

**2020 -  
2025**



*competitiontribunal*  
SOUTH AFRICA

# **STRATEGIC PLAN FOR THE YEARS 2020 – 2025**

## Abbreviations and Acronyms

the Act	The Competition (Act 89 of 1998)
AG	Auditor-General
APP	Annual performance plan
B-BBEE	Broad-based black economic empowerment
Commission	Competition Commission
CAC	Competition Appeal Court
DTIC	Department of Trade, Industry and Competition
ENE	Estimates of National Expenditure
ESKOM	Electricity Supply Commission, SA's electricity public utility
HR Management	Human Resource Management
ICASA	Independent Communications Authority of South Africa
ICN	International Competition Network
ICT	Information and communications technology
IEAP	Integrated Economic Action Plan
IT	Information technology
MTEF	Medium Term Expenditure Framework
MTSF	Medium Term Strategic Framework
NDP	National Development Plan
NGO	Non-government agencies
OECD	Organisation for Economic Co-operation and Development
RMC	Risk Management Committee
SADC	Southern African Development Community
SCM	Supply Chain Management
SMMEs	Small, medium, and micro-sized enterprises
TID	Technical indicator description
Tribunal	Competition Tribunal
WTO	World Trade Organisation

## Foreword by Executive Authority



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.

A handwritten signature in black ink, appearing to read 'Ebrahim Patel', with a long horizontal stroke extending to the right.

**MR EBRAHIM PATEL**

**MINISTER OF TRADE, INDUSTRY AND COMPETITION**

## Foreword by Accounting Authority

The revisions to this Annual Performance Plan are limited to the current 2020/2021 year, whereas the outer two years of the Medium-Term Expenditure Framework will be revised at a later time. It is tabled to take into account the outcomes of National Treasury's Supplementary Budget Review tabled on 24 June 2020 which reprioritises spending towards the battle against the COVID-19 pandemic.


This has resulted in the Competition Tribunal's 2020/21 budget being cut by 11.3% to R33.1 million from R37.4 million. Further to this, the Tribunal forecasts a 51.3% fall in its filing fees from R20.0 million to R9.7 million as a consequence of reduced merger activity. We therefore anticipate a 24.7% (R14.4 million) reduction in total revenue.

In response to this, we have zero-based our budget to achieve an expenditure cut of 22.7% (R14.5 million) from R64.2 million to R49.7 million. This is a significant cut. In making do with less; we have reduced benefits to staff, set aside the filling of all but critical vacancies, negotiated reliefs and reduced rates with service providers and we have deferred capital expenditure. Yet notwithstanding these austerity measures, the Tribunal has not planned to retrench staff in the Annual Performance Plan.

The net effect of these revisions is that the 2020/21 Annual Performance Plan budget deficit will be *tightened* from R5.9 million to R5.8 million. We are cognisant of the tremendous pressure on the national fiscus, and have made provision to fund this deficit from our accumulated surplus of R24.3 million. This surplus has been accumulated over a number of years as a result of judicious management of resources and serves as a necessary buffer to the variability of filing fees.

Merger notifications have reduced following the national lockdown, however we have seen a sharp rise in Complaint Referrals stemming from the COVID-19 Excessive Pricing Regulations gazetted in March. We issued directives to hear these referrals on an expedited basis, and have adapted quickly to hearing matters via videoconference. The Tribunal Members and case managers have been working tirelessly to dramatically reduce the time taken to issue rulings. In all of this, we have stayed true to our core outcomes to adjudicate in favour of equitable participation in markets and fair conduct by market participants. In this regard the Tribunal has heard and confirmed 18 consent orders against various suppliers of essential products necessary to combat the spread of the coronavirus; and has made a landmark ruling against Babelegi, a supplier of face masks who hiked prices by more than 500% at the onset of the pandemic.

In these times of uncertainty, we remain grounded in our commitment to Governance, and Responsive and Reliable Adjudication. As a consequence of the budget cuts and prioritisation of COVID-19 related cases, we anticipate some longer lead times in the adjudication of non-COVID-19 related matters. These key performance indicators have had to be revised downwards accordingly. In order to retain our adjudicative capacity, we have budgeted to fill the one vacancy for a full-time Tribunal Member in the 2020/2021 Annual Performance Plan.

Signature:  \_\_\_\_\_ Date: \_\_\_\_\_ 29 March 2021 \_\_\_\_\_

**Mondo Mazwai**

**Accounting Authority – Competition Tribunal**

## Official Sign Off

It is hereby certified that this Strategic Plan of the Competition Tribunal for the period 2020/2021 – 2024/2025:

- Was developed by the management of the Competition Tribunal under the guidance of the Department of Trade, Industry and Competition (DTIC).
- Considers all the relevant policies, legislation, and other mandates for which the Competition Tribunal is responsible.
- Accurately reflects the impact and outcomes which the Competition Tribunal will endeavour to achieve over the period 2020/2021-2024/2025.

**Oliver Josie**

***Oliver Josie***

Signature: \_\_\_\_\_

**Chief Operating Officer - Competition Tribunal**

Date \_\_\_\_\_ 29 March 2021 \_\_\_\_\_

**Mondo Mazwai**

Signature : 

**Chairperson – Competition Tribunal**

Date \_\_\_\_\_ 29 March 2021 \_\_\_\_\_

***Approved by:***

**Ebrahim Patel**

Signature: \_\_\_\_\_

**Minister Responsible for Trade, Industry and Competition**

**Executive Authority of the Competition Tribunal**

Date \_\_\_\_\_

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## **PART A: OUR MANDATE**

### **1. Constitutional Mandate**

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

In 1999 the Competition Act 89 of 1998 (the Act) was promulgated, thereby establishing a Competition Commission (Commission), the Competition Tribunal (Tribunal), and a Competition Appeal Court (CAC).- The Competition Tribunal is responsible for the adjudication of matters pertaining to restrictive practices, abuse of a dominant position and mergers.

### **2. Legislative Mandate**

The Tribunal derives its legislative mandate from the Competition Act and its purpose is to promote and maintain competition in the Republic in order to:

- a) Promote efficiency, adaptability, and development of the economy.
- b) Provide consumers with competitive prices and product choices.
- c) Promote employment and advance the social and economic welfare of all South Africans.
- d) Expand opportunities for South African participation in world markets and recognise the role of foreign competition in the Republic.
- e) Ensure that small and medium-sized enterprises have an equitable opportunity to participate in the economy.
- f) Promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged people; and
- g) to detect and address conditions in the market for any particular goods or services, or any behaviour within such a market, that tends to impede, restrict or distort competition in connection with the supply or acquisition of those goods or services within the Republic; and
- h) to provide for consistent application of common standards, and policies affecting competition within all markets and sectors of the economy.
- i) Adjudicate promptly on COVID-19 Excessive Pricing matters.

### **3. Policy Mandate**

The National Development Plan (NDP) 2030 was adopted in South Africa in 2012 and it sets out the long-term vision for the country and provides a broad strategic framework to guide government choices and actions required to transform the economy and society.

The NDP five-year implementation plan has been developed in order to advance and guide planning that is responsive to the attainment of NDP priorities. It allows for the co-ordination and alignment of priorities across spheres of government.



The Tribunal's objectives are set out in the Competition Act. As an adjudicative body it can determine the outcomes of these objectives by aligning its adjudication to meet the objectives of the NDP and the DTIC.

The Tribunal's mandate is also consistent with certain of the priority outcomes contained in the NDP. The connections between the Tribunal's legislated mandate and the NDP outcomes are illustrated in the diagram below.



All decisions taken by a Tribunal panel when adjudicating on matters brought before it must consider, in addition to competition issues, various public interest factors which include the effect on employment, asset ownership and the promotion of SMMEs.

Improved competition by its very nature will maximise consumer surplus and will therefore have a positive impact on national development goals.

The two tables that follow provide an alignment matrix between the DTIC outcomes and the Tribunal outcomes and the NDP Outcomes and the Tribunal Outcomes, respectively.

