

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

PART B: SITUATIONAL ANALYSIS

5. EXTERNAL ENVIRONMENT ANALYSIS

5.1. Economic Outlook

South Africa's economy had already started contracting in the last quarter of 2019, before the onset of the global COVID-19 health crisis emerged in the first month of 2020. The necessity to contain the spread of the virus globally and within nations has led to widespread restrictions of the movement of people between nations and lockdowns of national economies. South Africa has been no different, with a State of Disaster being declared on 15 March, followed by a five-week hard lockdown from 27 March which saw all but essential services cease operation. The result is that global demand has collapsed, pushing the world into a global recession where the current IMF expectation is that global GDP will shrink in the order of 5% in 2020. Forecasts for South Africa are being continually revised, but a contraction in the region of 7% is expected, with a potential to put 1.5m people out of work.

The initial panic and uncertainty saw stock markets collapse and a large depreciation in emerging market currencies as investors fled to secure more secure assets. The Rand depreciated by circa 30% from the end of February through to late April. Global spikes in demand for hygiene and healthcare products needed to contain and treat the virus far outstripped supply, resulting in widespread shortages. This has brought into focus the inadequacy of healthcare systems in many countries, and particularly the ability to produce essential medical supplies domestically as supply from other countries turned inwards. Panic-buying and hoarding of dry foodstuffs, along with export restrictions on essential foodstuffs in some countries saw some initial food price inflation, worsened by Rand depreciation in South Africa. These factors provided the economic conditions for widespread price gouging, which has been the immediate challenge for the Commission in response to the crisis. It has also required an urgent coordinated response on healthcare and debt management, necessitating numerous exemptions from the Competition Act to facilitate this.

Gradually more stability has returned to markets as greater certainty has emerged about the virus itself and its likely economic impact. This has seen stock markets recover, more stability in food prices and some reversal in the fortunes of the Rand. Price gouging has become less of a concern, with a shift now to rebuilding the economy. That process has begun with economies starting to emerge from hard lockdowns, allowing much more economic activity to resume whilst trying to contain the health risks. However, it is apparent that economic activity is likely to see disruptions throughout 2020 as outbreaks close commercial operations and individuals go into quarantine. The

drop in local and global demand will see contraction in 2020 and most likely 2021, with full recovery to growth expected only in 2022. Most governments including our own have resorted to stimulus packages to try contain widespread company failures and large job losses. This in turn will see increasing government debt levels, exacerbated by lower revenue receipts. The slow growth in the South African economy pre-COVID and existing government debt challenges has limited the size and scope of a stimulus package domestically.

The impact of COVID-19 on different sectors of the economy has varied considerably, albeit that going forward all sectors will suffer from reduced demand due to the local and global contraction. Essential services such as healthcare, grocery retail and online access/services were more resilient in the early stages as they remained open and demand consistent. This included the upstream value chains in food & agro-processing, medical supplies and data infrastructure. Other sectors such as retail, non-essential manufacturing and mining have all suffered a once-off liquidity shock from closure for a few months which will have pushed many into closure and have a lasting effect on others. The liquidity crisis was contained to some extent by payment holidays, debt forgiveness and rental reductions facilitated through the exemptions to banks & retail property owners. Finally, some sectors are likely to be impacted for a much longer period due to extended closures and customers trying to limit their exposure to one another even after lockdown restrictions are lifted. These include air transport, tourism and personal services. The global and local recession also means that the impact will be felt on both inward and export focused sectors of the economy. In fact, travel and tourism is likely to feel the dual effect of reduced demand from local and global travellers.

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

The liquidity crisis created by hard lockdowns and emergence into a deep recession will result in considerable business failure. It is expected that SMEs are likely to bear the brunt of such failure given their lack of access to capital, but it is also likely that some large companies will collapse due to prior weaknesses or in sectors particularly hard hit. This is likely to result in increased concentration in the economy and distressed mergers aimed at consolidation. However, merger activity in general is likely to initially reduce as fewer companies may have the cash and appetite for acquisitions.

The economic hardship created by the crisis is also likely to result in an escalation in the abuse of market power, both by dominant buyers and a sellers, as dominant firms look to use that market

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

The threat of widespread business failure and the need to rebuild the economy is also likely to see a continued focus on sectoral recovery plans from government. It is already evident that industries that are looking at this sectoral approach are contemplating forms of cooperation or coordination that would ordinarily fall foul of competition law. This will result in an escalation in the requests for exemptions to permit coordination which will require careful consideration as to whether coordination offers a better outcome than company failures, and how that can be contained such as to not result the emergence of cartel activity. In particular sectors, such as airlines or steel, this may require competition authorities to become intimately involved in sectoral restructuring efforts beyond simply the granting of exemptions. The focus of such efforts will be around how to achieve a more competitive industry in the rebuilding process rather than simply facilitating consolidation.

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

The shift to online commerce and services was given a huge impetus by lockdown which is likely to continue given the desire by consumers to retain social distancing and a new work-from-home culture. This step change in demand for online provides an opportunity for new entry and greater competition, but also the threat that entrenchment strategies of leading online firms may tip the markets in their favour. This applies to both the infrastructure layer as well as the online eCommerce, platforms and service layer. Competition authorities will need to be far more proactive and rapid in their response to the online economy if they are to tip the balance in favour of greater competition and not less. This will require proactive enforcement on entrenchment strategies and removing entry barriers to new players. It will also require a broader engagement on other regulatory interventions such as data access that will complement enforcement and shift the

balance to greater competition.

The response of different markets to the crisis also provided some indication of the health of different parts of the economy from a consumer access, participation, market resilience and competition perspective. For instance, the lack of domestic depth in medical supplies (incl. essential chemicals) has raised questions as to how these industries can be rebuilt. The lack of resilience of SMEs and the risk of 'too big to fail' firms in multiple industries has similarly raised questions around the market structure we have inherited and the need to alter that. Similarly, the fragility of infrastructure and the inequity of services to lower income households have exposed failures in markets such as transport and online access. The cracks within the economy exposed by the crisis provide a starting point for proactive efforts by the competition authorities to improve competition and participation through for instance market inquiries but also advocacy efforts to improve regulation and legislation. This should be a priority if the economy is to become more equitable and resilient to future crises.

5.1.1. Impact of Covid-19 pandemic on Merger Activity

The COVID-19 pandemic is expected to have a significant impact on both the pace of merger activity as well as the types of transactions that will be prevalent in the 2020/21 financial year. The pace of merger activity has slowed significantly since the start of the 'hard lockdown' on 27 March 2020. Merger filings have decreased by 60% from 66 in the first quarter of 2019/20 financial year to 26 at 26 June 2020.² The trend is expected to persist for the rest of the financial year due the continued uncertainty associated with the effect of COVID-19 on economic activity.

The Commission also expects to see an increase in 'distressed' or failing firm mergers due to the significant negative effect of the COVID-19 pandemic on demand and the disruptions to global supply chains. In the first quarter, the Commission has already assessed four mergers in which firms have claimed financial distressed worsened by the COVID pandemic. The Commission also understands that there has been a significant rise in the number of business rescue applications. As at 02 June 2020, CIPC already reported 20% more business rescue applications than in the entire 2019 calendar year.³ The upsurge in failing firm mergers will also place increased demands on the Commission's resources as firms in financial difficulty usually request expedited investigations to stave off business rescue. In situations where these investigations raise competition concerns, they can be complex, requiring a rapid assessment of less anticompetitive

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

³ Communication with CIPC. 02 June 2020.

alternatives and balancing this against public interest benefits, such as savings jobs and retaining productive capacity in the economy.

Internationally, competition authorities have also indicated that they expect an increase in foreign acquisitions as well-capitalized international firms look to acquire firms that may be in short-term financial distress but have good fundamentals and solid long-term growth prospects. The European Commission (EC) recognized early on that the pervasive economic effect of the pandemic may place industrial and corporate assets under stress, making them vulnerable to foreign and even hostile takeovers. In response, the EC introduced a regulation on the screening of foreign direct investment aimed at preserving EU assets particularly in areas such as health, medical research, biotechnology and infrastructure that is essential to security and public order.⁴ In April 2020, India also amended its foreign direct investment policy to increase scrutiny of all FDI deals from neighbouring nations, extending the scope of these protections to all sectors and now including acquisitions from Chinese firms.⁵ Internationally, there is thus an indication of greater scrutiny of international acquisitions for competition (including future competition) and national security reasons. The South African Commission may see a similar trend of increased international acquirers as firms look for value in emerging markets more broadly.

Lastly, with respect to merger conditions monitoring, the Commission expects an increase in conditions-related investigations, particularly on potential breaches of employment and supply commitments made conditional to the approval of mergers. In the first quarter of 2020, the Commission has commenced investigations into four firms that have ostensibly effected retrenchments in response to the COVID-19 pandemic. The Commission is also evaluating the changing circumstances of a national retailer that entered into supply commitments with an upstream manufacturer which it is unable to honour ostensibly due to increased financial precarity as a result of lockdown trading restrictions. With respect to employment conditions in particular, the merits of each case will have to be considered carefully in order to assess whether the retrenchments have taken place for justifiable operational reasons and whether firms could have taken reasonable steps to avoid job losses, including taking advantage of the various support and relief mechanisms put in place by government.