**Table 1: Alignment of Tribunal outcomes with DTIC Outcomes**

DTIC Programme/Outcomes <sup>1</sup>	Tribunal Outcome number	Tribunal Outcomes
<p><b>Programme 3:</b> Spatial Industrial Development and Economic Transformation</p> <ul style="list-style-type: none"> <li>Increased number of Black People that participate in the mainstream economy</li> <li>Grow the manufacturing sector to promote industrial development, job creation, investment, and exports</li> </ul> <p><b>Program 4 :</b> Industrial Competitiveness and Growth</p> <ul style="list-style-type: none"> <li>Increase economic growth and job creation through a re-invigorated industrial strategy (<i>APP only</i>)</li> </ul> <p><b>Programme 5:</b> Consumer and Corporate Regulation</p> <ul style="list-style-type: none"> <li>Improved regulatory environment conducive for consumers and companies as well as providing access to redress.</li> </ul> <p><b>Program 6:</b> Industrial Financing</p> <ul style="list-style-type: none"> <li>Increased private sector investment</li> <li>Employment Creation</li> <li>Increased access for industrial finance support</li> </ul> <p><b>Programme 7:</b> Export Development, Promotion and Outward Investments</p> <ul style="list-style-type: none"> <li>Promote export growth.</li> <li>Diversify the export bundle, by promoting export growth in priority sectors</li> </ul> <p><b>Programme 9:</b> Economic Research and Coordination</p> <ul style="list-style-type: none"> <li>Economic research and reviews</li> </ul> <p><b>Programme 10:</b> Competition Policy and Economic Planning</p> <ul style="list-style-type: none"> <li>Coherent competition policies</li> <li>Public interest analysis and participation</li> </ul>	Outcome 1	Through responsive and reliable adjudication of matters across all sectors of the economy, the Tribunal contributes to the outcomes of economic transformation and employment creation by the NDP and the DTIC

<sup>1</sup> At the time the Tribunal drafted this document the DTIC's outcomes had not been linked directly to the NDP's. The above has been prepared on the assumption that the identified DTIC outcomes link to the NDP's outcomes as indicated in the table

DTIC Programme/Outcomes <sup>1</sup>	Tribunal Outcome number	Tribunal Outcomes
<ul style="list-style-type: none"> <li>• Implementation of competition recommendations and commitments</li> <li>• Supported Ministerial technical and statutory responsibilities on competition matters</li> </ul>		
<p><b>Programme 1:</b> Administration</p> <ul style="list-style-type: none"> <li>• Attract, Develop &amp; Retain Skilled Staff &amp; Professional Officials</li> <li>• Ensure accountability through effective performance management</li> </ul> <p><b>Programme 10:</b></p> <ul style="list-style-type: none"> <li>• Coherent competition policies</li> </ul>	Outcome 2	Transparent, accountable, and sustainable Tribunal
<p><b>Programme 2:</b> Trade Policy, Negotiations and Cooperation</p> <ul style="list-style-type: none"> <li>• Increased intra-Africa trade</li> </ul> <p><b>Programme 7:</b> Export Development, Promotion and Outward Investments</p> <ul style="list-style-type: none"> <li>• Promote export growth.</li> <li>• Diversify the export bundle, by promoting export growth in priority sectors</li> </ul>	Outcome 1	Through responsive and reliable adjudication of matters in these sectors the Tribunal contributes to the NDP outcomes.

**Table 2: Alignment of Tribunal outcomes with the NDP Outcomes**

NDP Outcome Number	NDP Outcomes	Tribunal Outcome Number	Tribunal Outcomes
NDP Outcome 1	Economic transformation and job creations	Tribunal Outcome 1	Through responsive and reliable adjudication of matters across all sectors of the economy, the Tribunal contributes to the outcomes of economic transformation and employment creation by the NDP and the DTIC
NDP Outcome 2	Education, skills, and health		Through responsive and reliable adjudication of matters in these sectors the Tribunal contributes to the NDP outcomes.
NDP Outcome 6	A capable, ethical, and developmental state	Tribunal Outcome 2	Transparent, accountable, and sustainable Tribunal
NDP Outcome 7	A better Africa and World	Tribunal Outcome 1	Responsive and reliable adjudication(indirectly through cases)

#### **4. Institutional policies and strategies over the five-year planning period**

The largest contribution the Tribunal can make is the policy driver “competitiveness and competition policy” as its core function deals specifically with this area. Its public interest mandate makes contribution to the following drivers: employment, SMMs and B-BBEE. To the extent that mergers and market structures in prohibited practice cases may have a negative effect on these factors, the Tribunal may in appropriate cases be able to impose conditions or issue orders to alleviate the adverse effects.

The Tribunal can provide access to case archives which provide rich resources for research. Part of our interaction with the department will be to encourage researchers linked to the department or its institutions to use these resources and to alert them to new and useful information.

#### **5. Relevant Court Rulings**

There are no specific court rulings that have a significant, ongoing impact on operations or service delivery obligations.

### **PART B: OUR STRATEGIC FOCUS**

#### **6. Vision**

To be seen as an exemplary administrative tribunal by being independent, impartial, ethical, and professional.

#### **7. Mission**

To develop credible competition law and an effective structure for administering the law.

#### **8. Values**

In pursuing its legislated mandate, the Tribunal strives to:

- Fairness, objectivity, and independence.
- Timeous decisions of high calibre.
- Effective communication of our work with the public.
- Professional, efficient, informed interaction with our customers.

#### **9. Situational Analysis**

##### **9.1. Strategic focus**

The Tribunal is an independent and impartial institution with jurisdiction throughout South Africa. It

is required to perform its functions without fear, favour, or prejudice subject only to the Constitution, the law, and its legislated mandate.

Its core business and therefore its strategic focus is the adjudication of mergers and prohibited practice cases brought before it either by the Commission or directly by aggrieved parties, or in some circumstances by higher courts.

Upon a matter being referred to it, the Tribunal will initiate proceedings to consider the matter in terms of the Competition Act and Rules and may:

- a) authorise a merger, with or without conditions, or prohibit a merger.
- b) adjudicate in relation to any conduct prohibited in terms of the Act by determining whether prohibited conduct has occurred, and if so, impose a remedy provided for in the Act.
- c) grant an exemption from a relevant provision of the Act.
- d) grant an order for costs.

The Tribunal is required to expeditiously decide on the matters brought before it. All Tribunal hearings are public and written reasons are provided for all decisions and orders of the Tribunal. The Act and Rules prescribe time frames for the issuing of orders and decisions which must be adhered to by the Tribunal.

The Tribunal decisions have the same legal weight as the judgements of the High Court and may be taken on appeal only to the Competition Appeal Court.

The Tribunal is enjoined to retain its independence and impartiality in the exercise of its powers and in carrying out its duties.

The Tribunal Members are committed to making high quality decisions, based on the criteria stipulated in the Act. The members are supported in their decision making by the Tribunal secretariat that provides efficient and effective administrative, research and organisational assistance.

Whilst the adjudicative process remains the main strategic focus we have also placed emphasis on other key areas of administration namely:

- Governance and compliance
- Capacity Building
- Effective Financial management

In addition, the Tribunal strives to be an accessible institution and to ensure that the public remains informed about the Act and the Tribunal's functions and activities.

All upcoming hearings and decisions given by the Tribunal are communicated to the media and all of the Tribunal's decisions can be accessed by the general public from the Tribunal's website or its offices. The Tribunal also publishes a newsletter – Trials and the Tribunal which is distributed to relevant stakeholders.

## **9.2. Performance overview**

Demand for the services of the Tribunal over the past 20 years has increased significantly. The table below provides details with regard to matters heard over the past five years. It is evident that there is considerable fluctuation from year to year however there has been an average annual increase of 3.9% in matters heard over the period.

**Table 3: Matters heard 2014/2015 to 2018/2019**

Type of case	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019
Large merger	98	125	102	121	101
Intermediate/small merger reconsideration	4	10	8	6	4
Complaints from the Commission	3	4	10	14	18
Consent order/settlement agreement	46	26	27	29	45
Complaints from the complainant	1	0	0	1	0
Interim relief	1	0	1	0	1
Procedural matter	27	39	50	42	46
<b>Total</b>	<b>180</b>	<b>204</b>	<b>197</b>	<b>213</b>	<b>215</b>

The increase in consent orders, most of which result from settlements of cartel cases, is an indication of the success of the Commission's cartel unit and the leniency policy that underpins it. As procedural issues often piggyback on the number of substantive cases heard it is not surprising that when our case load increases so does the number of procedural matters.