⁴ European Commission. 25 March 2020. *Guidance to to the Member States concerning foreign direct investment and free movement of capital from third countries, and the protection of Europe's strategic assets, ahead of the application of Regulation (EU) 2019/452 (FDI Screening Regulation)*. Available at https://trade.ec.europa.eu/doclib/docs/2020/march/tradoc_158676.pdf

⁵ Parkin, B. 18 April 2020. *India moves to curb Chinese corporate takeovers*. Financial Times. Available at <https://www.ft.com/content/ad3f84b0-fb75-4588-97e8-4a657ad67883>

5.1.2. The Economic Policy Framework

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

In September 2018 President Cyril Ramaphosa announced an economic stimulus and recovery plan aimed at igniting economic activity, restoring investor confidence, preventing further job losses and creating new jobs, and addressing some urgent challenges affecting the conditions faced by vulnerable groups. The measures announced in the plan give priority to areas of economic activity that will have the greatest impact on youth, women and small businesses and that will speedily unlock the country's short and long-term growth prospects. The five broad areas set out by the plan are: 1) implementation of growth enhancing economic reforms; 2) reprioritization of public spending to support job creation; 3) the establishment of an Infrastructure Fund; 4) addressing urgent and pressing measures in education and health; and 5) investing in municipal infrastructure improvement.⁶

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

- a) reduce the cost of doing business, to boost exports and to make South African industry more competitive by reviewing various administered prices, starting with electricity, port and rail tariffs;
- b) expand procurement from small businesses and cooperatives, as well as using trade measures within WTO rules to protect poultry and other sensitive sectors and as well as a vigorous crackdown on illegal imports;
- c) provide a stimulus package to support black commercial farmers with the aim of increasing their entry into food value chains through access to infrastructure like abattoirs and feedlots; and

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

- d) initiate the process for the allocation of high demand radio spectrum to enable licensing and unlock significant value in the telecommunication sector, increase competition, promote investment, and reduce data costs which will provide relief for poor households. Progress has been made in this regard, with the July 2019 release of the policy directive for spectrum licensing⁷ being followed by the release of the Information Memorandum by the Independent Communications Authority of South Africa (ICASA) during November 2019, providing an overview on the licensing process for the assignment of high demand spectrum.⁸

The aforementioned interventions align with some of the NDP objectives over which the Commission can have an impact on, such as increasing trade and export opportunities; promoting competition in regulated markets and advancing sectors with high growth potential; as well as addressing issues related to abuse-of-dominance and restrictive business practices, amongst others. The National Development Plan Five Year Implementation Plan provides a medium-term roadmap which will guide the realization of the 2030 NDP objectives. It will also form the basis for developing five-year institutional plans that align with the NDP goals.⁹

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

- a) modernising network industries such as transport, energy, water, and communication in order to promote competitiveness and inclusive growth;
- b) enhancing competition as a lever for inclusive growth and economic transformation by encouraging the growth of smaller firms, the entry of new firms, and growth in innovation and productivity. This requires reducing anti-competitive practices and barriers to entry in order to facilitate the entry of SMMEs and improve competition amongst incumbent firms;
- c) adopting deliberate policy measures and interventions that can bias economic growth towards employment-intensive sectors such as agriculture and services sectors such as construction, retail, and tourism;

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

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

⁹ Department of Planning, Monitoring and Evaluation, Revised Framework for Strategic Plans and Annual Performance Plans and Concept Note on the NDP Five Year Implementation Plan, October 2018

- d) implementing focused and flexible industrial and trade policy to promote competitiveness and facilitate long-run growth; and
- e) growing exports and improving export competitiveness, which requires better integration into global and regional value chains.

Following the announcement of the government's national budget in February 2019, the MTBPS was tabled in October 2019 detailing government's fiscal goals and projections for the economy, as well as setting out measures to boost the economy, narrow the fiscal deficit and raise the quality of spending, particularly on large infrastructure projects. The MTBPS covers a package of economic reforms largely focused around balancing the budget, promoting investment and economic growth, stabilising SOE's and improving spending efficiency and reducing waste.¹⁰

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

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

The MTBPS acknowledges that several large SOEs are struggling due to governance failures, poor operational performance and unsustainable debt levels. While government is on board to assist these entities, as it has increased spending to meet its obligations for guaranteed debt, a programme of reforms is being carried out to strengthen their governance and operations. In terms of managing the Eskom risk and ensuring a financially viable electricity utility, the MTBPS states that faster progress is required to effect separation of Eskom into three entities, while the reduction of Eskom's debt burden will only be considered once it cuts costs and starts unbundling. Government has made

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

provisional support of R49 billion available in 2019/20, R56 billion in 2020/21 and R33 billion in 2021/22. Other SOE's, including South African Airways (SAA), the South African Broadcasting Corporation (SABC), Denel and South African Express, have further added to spending pressure on government where these entities have amounted to an expenditure of R10.8 billion in 2019.

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

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

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

In conclusion, the South African economy faces many challenges with regards to poverty, inequality and rising unemployment which has resulted in declining economic growth. For South Africa to see a turnaround in its medium-term economic outlook and an improvement in expected long-run growth, the MTBPS states that an increase in state capacity and economic competitiveness is required. The policy statement acknowledges that both macroeconomic and microeconomic policy have a role to play in ensuring the structure of the economy promotes competition and facilitates access. Low inflation and sustainable fiscal policy serve to lower the cost of borrowing and support investment, while microeconomic policy ensures an efficient, well-regulated business environment that facilitates

investment, innovation and the creation of new businesses. The Commission is therefore well-placed to drive the economy forward and play an active role in the formulation of economic policy, particularly in relation to creating an environment of inclusive economic growth.

5.1.3. Global and Regional Competition Policy Developments

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

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

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

At the regional level, South Africa signed the Tripartite Free Trade Area (TFTA) in July 2017. Negotiations followed to create an African Continental Free Trade Area (ACFTA) by 2017 where it was hoped that all 54 African Union states will become members of the free trade area. The operational phase of the ACFTA was subsequently launched during the 12th Extraordinary Session of the Assembly of the African Union in Niamey, Niger on 7 July 2019. The main objectives of the ACFTA are to create a single continental market for goods and services, with free movement of

businesspersons and investments, and thus pave the way for accelerating the establishment of the Customs Union. It will also expand intra-African trade through better harmonization and coordination of trade liberalization and facilitation and instruments across the RECs and across Africa in general. The ACFTA is also expected to enhance competitiveness at the industry and enterprise level through exploitation of opportunities for scale production, continental market access and better reallocation of resources. The ACFTA will be governed by five operational instruments, i.e. the Rules of Origin; the online negotiating forum; the monitoring and elimination of non-tariff barriers; a digital payments system and the African Trade Observatory. Phase 2 of the TFTA negotiations, which include policies of investment, competition and intellectual property rights is still ongoing.

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

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

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

We foresee that International Relations in the times of the Covid 19 pandemic will be taking a different format for the foreseeable future, with webinars and teleconferences already replacing physical conferences and meetings. Further, continued competition enforcement and collaboration with other authorities at the regional and international level to tackle challenges is crucial, particularly under crisis. During times of the Covid-19 crisis, and also the post crisis, there is an increasing need for competition authorities to reinforce advocacy efforts and law enforcement, which call for closer

relationships with other authorities.

5.2. Internal Environmental Analysis

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

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

5.2.1. Case Pipeline Management

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

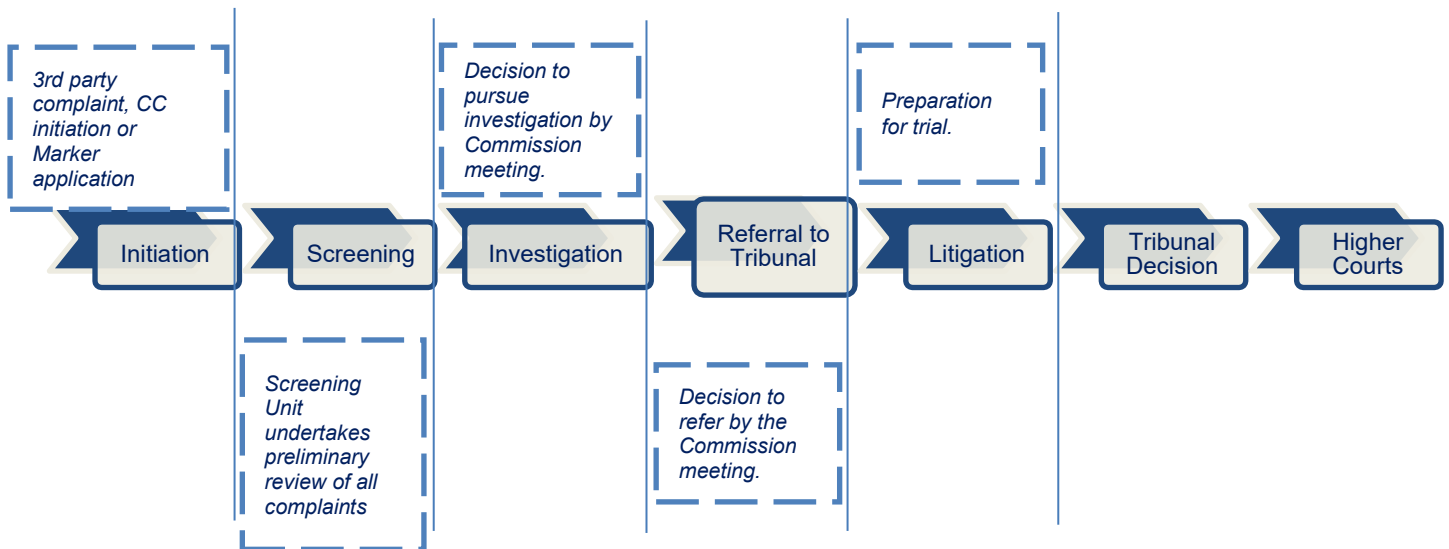
Following preliminary investigations (screening), it was established that over half of the complaints received were not related to Covid19 price hikes or to the regulations, but rather, often, general enquiries about the lockdown. Of the balance of relevant cases, the Commission's investigation and prosecutorial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

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

Table 4: Covid19 Complaints Received Since declaration of National Disaster

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

Figure 2: Case Pipeline Process- Enforcement



5.2.2. Impact of Covid-19 on Corporate Services

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

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

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

The Commission has also commenced the development of an enhanced Mental Health and Employee Welfare policy, to mitigate and manage the risks and psycho-social challenges due to the impact of Covid-19. Lastly, all the necessary employee training and reskilling in relation to the above is being undertaken, in an effort to balance the productivity needs of the organization, and the overall welfare and safety of the employees.