Despite the significant increase in caseload the Tribunal has generally performed well in getting merger cases set down and decided within our targeted time periods. Our performance in completing reasons in opposed cases is less impressive and the Tribunal is taking steps to improve turn around periods for reasons including better tracking of cases and increasing the pool of part-time members who hear cases. That being said, the complexity of cases before the Tribunal has also increased as the system matures and experience in the field evolves thereby increasing the turn-around time to conclude matters.

### **9.3. Policy environment**

The policy parameters and objectives of the Act are consistent with the objectives of government's economic policy as enunciated in policy documents of the DTIC as well as the NDP and are given effect in the analysis and decision-making of the adjudicative panels, which assess merger transactions, allegations of restrictive practices and abuse of dominance, and exemption applications.

Although the Tribunal's decisions are primarily taken on competition grounds, the Act also requires that it considers specified public interest factors which correlate with other objectives of the government's economic policy and in particular concerns about job impact, SMMs and B-BBEE.

The recent amendments have also increased the scope of prohibited practices to address concentration levels which remain high, and have introduced new public interest issues to promote inclusivity in the economy.

i. **Merger Regulation - Structural Remedies**

Through its merger regulation powers the Tribunal considers the impact of mergers and acquisitions on the structure of a particular market.

In its consideration of mergers or acquisitions, the Tribunal initially determines whether the transaction will substantially prevent or lessen competition in the market in which the transaction occurs. In the event that it does, the Tribunal is then required to evaluate whether any efficiency and technology gains arise from the merger. If it is decided that the merger has generated pro-competitive efficiency gains that outweigh the lessening of the competition then the merger may be approved. Despite its determination above, the Tribunal must always (consider the impact of the transaction on specified public interest criteria. An anti-competitive merger may be approved if it is found that a positive impact on public interest outweighed the negative impact on competition. By the same token, it is possible to prohibit a merger that did not lessen competition if its impact on public interest, for example employment, was negative.

The following are the public interest criteria that must be considered:

1. impact on a particular industrial sector or region.
2. employment.
3. the ability of small and medium businesses, or firms owned by historically disadvantaged persons, to effectively enter into, participate in or expand within the market; and
4. the ability of national industries to compete in international markets.
5. 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 recent amendments to the Act have also improved merger provisions to include the assessment of creeping mergers, cross-shareholdings by merging firms, and asset ownership by workers.

ii. **Prohibited practices - Behavioural Remedies**

The Tribunal regulates anti-competitive conduct or behaviour by firms in a particular market through its powers to regulate prohibited practices.

The Act prohibits certain practices between competitors and firms in a vertical relationship (that is between supplier and customer). Dominant firms (as defined by the Act) are also prohibited from engaging in certain practices. While the Act specifies certain per se prohibitions in each of these categories, other specified conduct, if found to be anti-competitive, must be weighed against countervailing “technological, efficiency, or other pro-competitive gains” that may arise from the conduct.

The Tribunal anticipates an increase in prohibited practice cases brought to it. Its decisions on prohibited practice cases potentially have sector-wide and economy-wide implications and are likely to impact significantly on business behaviour. It is in this area that objectives on competitiveness, black economic empowerment, SMME development is most directly advanced. Restrictive practices



are prohibited by the Act precisely to improve the competitiveness of firms, to prevent abuse by dominant firms, to lower barriers to entry and to allow for markets to be contested.

iii. **Exemptions**

A firm may apply to the Commission for exemption from the provisions of Chapter 2 of the Act. However, persons affected by the Commission's decisions may appeal those decisions to the Tribunal.

Exemptions may be granted if they contribute to any of the following objectives:

1. Maintenance or promotion of exports.
2. Promotion of the effective entry into, participation in or expansion within the market by small and medium businesses, or firms controlled or owned by historically disadvantaged persons,.
3. Change in productive capacity necessary to stop the decline of an industry.
4. The economic development, growth, transformation, or stability of industry designated by the Minister, after consulting the Minister responsible for that industry; or
5. Competitiveness and efficiency gains that promote employment or industrial expansion.

Consideration of the above factors in its adjudication provides for government policy objectives to be considered by the Tribunal.

iv. **Interlocutory applications**

The Tribunal also hears interlocutory applications that are necessary or incidental to the performance of its functions in terms of this Act, such as:

- Exception applications: Respondents frequently bring objections to a complaint referral prior to pleading (filing their response). The objections range from those that contend that the complaint referral makes out no cause of action, to complaints that are vague and embarrassing or requests for further particulars.
- Discovery applications: Both parties in a case have a duty to disclose documents in a case and applications to compel disclosure may follow if there are disputes over relevance, whether the document exists or over claims of privilege.
- Confidentiality applications: Parties are entitled to claim documents containing certain sensitive information as confidential. Procedurally access to information claims are heard in the same way, and sometimes at the same time as discovery applications.
- Intervention applications: In terms of the Act the Tribunal can admit as a participant in merger proceedings any party who it recognises as a participant, and
- Points *in limine*: The Respondents can bring an objection based on a question of pure law prior to pleading for example where the Tribunal's jurisdiction is questioned

#### **9.4. Impact of recent amendments to the Competition Act**

It is expected that the recently promulgated will substantially increase the workload of the Tribunal.

First, decisions that the Commission makes after conducting a market enquiry will now be appealable to the Tribunal. Since market enquiries have to date taken a long time to conduct, it is likely that the record in such cases will be lengthy and intricate. This means that the panels will have to perform an appellate function i.e. hear cases without any oral evidence and the ability to test the evidence with witnesses.

The Act also contains new prohibited practices (buyer power provisions) and reformulated provisions in relation to some of the existing abuse of dominance provisions (excessive pricing, margin squeeze and predatory pricing). The buyer power provisions are likely to lead to an increased case load particularly early on as the jurisprudence develops. The improved dominance provisions are also likely to lead to renewed enforcement activity by the Commission.

In merger control expanded considerations both regarding the competition and public interest aspects of merger control are likely to expand the ambit of issues for merger consideration and may also lead to prolonged hearings and an increase in appeals in respect of intermediate mergers.

Finally, other residual procedural cases will come before the Tribunal. For instance, the Commission may request information from parties for the purpose of its new power to conduct impact studies. Parties are entitled to object to these requests which must then be determined by the Tribunal. It is unknown how frequently these types of cases will occur. Determinations made by the Commission during the course of a market enquiry that information is confidential can also be brought to the Tribunal to determine.

### **9.5. Public policy and participation**

The general approach of the Tribunal is to encourage participation of interested parties in its proceedings. This allows for less powerful groupings to articulate their interests and maximizes the information available to the Tribunal. In the cases to date the Tribunal has had representation from competitors, customers, franchisees, trade unions, industry associations, government department/entities and non-government agencies (NGO's).

The Act also allows for the Minister of Trade and Industry to make representation on public interest grounds, in merger transactions of which the Minister must be notified so as to enable him to intervene if he so decides. The amendments grant the Minister the right to appeal Tribunal decisions where previously the Minister's right was limited to review.

The Commission may also exempt an agreement or practice from prohibitions contained in Chapter 2 of the Act if it contributes to the economic stability of an industry designated by the Minister of Trade and Industry. The Minister has the ability to make direct representation before the Tribunal on any aspect of government policy that is relevant to a case.