5.2.3. Information Communication Technology (ICT) Environment

A comprehensive review of the Commission's ICT environment was completed in the 2016/17 financial year. The aim of the review was to make proposals for the modernization of the Commission's IT infrastructure and services to effectively enable the work of the organization. The review focused on assessing the adequacy and effectiveness of the current ICT, specifically the Infrastructure Architecture, the Platforms/Software Infrastructure and Internal Security. The review found that the Commission's ICT environment consists of disparate systems that are not integrated; the core business system does not support the business vision and strategic objectives; does not support the people nor the process; the CSD is inadequately capacitated; and IT Governance needs to be improved. The implementation of a fully integrated, efficient and adequate ICT environment was recommended that:

- embodies standardization, ensuring work can be conducted uniformly, but efficiently;

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

The first phase of implementation was scheduled for commencement in the 2016/17 financial year and subsequent phases were due to be completed during 2019/20, in order to give effect to the recommendations. The project was not implemented to financial constraints. Considering such constraints, the approach that will be adopted by the Commission is to focus on providing basic tools-of- trade to support the ICT environment and implement upgrades on some of the current dated systems in a phased approach depending on resource availability.

5.2.4. Organizational Structure

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

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

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

PART C: OUR STRATEGIC FOCUS

6. VISION

A Growing, Deconcentrated and Inclusive Economy.

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

7. MISSION

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

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

8. OUTCOME ORIENTATED GOALS

The Commission has identified three strategic goals which it aims to achieve in order to realize its vision of contributing to the attainment of a growing and inclusive economy. These are articulated below:

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, with considerations of addressing 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.

9. 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 arises to the Commission's target stakeholders because of the achievement of its strategic goals. The 12 outcomes for the 2020-2025 period are captured in the table below.

Table 5: Commission Outcomes 2020-2025

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

10. VALUES

For the 2020 – 25 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 6: Values of the Commission

<i>Values</i>		<i>Descriptor</i>
<i>i.</i>	<i>Communication</i>	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.
<i>ii.</i>	<i>Ownership</i>	The ability to commit self to task(s) at hand, accepts responsibility for own actions and decisions and demonstrates commitment to accomplish work in an ethical and cost-effective manner.
<i>iii.</i>	<i>Making a Difference</i>	The ability to consistently deliver required business results; sets and achieves realistic, yet aggressive goals; consistently complies with quality, service and productivity standards and meets deadlines; maintains focus on Commission's goals.
<i>iv.</i>	<i>Professionalism</i>	An ability to demonstrate good work ethic, respect, integrity and empathy.
<i>v.</i>	<i>Employee Welfare</i>	The ability for employees to achieve full potential whilst maintaining a healthy work-life balance.
<i>vi.</i>	<i>Teamwork</i>	The ability to work cooperatively and effectively with others to achieve common goals. Participates in building a group identity characterized by pride, trust and commitment.
<i>vii.</i>	<i>Efficiency</i>	The ability to measure how well resources are utilized (i.e. means and manner) in pursuit of quality results.

9.1.1 The Prioritization of Sectors

'Prioritization' refers to the Commission's approach of identifying and selecting strategic sectors in which it will focus its enforcement and advocacy work. This principle was adopted in 2008 and has

served the organization well with regards to its enforcement and advocacy initiatives. The selection of priority sectors has allowed for effective allocation of resources and it has ensured the alignment between the focus areas of the Commission and those of Government. The identification and defining of priority sectors also benefited the Commission in its relationships with partners and stakeholders, allowing for greater collaboration and synchrony on economic policy. Prioritization has also allowed for targeted impact of the Commission's work in significant areas of the economy.

The Commission's Prioritization Framework is based on several factors, namely: (i) the impact on the consumer welfare for low-income earners; (ii) the prevalence of anti-competitive conduct or outcomes in a sector or industry; and (iii) government's economic priorities as captured in economic policy. In this strategy period, the Commission has also considered markets which are concentrated and/or have low levels of participation (inclusion).

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

Table 7: Priority Sectors

Sector	Rationale	Sub-sectors
<p>1. Agriculture, Food & Agro-processing</p>	<p>The sector continues to be a priority due to its significance on the lives of South Africans, particularly the impact of high prices on the poor. The sector has huge potential for job creation and SME participation but is characterized by developing and legacy competition concerns, with increasing concentration across the value chain in contrast to its potential to create more participation. The Commission intends to address issues of access (entry) and participation in the value chain, with a focus on fresh produce markets, retail and processing levels.</p> <p>The issue of land (agriculture) and economic participation will also be a focus area. The Covid-19 crisis has also exposed areas of dependency and weakness in certain food markets, such as the abuse of small suppliers and inequitable rebates and prices to smaller retailers that service poor and rural communities. The Commission will prioritize the enforcement of the new amendments on buyer power and price discrimination in this sector, which is also designated by the Minister for the application of buyer power provisions. The objective is to ensure a better distribution of risk and profit in the supply chain to support SME participation, and the reduction of cost structures that increase pricing to poorer communities.</p>	<ul style="list-style-type: none"> • Meat (red meat, poultry, fish) • Fresh Produce (Fruits & vegetables) • Dairy value chain • Breads and cereals • Basic and/or other “essential” food products
<p>2. ICT & Digital Markets</p>	<p>Digital markets entail technology-driven businesses, including platform-based business models. These are typically multi-sided markets with high network effects and economies of scale of such size that it renders competition issues more complex. Digital markets are characterized by high rates of investment and innovation, which lead to rapid technological progress in the sector, and to increased disruptive innovation, in many other markets that adopt to technological changes.</p> <p>The increasing prominence of the digital economy requires competition authorities to devote more time in understanding the dynamics emerging, and to regulate in a manner that strikes a balance between supporting the efficiencies and consumer benefits often arising whilst addressing anti-competitive outcomes such as</p>	<ul style="list-style-type: none"> • ICT infrastructure • Data • Broadcasting • Platforms, Big Tech, FinTech & E-commerce • Infant industries

Sector	Rationale	Sub-sectors
	<p>concentration and abuse of dominance. The competition issues arising in digital markets intersect with other regulations (e.g. privacy laws, intellectual property, financial regulation, tax, labour etc.) and thus require a coordinated approach among regulators. The Commission will be contributing to the policy discourse in regulating these markets whilst also monitoring for anti-competitive conduct. A market inquiry may be an ideal tool to use to probe this sub-sector.</p> <p>South Africa's ICT market is highly concentrated, both at the wholesale and retail levels. The Commission has established that data (connectivity) prices are very high, particularly for mobile prepaid data. The data inquiry identified reforms to improve access and competition which need to be implemented urgently. The COVID-19 crisis brutally exposed the consequences of inequity in access as schools needed to resort to online learning and employees shifted to working from home. The Commission will work with DTIC, DTPS and ICASA to bring about the reforms required.</p> <p>There is also lack of competition in subscription television broadcasting services, with one dominant player in the market. The market remains concentrated, even after issuing of various licenses by the sector regulator. As such, the Commission will continue its focus on the ICT sector.</p>	
<p>3. Energy</p>	<p>The South African energy sector is highly regulated and is currently the subject of policy reforms in most of its sub-sectors. The problems at Eskom exposed the weakness in the energy sector due to its reliance on a single operator, reducing overall resilience in the provision of power. The Commission will be monitoring the unbundling of Eskom and the effect of the restructuring on the market. Competition issues of focus will also include the ability of IPPs to access the grid and distribution channels, the relationships between Eskom, Independent Power Producers and municipalities. Further, pricing dynamics in the electricity market/value chain will be monitored. Other areas within the energy sector the Commission is prioritizing is Gas, including ensuring implementation of LPG market inquiry recommendations.</p>	<ul style="list-style-type: none"> • Renewables/ IPPs • Electricity IPPs • Gas (LPG, Natural Gas)

Sector	Rationale	Sub-sectors
4. Transport & Automotive	<p>A well-integrated and efficiently functioning transport system is key to enabling and unlocking economic growth, and an important mechanism in fighting poverty, given its financial significance on poor households. The South African transport system (roads, railway and ports) is diverse and largely regulated by SOEs, national, provincial and local governments. The sector is characterized by inefficiencies due to apparent lack of coordination between different spheres of government. The recommendations arising from the market inquiry into Public Passenger Transport will be important in addressing some of the challenges in the transport network.</p> <p>Ongoing investigations into Ports and Rail will also continue, with the aim of addressing behavioural and legacy issues arising in these sub-sectors. The Commission will also continue its work in the automotive sector during the strategy period. The work in automotive aftermarkets work is a result of more than a decade of complaints from the public regarding parts distribution, retail and service/repairs of vehicles. Component manufacturing will also remain a focus area.</p> <p>The airline industry has been devastated by the COVID-19 travel restrictions with both SAA and Comair entering business rescue and SA Express closing shop. This will fundamentally reshape the domestic airline market with the prospect of far less competition in future. The same is likely to be the case with regional and international travel as airlines globally either fail or reduce capacity and routes. The Commission needs to be intimately involved in the restructuring and regeneration of this industry if it is to become competitive as it emerges from the crisis.</p>	<ul style="list-style-type: none"> • Automotive Aftermarkets: services & repairs, short-term insurance • Automotive Components • Ports & Rail • Public Passenger Transport
5. Construction services, Property & Infrastructure	<p>In the recent past, the Commission undertook extensive work in the construction sector in relation to anti-competitive conduct that manifested prior to 2010 FIFA world cup construction projects. The Commission has succeeded in prosecuting firms for their anti-competitive conduct in this sector. The government also prioritized this sector and has successfully reached pro-transformation settlement agreements with various market participants. However, competition problems persist, with the Commission still receiving complaints relating to conduct in the various sub-sectors of construction services. The Commission also continues to investigate several</p>	<ul style="list-style-type: none"> • Construction services • Commercial & Retail Property • Residential estates • Property finance • Built Environment