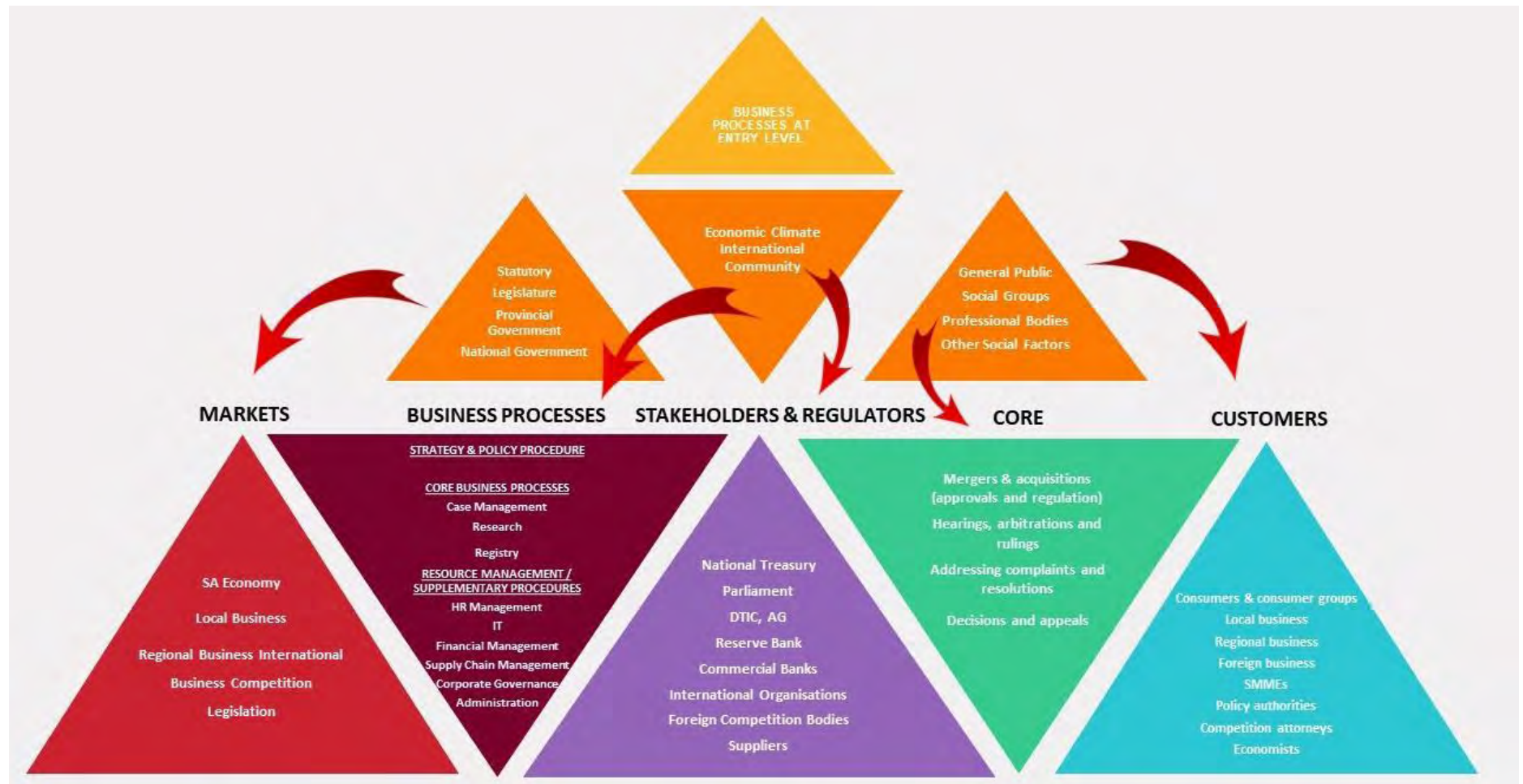
### **9.6. Stakeholder Profile**

The Act impacts numerous stakeholders. The Tribunal has established and maintains professional and appropriate relationships with key stakeholders with the ultimate objective of contributing to the welfare of all South Africans.

The Tribunal's external stakeholders may be categorized as follows:

- a) Stakeholders with whom the Tribunal has direct contact in the course of fulfilling its functions. These include:
- The Commission which refers and prosecutes cases before the Tribunal.
  - Complainants, respondents, interested parties, expert witnesses and their legal representatives who participate in or have a direct interest in a case before the Tribunal. These may be local or international businesses, trade unions, consumers, legal firms, or any other affected individual or organization.
- b) Stakeholders with whom the Tribunal may not be in direct contact but who are affected by Tribunal decisions. These include consumers, competitors, customers, and suppliers of firms directly affected by Tribunal decisions.
- c) Sector-specific regulators such as Independent Communications Authority of South Africa (ICASA) who enjoy concurrent jurisdiction with the Competition authorities.
- d) Stakeholders to whom the Tribunal is accountable with respect to its functions. These include the DTIC, Parliament, the Minister of Trade and Industry, National Treasury (National Treasury) and the Auditor-General (AG).
- e) Stakeholders who act as reputational agents in providing policy and peer feedback on the standard and quality of work in the Tribunal. These include the media/journalists/editors, the financial press, academics, the judiciary and other competition agencies, the Organisation for Economic Co-operation and Development (OECD), the World Trade Organisation (WTO), Southern African Development Community (SADC), and the International Competition Network (ICN) etc.
- f) Government stakeholders that Tribunal may interact with e.g. the DTIC.

The business model on the next page illustrates the Tribunal's stakeholders and processes that characterize these relationships.



## 10. External environmental analysis

The meetings and workshops held with regard to the development of a strategic plan and annual performance plan aligned to the recently approved framework and guidelines for strategic planning issued by the Department of Performance Monitoring and Evaluation (DPME) is detailed in table 3 below.

**Table 4: PESTEL Analysis**

FACTOR	ITEMS
<b>Political Factors</b>	<ul style="list-style-type: none"> <li>• International <ul style="list-style-type: none"> <li>○ Rise in populism</li> <li>○ Rise in nationalism</li> <li>○ Greater concentration, less intervention</li> <li>○ Trade wars</li> <li>○ Brexit</li> </ul> </li> <li>• National <ul style="list-style-type: none"> <li>○ Effects of state capture</li> <li>○ Factional battles within the ruling party</li> <li>○ Policy uncertainty</li> <li>○ Rise in civil unrest</li> <li>○ Growth of racialism</li> <li>○ Lack of social accord e.g. unions vs business</li> </ul> </li> </ul>
<b>Economic Factors</b>	<ul style="list-style-type: none"> <li>• Merger activity affected by economic climate</li> <li>• Pressure to contain or reduce employment in public sector</li> <li>• Rising inequality</li> <li>• Poor economic growth</li> <li>• Trade wars</li> <li>• Low investor confidence</li> <li>• Failing State Owned Companies</li> </ul>
<b>Social Factors</b>	<ul style="list-style-type: none"> <li>• Standard of education – affects quality of interns and skill capacity of staff</li> <li>• Public perception - poor understanding of what we do</li> <li>• Digital divide – the Tribunal’s communication does not reach many parts of the population</li> </ul>
<b>Technological Factors</b>	<ul style="list-style-type: none"> <li>• Cyber security is a growing global risk</li> <li>• Fourth industrial revolution – impact on the way we work</li> </ul>

FACTOR	ITEMS
	<ul style="list-style-type: none"> <li>• Need to consider making processes digital (e.g. online filing)</li> </ul>
<b>Environmental Factors</b>	<ul style="list-style-type: none"> <li>• Environmental degradation is a rising global concern</li> <li>• Diminished capacity of state to provide basic services (e.g. a stable electricity grid)</li> <li>• Rising public interest issues</li> </ul>
<b>Legal Factors</b>	<ul style="list-style-type: none"> <li>• Amendments to the Act</li> <li>• Increased regulation and compliance</li> <li>• International developments in competition law</li> </ul>

## 11. Internal environmental analysis

The narrative provided below provides a description of some of the more important issues that were identified as part of a detailed root cause analysis performed by the Tribunal during its strategic planning process.

The root-cause analysis was chosen as a methodology to drill down into potential threats that might have a negative impact on the Tribunal's ability to provide an efficient and effective service delivery as required by its mandate.

The first potential area is the timeous and consistent decisions made by the Tribunal and is represented in the problem tree attached as **Annexure A.**

The root cause analysis process also enabled the Tribunal to identify possible interventions and solutions for the causes of delayed and inconsistent decision and solutions thereto are included in **Annexure B.**

The second potential threat identified related to the ineffective utilisation of resources of which the problem tree is shown in **Annexure C.** The interventions and solutions to address and resolve these causes are reflected in the solution tree in **Annexure D.**

The meetings and workshops held with regard to the strategic planning process are detailed in **Annexure J.**

### i. Tribunal members

The Act specifies that Tribunal members should collectively represent a broad section of the South African population. The duties and responsibilities of the Tribunal members are national significance and require a high level of technical skill and experience. Tribunal members are required to take decisions of major commercial and economic significance and it is therefore necessary (and stipulated in the Act) that they should have qualifications and experience in law, economics, commerce, industry, and public affairs. Adjudicative panels of the Tribunal comprise three Tribunal members.

Members are appointed by the President of South Africa, on recommendation of the Minister of Trade and Industry , for a five-year term of office.

The amended Act makes provision for an increased number of Tribunal members. It makes provision for the appointment of 15 (including the Chairperson) members as opposed to 11 prior to the amendments. It also gives the Minister the power to appoint acting part time members.

As of 1<sup>st</sup> August 2019, we have four full-time members (including the Chairperson and the Deputy Chairperson) and six part-time members making the Tribunal's complement of members ten out of eleven under the previous Act. The new Act has increased the number of members to 14 in anticipation of the increased workload.

While these vacancies do not affect the running of the organisation on a day to day they impact on the efficiency of the adjudicative process and have caused delays in certain turnaround times – particularly with regard to the issuing of reasons. This will be further exacerbated by the predicted increase in caseload.

**Annexure E** provides a detailed list of current serving Tribunal members and their respective qualifications.

## **ii. Tribunal Secretariat**

The Tribunal's secretariat provides administrative and operational support within the Tribunal currently consists of 24 full-time staff members and two case managers on contract, allocated to four divisions.

- The Office of the Chief Operating Officer
- The Finance Division
- The Case Management Division
- Registry
- The Corporate Services Division

The Chairperson of the Tribunal is the Accounting Authority while other responsibilities have been devolved to divisional heads who report directly to the Chairperson.

The Chairperson therefore has a “hands on” involvement in the day-to-day management of the Tribunal which is consistent with the Chairperson's responsibility as accounting authority of the institution and is consistent with her powers in terms of the Competition Act.

The organogram in **Annexure F** illustrates the current structure of the organization. The Head of Corporate Services and the Financial Officer position on the organisational structure are currently vacant.

**Annexure G** details the names and positions held by Tribunal employees and provide some statistics pertaining to the profile of the secretariat. 70.37% of the current employees are black while 63% of them are female. Currently the Tribunal does not employ any persons with disabilities.

## **iii. Personnel**

The Tribunal is an equal opportunity employer and is committed to achieving employment equity in its workplace. The Tribunal respects diversity and subscribes to the constitutional ethos of equality

and non-discrimination in all its policies, practices, and activities. These principles are adhered to with respect to the recruitment of staff and human resource policy development.

As can be seen in the organisational structure attached as **Annexure F**, the Tribunal does not have a hierarchy of positions to which professional staff can aspire. However, some mechanisms have been developed in order to ensure the retention of skilled staff and to provide some career progression albeit limited.

In Registry, it is possible for someone to enter the Tribunal as a Registry Clerk and eventually progress to Registry Administrator or Registrar. In the Case Management division personnel can enter as “junior” case managers and progress to a senior level over a period of three to five years.

In general staff turnover in the Tribunal is not high with perhaps the highest turnover occurring in the case management division where case managers spend on average three to four years in the Tribunal and as their marketability increases they are attracted by higher salaries and more growth opportunities to the legal profession. The Tribunal is aware of this trend and is aware that in many senses this is the intellectual capital of the organisation, for this reason a managerial position was created in this department and a leader appointed to set the direction and pace of case management activities in the organisation. In addition, a tiered development path (stratification according to the level of experience) has been established so that career and grade growth is now feasible and can be experienced within the Tribunal rather than through departure.

#### **iv. Internship**

The Tribunal is a small organisation and is therefore limited in its ability to generate significant employment or offer a substantial number of internships. Despite this the Tribunal will continue to focus on providing an opportunity for students to serve vacation internships in the four divisions of the Tribunal as well as embark on the implementation of a graduate internship programme in the case management division. The intern/interns in this programme will spend up to a year at the Tribunal.

In other divisions within the Tribunal we use the internship programme to provide short-term employment opportunities to unemployed youth. These internships vary in length, but they never exceed a period of 12 months. While we are not in a position to offer long-term employment, we are able to expose them to interview and selection processes and provide them with valuable work experience.

We have partnered with Harambee, an employment accelerator, in this regard but have also engaged with students who have been referred to us by other stakeholders and who require practical experience in order to graduate.

#### **v. Capacity Development**

The Tribunal is committed to capacity building and recognises that proactive steps need to be taken to train and develop staff given the significant skills gap in South Africa. This is consistent with maximizing the human resource potential of all employees, which is necessary to ensure efficiency and performance excellence.

Training includes in-house and on the job training with respect to the case management system and is undertaken so as to provide assistance to staff with the development of experience and skills in the area of competition law and economics.



External training service providers are utilized for specialized training courses. Furthermore, exposure to international best practice in competition law and policy is facilitated through attendance at international conferences/workshops, staff exchange programmes and visits by international experts.

Tribunal members in particular need to keep abreast of the extensive international case law in the field as well as legal and economic analysis in academic and practitioner journals in order to be able to perform their duties adequately.

The Tribunal facilitates this process by identifying the training needs of the Tribunal members and continues to facilitate the attendance of Tribunal members at international meetings/conferences (like International Competition Network (ICN) conference/working groups, the Annual Fordham Antitrust conference and the OECD Competition Committee meetings).

These meetings provide the Tribunal members with a forum to review their work and to keep up to date with aspects of competition, economics and law. The budget provides for representation at these conferences and forums.

Tribunal members are appointed for a five-year period and when new members are appointed there is a need to engage them in intensive training thus familiarising them with competition law. As a result training expenses will vary year on year depending on the needs of Tribunal members.

Full time Tribunal members will continue to lecture university students and will remain active in international bodies such as the ICN.

Since 2006 the Tribunal and the Commission have been observer members of the Competition Committee of the OECD, a body at the international cutting edge of new developments in competition law and policy. The budget provides for attendance on an annual basis at two of these meetings.

#### **vi. Financial requirements and resources**

In submitting the revised annual performance plan the Tribunal has only considered the financial impact of COVID-19 on the 2020/2021 budget and we have left the indicative budget for the two outer years unadjusted for the time being. When the 2021/2022 budget is drafted later this year consideration will be given to financial impact of COVID-19.

In the first tabled version of the annual performance plan the Tribunal's budgetary requirements (inclusive of capital expenditure) over the three years of the Medium-Term Expenditure Framework (MTEF) period (2020/2021 – 2022/2023) was estimated to be **R202.17m**. With the reduction in the 2020/2021 budget this figure is now R187.57m. It is anticipated that we will receive income from the three sources below:

- Department of Trade, Industry and Competition (DTIC) grant funding of **R118.57m** (previously R122.79m) for three years.
- Expected filing fee revenue of **R53.50m** (previously R63.82m); and
- Use of accumulated cash surpluses of **R13.45m** (previously R13.64m) as at end of March 2020 for the three-year period.

The cash surplus has been accumulated over a number of years as a result of judicious management of resources. It serves as a necessary buffer to the variability of filing fees.

In drafting the budget four major points must be noted:

- the assumption made with regard to expected filing fees received from the Commission over the MTEF. The original MTEF budget indicated that we expected to receive **R63.82m** over the MTEF period (2020/2021 to 2022/2023) in filing fees based on a historic average annual growth rate of 6%. While the 2021/2022 and 2022/2023 estimates remain unchanged for the present the 2020/2021 figure has been reduced from R20.04m to R9.73m. This estimate is based on merger activity over the last three months and some increase in the months that follow
- an initial assessment of the financial impact of recent amendments to the Competition Act have been considered
- the Tribunal has reduced the 2020/2021 expenditure budget by R14.60m – this reduction was necessitated by a grant reduction of R4.23m and estimated reduction in filing fees of R10.31m. The reductions in budget line items are detailed further in this document
- the budget drafted assumes we are granted permission to retain and use expected cash surpluses of **R13.45m (previously R13.64m)** over the MTEF period. .