Sector	Rationale	Sub-sectors
	<p>bid-rigging complaints, and this continues to be a focus for advocacy and enforcement action. However, this is an industry which is currently in the doldrums and is likely to remain suppressed unless public finance can stimulate infrastructure development. Lower occupation levels for commercial and retail property will most likely see limited new private sector work.</p> <p>During this period, the Commission will also pay attention to Built Environment professionals: their role in construction projects and the role of the Councils with regards to promoting entry and participation.</p> <p>Commercial and retail property have come under considerable pressure during the Covid-19 lockdown as they were forced to reduce and defer rental payments by tenants that were not operating. It is likely that there will be many retail and commercial casualties, resulting in low occupancy levels and even some mall closures. The covid crisis also exposed other concerns in this sector, with rental increases that have far outstripped inflation and a system of syndicated development which results in the same companies having ownership in each other's properties. Financing structures that result in a lack of transformation and participation are additional longstanding concerns. The Commission will need to exert careful oversight of this sector, especially given it has received a temporary exemption and also benefits from the banking exemption too. Another area of focus in the 5-year period will be residential estates with regards to the rules and practices of role-players, which may have competition implications, against which the Commission has received many complaints.</p>	<p>Professionals</p> <ul style="list-style-type: none"> • Bid-rigging
<p>6. Banking & Financial Services</p>	<p>The banking and finance sector have the potential to contribute towards greater inclusion of historically marginalized groups – by extending access to banking and insurance services, by helping to promote and mobilize household savings, and by easing broader access to credit. The sector also has a crucial role as a provider of potentially dynamic intermediate services. The Commission will continue its enforcement focus in addressing contraventions of the Act which arise, including the banking cartel relating to foreign exchange market.</p> <p>The Commission will also follow policy reforms in the national payments system to identify competition issues</p>	<ul style="list-style-type: none"> • Banking • Property finance • Insurance • Audit Profession

Sector	Rationale	Sub-sectors
	<p>which can be advocated for. Equally, reforms that are underway in the Audit Profession which have a competition element will be monitored.</p> <p>The banking sector is playing a crucial role in the response to the Covid-19 crisis through an exemption which provided for coordinated debt relief and payment holidays. It will also need to play a role in refinancing businesses. However, the banks and their private equity arms may also end up taking ownership of numerous businesses or their assets as companies fail to repay bank creditors. This may itself create concerns over concentrated and coordinated ownership in the economy which the Commission will need to ensure does not result in adverse outcomes.</p>	
<p>7. Manufacturing</p>	<p>The manufacturing sector is important for the South African economy given its contribution towards the GDP and the number of employees that the sector absorbs. Manufacturing includes Intermediate Industrial Inputs (IIP) used to manufacture different outputs in various sectors. The Commission’s study into concentrated markets revealed that the sector is highly concentrated. The sector is likely to go through a period of further concentration as a deep recession domestically reduces local demand and a global recession reduces export demand. Weak global demand is also likely to see a rise in dumping by international firms as a price war erupts amongst competitors trying to retain capacity utilization. This will add pressure to the domestic industry and will see firms fail.</p> <p>The impact of the pre-crisis economic woes and the massive impact of the crisis, sees a number of value chains in considerable distress, including sugar and steel. The DTIC is developing masterplans for these sectors which seek to consolidate and rebuild them into more sustainable businesses. The Commission will prioritize engagement with the masterplan process in order to ensure that what emerges are more competitive industries.</p> <p>During this strategy period, greater focus would be in the value chains of various industries in the broader manufacturing sector, particularly where there is high concentration. A market inquiry may be an ideal tool to</p>	<ul style="list-style-type: none"> • Chemicals, pesticides and agrochemicals • Forestry/paper/pulp/corrugated packaging • Steel/ fabricated metals • Plastic

Sector	Rationale	Sub-sectors
	<p>use to probe into some of these value chains which fall outside of the masterplan process.</p>	
<p>8. Healthcare</p>	<p>The healthcare sector is undergoing major policy reforms with the proposal of a National Health Insurance. Commission will be advocating for the recommendations arising in the Market Inquiry on Private Healthcare, which are crucial to the achievement of an efficient universal healthcare system as proposed in the NHI. Equally, mergers in this sector, will be monitored to prevent further concentration, particularly in relation to facilities.</p> <p>The investigation into various pharmaceutical drugs will continue in this period.</p> <p>The Covid-19 crisis revealed considerable weaknesses and concentration in medical supplies markets which were not the express focus of the health market inquiry. PPE and hand sanitizer/disinfectants were the subject of considerable price gouging in the initial lockdown period, and the lack of domestic manufacture resulted in shortages across numerous medical equipment as other countries diverted supply inwards. Even the upstream chemical industry failed to have sufficient capacity for domestic use. Government is likely to put a strong focus on the medical supplies industry following the crisis and the Commission will engage with this to ensure greater domestic participation in this critical part of the economy.</p>	<ul style="list-style-type: none"> • Facilities • Pharmaceuticals, particularly drugs related to the treatment of Covid-19 • Medical Equipment, particularly related to the treatment of Covid-19 • PPE and related products and services • General medical and hygiene supplies