**vii. Filing fees**

In terms of a memorandum of understanding between the Commission and the Tribunal, the Tribunal receives 30% of all fees filed with the Commission for large mergers and 5% of the fees filed for intermediate mergers.

The Tribunal has always referred to the significant uncertainty related to the volume of mergers and the value of the filing fees expected by the Commission and while the impact may have been minor in prior years the impact of COVID-19 has been and is expected to be significant (reduction of 51.45%). So, while the MTEF budget is drawn, using the Commissions estimates as a basis for the two outer years of the MTEF, it will be necessary to reconsider the impact of COVID-19 on the budget in the next financial year.

**viii. Financial impact of amendments**

While we cannot predict with certainty the direct financial impact of the amendments to the Act, we anticipate an increase in procedural matters e.g. arising from the market enquiries and monitoring provisions of the Act as firms may challenge the Commission's processes or requests for information under these provisions.

We also anticipate that hearings will be protracted due to the complexity of some of the provisions in the amendments for which there is no precedent.

In the 2017/2018 and the 2018/2019 financial year the Tribunal spent 157 days and 146 days in hearings, respectively. This budget provides for 202 hearing days. In considering the impact of COVID-19 and case activity in the first months of the year we have reduced this to 163 days

The additional capacity required and referred to in section 9.4 of this document will improve the efficiency of the Tribunal but at the same time will impact on all costs associated with the adjudicative process.

Additional expenses are typically incurred in respect of the induction and integration of new members.

We expect the financial impact to be on expenditure and not revenue. The reason for this expectation is that the amendments to the Act do not make provision for any amendments to the nature of filing fees payable for matters brought before the competition authorities.

**ix. Retention of surpluses**

Historically the escalation in the grant allocated by government to the Tribunal has been inadequate to cover expected expenditure year on year. The Tribunal was in a position to balance its budget by making use of accumulated cash surpluses that have been drawn down year on year.

This “drawing down” has been reflected in the MTEF and Estimates of National Expenditure (ENE) submissions and has been communicated in the Tribunal’s APP annually since November 2010.

Calculations indicate that if the Tribunal is granted permission to retain expected accumulated cash surpluses of R13.45m (previously R13.64m) over the MTEF period there will be sufficient funding to fully cover estimated expenditure to the outer year (2022/2023). Permission was granted in October 2019 to retain surpluses in the amount of R5m to fund the budgeted shortfall in 2019/2020. The Tribunal is now required to obtain National Treasury approval for retention on an annual basis.

The table on the next page reflects the estimation for the receipt of annual filing fees from the Commission and the use of accumulated surpluses to cover the expected shortfall of income over expenditure.

The table reflects the pre COVID-19 budget increments of 4.19 %, 4.78% and 4.92% in the respective years of the MTEF budget. It must be noted that these increments primarily related to an anticipated increase in the volume of cases associated with the amendments. We are of the view that this increased case load will result in a need for increased capacity (and therefore increased personnel costs) and operational costs related to the adjudicative process.

The table has been adjusted to reflect the post COVID-19 budget increments (-19.49%, 35.59% and 4.92%). However, it must be noted that the two outer year budgets have not yet been adjusted and these increments may change when the 2021/2022 budget is finalised.

The Tribunal was awarded an additional allocation of R5m in the outer year of the MTEF. Assuming that permission is granted to retain surpluses of R5.77m, R5.98m and R1.70m (previously R5.96m, R5.98m and R1.70m) in the 2020/2021, 2021/2022 and 2022/2023 financial years respectively the Tribunal will be in a position to fund predicted shortfalls. There is however a need to address the Tribunal’s funding requirements in the next MTEF period as larger grants will have to be allocated to the Tribunal.

In the previously tabled annual performance plan the Tribunal indicated that it would need to make a submission to the DTIC and National Treasury for additional funding of **R3.83m** in the **2023/2024 financial year**. The funding needs for 2023/2024 will need to be reconsidered once the 2021/2022 budget is finalised and the possible impact of COVID-19 on the Tribunal is considered.

The Tribunal budget over the three-year MTEF period (assuming unchanged 2021/2022 and 2022/2023 budgets) is reflected in table 6 that follows.

**Table 5: Tribunal budget over the three-year MTEF period**

Year	PreCovid-19 budget increment	Covid-19 budget increment	Total budget ( R'm )	MTEF funding ( R'm )	Filing fees (R'm)	Interest (R'm)	Use of accumulated surplus (R'm)	Additional funding required (R'm)
2020/2021	4.19%	-19.49%	R49.64	R33.18	R9.73	R0.96	R5.77	R0.00
2021/2022	4.78%	35.59%	R67.31	R39.46	R21.25	R0.62	R5.98	R0.00
2022/2023	4.92%	4.92%	R70.62	R45.93	R22.52	R0.47	R1.70	R0.00
<b>TOTAL</b>			<b>R187.57</b>	<b>R118.57</b>	<b>R53.50</b>	<b>R2.05</b>	<b>R13.45</b>	<b>R0.00</b>

**Annexure H** provides a summary of the revised 2020/2021 budget and the unchanged budget in the outer years of the MTEF period.

**x. Budgeting**

As indicated earlier the Tribunal, being an adjudicative body, is reactive as opposed to proactive in terms of the cases brought before it. This in turn means that management is unable to accurately predict the number of cases to be heard on an annual basis.

Budgeting accurately therefore is not possible as many of the line items are based on an estimated number of cases for the financial year. In addition, the Tribunal makes provision for legal fees, as it is possible that particular cases may require the Tribunal to seek legal opinion.

Both these factors mean that, inevitably, variances in actual expenditure as opposed to budgeted expenditure arise. The trend over the last five years has been towards actual expenditure being more closely equated to the budget and resulting in smaller variances (as illustrated in the table 6 below) and the Tribunal strives for this trend to continue.

**Table 6: Spend against budget 2014/2015 to 2018/2019**

Year	Actual expenditure incl. of capital expenditure (in R'm)	Budget (in R'm)	% Budget spent	% Budget underspend/ overspend
2014/2015	R36.64	R33.48	109.43%	9.43% overspend
2015/2016	R36.89	R38.15	96.69%	3.31% underspend

Year	Actual expenditure incl. of capital expenditure (in R'm)	Budget (in R'm)	% Budget spent	% Budget underspend/ overspend
2016/2017	R38.70	R42.77	90.48%	9.52% underspend
2017/2018	R48.29	R52.22	92.47%	7.53% underspend
2018/2019	R49.72	R56.27	88.35%	11.65% underspend

## PART C: MEASURING OUR PERFORMANCE

### 12. Institutional Performance Information

The Tribunal is the court of first instance for competition matters, being a quasi – judicial body and creature of statute our activities are driven by matters that are brought before us, it can only do what the statute allows it to do.

The quasi-judicial nature of the Tribunal precludes the Tribunal from setting pro-active outcomes or embarking on specific interventions which target any particular sector or emphasise any specific criterion in its decision-making. However, in adjudicating matters that are brought before it the Tribunal can align its outcomes with those of the NDP within the confines of the Act.

We have through the process outlined above determined two outcomes that cover the scope of the adjudicative arena and the supporting business environment.

#### 12.1. Impact Statement

<b>IMPACT STATEMENT</b>	Better markets. By this we mean equitable market participation and fair conduct by market participants.
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#### 12.2. Outcome Statement

To achieve the desired impact the Competition Tribunal developed the following two outcomes that will contribute towards achieving the envisaged change as described above.

OUTCOMES	OUTCOME STATEMENT
<b>Responsive and Reliable Adjudication</b>	Respond timeously, pro-actively and judiciously to cases filed with the Competition Tribunal to consistently develop good quality, credible (and clear) decisions in a transparent manner to promote competitive markets.

OUTCOMES	OUTCOME STATEMENT
<b>Transparent, Accountable and Sustainable Tribunal</b>	To ensure effective leadership, transparency and accountability in the Tribunal through capacity building, effective reporting, policy management and financial compliance.

This high- level strategic focus over the term is shown in the diagram that follows below.



### 12.3. Measuring Outcomes

The results-based approach that forms the basis of planning within the government sphere, requires that the outcomes are clearly measured in order to determine progress on the attainment of long term and five-year specific targets associated with the measuring of the outcomes. The table below provides an indication of identified outcome indicators that can be used to measure progress on the outcomes.

**Table 7: Outcome indicators and targets**

OUTCOME	OUTCOME INDICATOR	BASELINE	FIVE YEAR TARGET
<b>Responsive and Reliable Adjudication</b>	Percentage of active cases concluded within the stipulated timeframes	New Indicator	75%
	Unqualified audit outcome	Clean audit	Clean audit

OUTCOME	OUTCOME INDICATOR	BASELINE	FIVE YEAR TARGET
<b>Transparent, Accountable and Sustainable Tribunal</b>	Going concern assessment	New Indicator	Tribunal will continue to operate as a going concern.

### 12.3. Explanation of planned performance over the five-year planning period

The two outcomes identified in section 12.2 above enable the Tribunal to operate within its mandate as a credible institution within the public sector and pursue its commitment to keep the public informed.

Section 4 addressed the manner in which the Tribunal's outcomes contribute indirectly to the NDP outcomes identified within the Medium-Term Strategic Framework (MTSF) of the 6<sup>th</sup> Administration.

Outcome indicators have been determined for each of the two identified outcomes. A baseline (unless it is a new target) has been determined for each outcome of which details will be read within the relevant Technical Indicator Descriptor (TID). The TIDs are described in Part D of this document.

The table that follows reflects the contribution of the Tribunal's outcomes to intended impact and details the enablers that will be required to achieve the five-year targets.

**Table 8: Outcome enablers and contribution on impact**

OUTCOME	CONTRIBUTION ON IMPACT	OUTCOME ENABLERS
<b>Responsive and Reliable Adjudication</b>	Equitable participation and fair conduct in the national economy.	Suitably qualified, experienced and non-conflicted Tribunal members.
	Decisions made by the Tribunal address public interest issues and economic inclusivity	Adherence to required processes and procedures in the adjudication process
	Enables Tribunal to evolve and adapt in order to respond to cases referred to it.	Competent and experienced case managers
		Long term retention of case managers
		Innovative and efficient process for managing cases
		Documented and shared information to ensure better understanding of jurisprudence applied within the Tribunal
<b>Transparent, Accountable and Sustainable Tribunal</b>	Effective resource (financial and human) allocation and utilisation	Employees that are adaptable and responsive to change
	Integrity and credibility of the Tribunal	Effective corporate governance, business ethics and regulatory compliance

OUTCOME	CONTRIBUTION ON IMPACT	OUTCOME ENABLERS
	To perform all functions in a sound and transparent way	Compliant financial management, disclosure and reporting
	Tribunal can operate and function in a changing environment	Effective communication of the work of the Tribunal
	Creates an institution that is responsive and adaptable to changes required to improve service delivery	Innovative application and utilisation of ICT
		Applied framework for integrated knowledge management

### 13. Key Risks and Risk Mitigation

The Tribunal is committed to the optimal management of risk in order to achieve its vision, its principal tasks and key objectives.

An enterprise wide approach to risk management is adopted in the Tribunal. All identified key risks in the entity are included in a structured and systematic process of risk management and within a unitary framework that is aligned to the Tribunal's corporate governance responsibilities.

A risk management framework that describes the Tribunal's risk management policies, structures, processes and standards is documented and is operative within the Tribunal. Through this framework the Tribunal is able to prioritize and identify major risks.

In terms of this framework, the Risk Management Committee (RMC) meets and reports quarterly to the Tribunal's Risk Committee (RC).

The RMC is responsible for ensuring that risk management is integrated into the day to day activities of the Tribunal. This committee reviews the risk register, obtains assurance on controls in place to mitigate these risks and monitors action plans identified.

All risks identified are ranked in terms of probability of occurrence (likelihood) and potential impact. Controls, mitigations or interventions that are designed to contain the potential impact or likelihood of the risk are identified and evaluated. These controls form the basis of an assurance plan and may be tested by the internal audit process or other independent means of evaluation.

For the purpose of the risk assessment a risk/threat is defined as "Any possible situation and/or problem that may hinder/influence the achievement of the strategic objective/focus area".

The risk assessment is designed to minimize the audit risk and is used to allocate resources efficiently and effectively when developing the internal audit plan (annual and 3 year strategic).

The table below identifies the key risks that would prevent the Tribunal from achieving its intended outcome and it also addresses risk mitigation.

In next review of the Tribunal's risk register would need to consider whether these are included and if not include them. If the required mitigation strategies are not in place action places would need to be addressed to include them as mitigating factors. Their effectiveness in addressing the risk will also need to be evaluated.



**Table 9: Key Risks and Risk Mitigation**

Outcomes	Key Risks	Risk mitigations
<b>Responsive and Reliable Adjudication</b>	Lack of expertise of Tribunal members	<ul style="list-style-type: none"> <li>• Appointment of suitably qualified and non-conflicted Tribunal members</li> <li>• Provide continuous training to Tribunal members</li> </ul>
	Lack of capacity	<ul style="list-style-type: none"> <li>• Timeous appointment of Tribunal members</li> <li>• Appointment of competent case managers</li> <li>• Provide continuous training to case managers and Tribunal members</li> </ul>
	Poor and ineffective case management	<ul style="list-style-type: none"> <li>• Improved alignment between case management and registry</li> <li>• Effective management of hearing logistics</li> <li>• Effective information sharing</li> </ul>
	Inability to retain experienced Tribunal members	<ul style="list-style-type: none"> <li>• Competitive remuneration</li> </ul>
	Compromised independence	<ul style="list-style-type: none"> <li>• Transparency in conducting proceedings</li> </ul>
	Lack of documented jurisprudence	<ul style="list-style-type: none"> <li>• Effective information sharing</li> </ul>
	Lack of funding	<ul style="list-style-type: none"> <li>• Effective budget management</li> </ul>
	Inability to retain experienced case managers	<ul style="list-style-type: none"> <li>• Competitive remuneration</li> </ul>
<b>Transparent, Accountable and Sustainable Tribunal</b>	Insufficient funding to implement initiatives to improve Tribunal performance	<ul style="list-style-type: none"> <li>• Funding model that is sustainable and provides certainty</li> </ul>

Outcomes	Key Risks	Risk mitigations
		<ul style="list-style-type: none"> <li>Ability to retain and utilise surplus funds over a longer (2 – 3 years) timeframe</li> <li>Integrated activity-based costing and budgeting processes</li> </ul>
	Inadequate information security	<ul style="list-style-type: none"> <li>Innovative technological development and effective IT strategy. Budget alignment to implement IT strategy</li> </ul>
	Lack of systems and processes	<ul style="list-style-type: none"> <li>Improved alignment across all divisions within the Tribunal</li> </ul>
	Lack of information sharing	<ul style="list-style-type: none"> <li>Effective information sharing through establishment of integrated knowledge management systems and processes</li> </ul>
	Business interruption	<ul style="list-style-type: none"> <li>Effective ICT infrastructure and business continuity and disaster recovery plans</li> </ul>
	Inadequate financial management and reporting	<ul style="list-style-type: none"> <li>Financial systems and processes in place. Sufficient oversight structures functional. Effective financial controls in place</li> </ul>
	Poor corporate governance ethics and regulatory compliance	<ul style="list-style-type: none"> <li>Adherence and compliance to governance framework.</li> <li>Effective oversight structures</li> </ul>

## PART D: Technical Indicator Description (TID)

Outcome 1. Responsive and Reliable Adjudication	
<b>Indicator 1 -Title</b>	Percentage of active cases concluded within the stipulated timeframes.
<b>Definition</b>	This performance indicator measures the efficiency of the Tribunal with regard to the conclusion of active cases brought before it for adjudication within stipulated timeframes.
<b>Source of data</b>	<ul style="list-style-type: none"> <li>➤ Documents pertaining to all active cases concluded.</li> <li>➤ Any correspondence and notices received and issued between the Tribunal, the Commission and parties.</li> <li>➤ Case Management System (electronic case management system run by the Tribunal hereinafter referred to as CMS) reports.</li> <li>➤ Qlikview reports (reporting tool placed on top of CMS) that reflects turnaround times</li> <li>➤ Hearing calendar.</li> <li>➤ Press releases referring to decisions or reasons issued by the Tribunal.</li> </ul>
<b>Method of Calculation / Assessment</b>	<p>The method of calculation is a percentage and it is calculated as follows:  Percentage of active cases concluded within the stipulated time frames = <math>(a/b) \times 100</math>  Where;  a = total number of active cases concluded in the stipulated timeframes.  b = total number of active cases concluded.</p>
<b>Means of Verification</b>	<ul style="list-style-type: none"> <li>➤ Workflows built into CMS either prevents further updating or sends alerts if case data is missing.</li> <li>➤ Annual reports extracted from Qlikview that reflect turnaround times relevant for conclusion for different types of matters.</li> <li>➤ Data reflected on Qlikview (originally captured on CMS) and source documents reviewed to verify data against source document and ensure accuracy.</li> </ul>