9.1.2 Scoping Studies

Scoping studies refer to research and analysis the Commission undertakes in selected markets in order to gain insights before initiating a formal inquiry or investigation. Candidate markets are largely drawn from the patterns and trends emerging from the Commission's enforcement work, public complaints and the priority sectors of the Commission. The outcomes of a scoping study can lead to several actions, which include an investigation, a market inquiry, advocacy intervention or no action at all.

Scoping studies are a mechanism which the Commission uses to generate its own work. Scoping studies are in fact, the catalytic agent to the principle of sector prioritization – for they enable the Commission to initiate work in the targeted sectors, without undue reliance on public complaints. Undertaking scoping studies in targeted markets ensures strategic focus - both with regards to the allocation of resources and assessment of desired impact.

Scoping studies are a fundamental pillar to the Commission's strategic performance. The intention behind the intended scoping studies is to generate actionable research which can lead to enforcement of cartel or abuse of dominance conduct.

9.1.3 Market Inquiries

The Commission has statutory powers to undertake Market Inquiries. A market inquiry *“means a formal inquiry in respect of the general state of competition in a market for particular goods or services, without necessarily referring to the conduct or activities of any particular firm”*¹¹.

Since 2014 when the statutory powers were promulgated, the Commission has completed market inquiries into the Private Healthcare sector (2010), Grocery Retail (2019), Data Costs (2019) and LPG (2016). It is currently conducting an inquiry into Public Land Based Passenger Transport and Data Costs at the time of writing.

There are many lessons learnt on the running of market inquiries which the Commission intends to draw on and improve on the function when initiating further market inquiries in the future. This is particularly important considering the expanded market inquiry mandate arising from the 2019 amendments to the Competition Act.

¹¹ Competition Amendment Act 1 of 2009, s43A

9.1.4 Impact Assessments

The Commission considers impact assessments as a strategic tool in its regulatory toolbox, for which recent amendments to the Competition Act further enable this function. 'Impact assessments' refers to the economic studies the Commission undertakes to evaluate its work. The purpose of undertaking impact assessments is to demonstrate to stakeholders the harm of anti-competitive conduct and the gains arising to the public from the Commission's interventions. Impact assessments are carried out under three main categories, namely:

- Estimation of the impact of anti-competitive conduct;
- Ex-post evaluation of specific enforcement interventions; and
- Evaluation of the broader impact.

The outcomes of impact assessments are seldom an exact exercise as the relationship between competition law enforcement and economic outcomes is often complicated by various exogenous factors. In the past few years, the Commission has sought to quantitatively demonstrate the results of its work by undertaking several impact assessments. The Commission will continue to undertake impacts assessments in its priority sectors during the 2019/20 financial year.

11. Strategic Risks

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

Risk	Risk Mitigation
	<ul style="list-style-type: none"> • Fraud and risk awareness drive to staff and the public including consequence management (bi-annual) • Bi-annual review of declarations of interests and gifts, and reporting to Risk and Governance and Audit & Risk Committees • Reviews strengthening and implementation of policies and procedures
5. Inadequate information security	<ul style="list-style-type: none"> • Mirroring of all documents/files in the document management system • Encryption of data on laptops • Intrusion, detection and prevention systems (Firewalls) • Attack monitoring system • Regular backups including off-site back- ups and information storage • Surveillance cameras and access controls to information storage areas • SLA on issues of access, vetting with service providers • Policies and procedures (development, review, implementation and monitoring) • Compliance monitoring with legislation (e.g. National Archives and Record Services Act, Promotion to Access of Information Act, Competition Act etc.) • Access control • Delegation of Authority (segregation of duties)
6. Inadequate business continuity management	<ul style="list-style-type: none"> • Daily and weekly back-ups (backup tapes are stored offsite and three sets of backups is available at any given point of time). • Incremental backups are made on case, financial and HR systems every hour to ensure that data is not lost. • Evacuation drills are conducted. • Consideration of the recommendations from the business continuity needs assessment reports. • Creating awareness regarding the business continuity risk (quarterly)
7. Inadequate and non-compliant office space	<ul style="list-style-type: none"> • Sourcing of appropriate office space • Implementation of the OHS Plan
8. Inadequate tools and resources for remote working	<ul style="list-style-type: none"> • Purchase appropriate tools for all affected staff • Ensure secure and reliable connectivity for all affected staff
9. Unavailability of critical	<ul style="list-style-type: none"> • Provide psychosocial support to all employees as they might be infected or affected by Covid19

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