Outcome 1. Responsive and Reliable Adjudication	
	<ul style="list-style-type: none"> <li>➤ Registry Administrator will contact official required to input missing data or make corrections on CMS.</li> <li>➤ Errors and corrections that affect prior period reporting are communicated to the Registrar/COO via email.</li> <li>➤ File reviewed by Registrar on an annual basis and signed off as proof of review.</li> <li>➤ Qlikview reports used as the basis for data collection.</li> <li>➤ Quarterly and annual reports and files that support annual figured available for review and verification by Head of Registry and COO.</li> <li>➤ Files and reports signed off as proof of review.</li> </ul>
<b>Assumptions</b>	<ul style="list-style-type: none"> <li>➤ Prior to beginning of 2020/2021 financial the Tribunal would have a clear definition of what constitutes an “active” and a “concluded” case</li> <li>➤ Different types of cases have different conclusion criteria so the final figure will be a global figure</li> <li>➤ The Tribunal has the financial resources and the capacity to perform its adjudicative function.</li> <li>➤ There will be no substantial changes to the Tribunal’s mandate or the Competition Act that will impact on stipulated timeframes and targets.</li> <li>➤ That the Tribunal maintains systems, processes and procedures that facilitate the target being achieved.</li> </ul>
<b>Disaggregation of Beneficiaries (where applicable)</b>	N/A
<b>Spatial Transformation (where applicable)</b>	N/A
<b>Calculation Type</b>	Percentage.
<b>Reporting Cycle</b>	Performance reported annually at each year end and cumulatively for numbers of years the target is effective
<b>Desired performance</b>	The aim of the Tribunal is to meet or exceed the target that has been set.

Outcome 1.		Responsive and Reliable Adjudication			
Indicator Responsibility	Head of Registry, Head of Case Management and COO				
Baseline	2016/17	2017/18	2018/19	2019/20*	
*Estimated performance	New indicator				
Annual Targets	2020 / 21	2021 / 22	2022 / 23	2023 / 24	2024 / 25
	75%	75%	75%	75%	75%

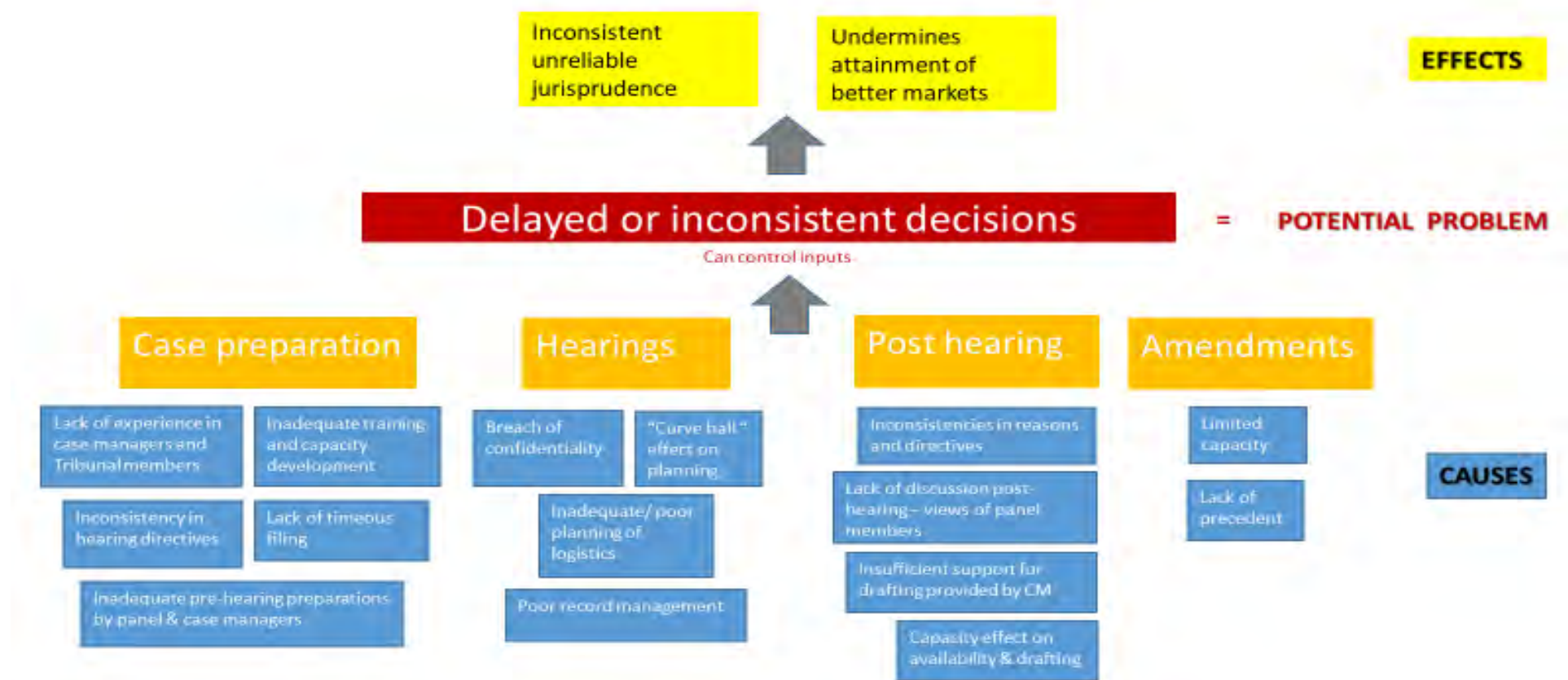
Outcome 2.		Transparent, Accountable and Sustainable Tribunal	
Indicator 1 - Title	Audit outcome		
Definition	This indicator refers to the opinion given by the Auditor General (AG) on the Tribunal’s Annual Financial Statements and Annual Performance Report annually at financial year end.		
Source of data	AG report and management report from AG		
Method of Calculation / Assessment	<ul style="list-style-type: none"><li>➤ No calculation required</li><li>➤ The report received from the AG refers to findings that can result in the audit conclusion being no audit opinion possible, qualified, unqualified or with no findings (clean)</li></ul>		
Means of Verification	AG report and Management report		
Assumptions	The Tribunal has over the past two years had a clean audit outcome and therefore if all systems, processes and procedures are maintained it is assumed that the same outcome will be achieved over the five-year period		
Disaggregation of Beneficiaries (where applicable)	N/A		

Outcome 2.		Transparent, Accountable and Sustainable Tribunal								
Spatial Transformation (where applicable)	N/A									
Calculation Type	Not calculated									
Reporting Cycle	Annual									
Desired performance	Clean audit – no findings									
Indicator Responsibility	Head of Finance and COO									
Baseline	2016/17		2017/18		2018/19		2019/20*			
*Estimated performance	Unqualified		Clean		Clean		Clean			
Annual Targets	2020 / 21		2021 /22		2022 /23		2023 /24		2024 /25	
	Clean		Clean		Clean		Clean		Clean	

Outcome 2. Transparent, Accountable and Sustainable Tribunal	
Indicator 2 - Title	Tribunal deemed to have the ability to continue as a going concern
Definition	This indicator will indicate (based on a number of identified criteria) the Tribunal's ability to continue to provide services and deliver on its adjudicative mandate.
Source of data	Completed assessment against pre-determined criteria.
Method of Calculation / Assessment	Assessment undertaken by management and governance structures based on pre-determined criteria that can be measured and assessed

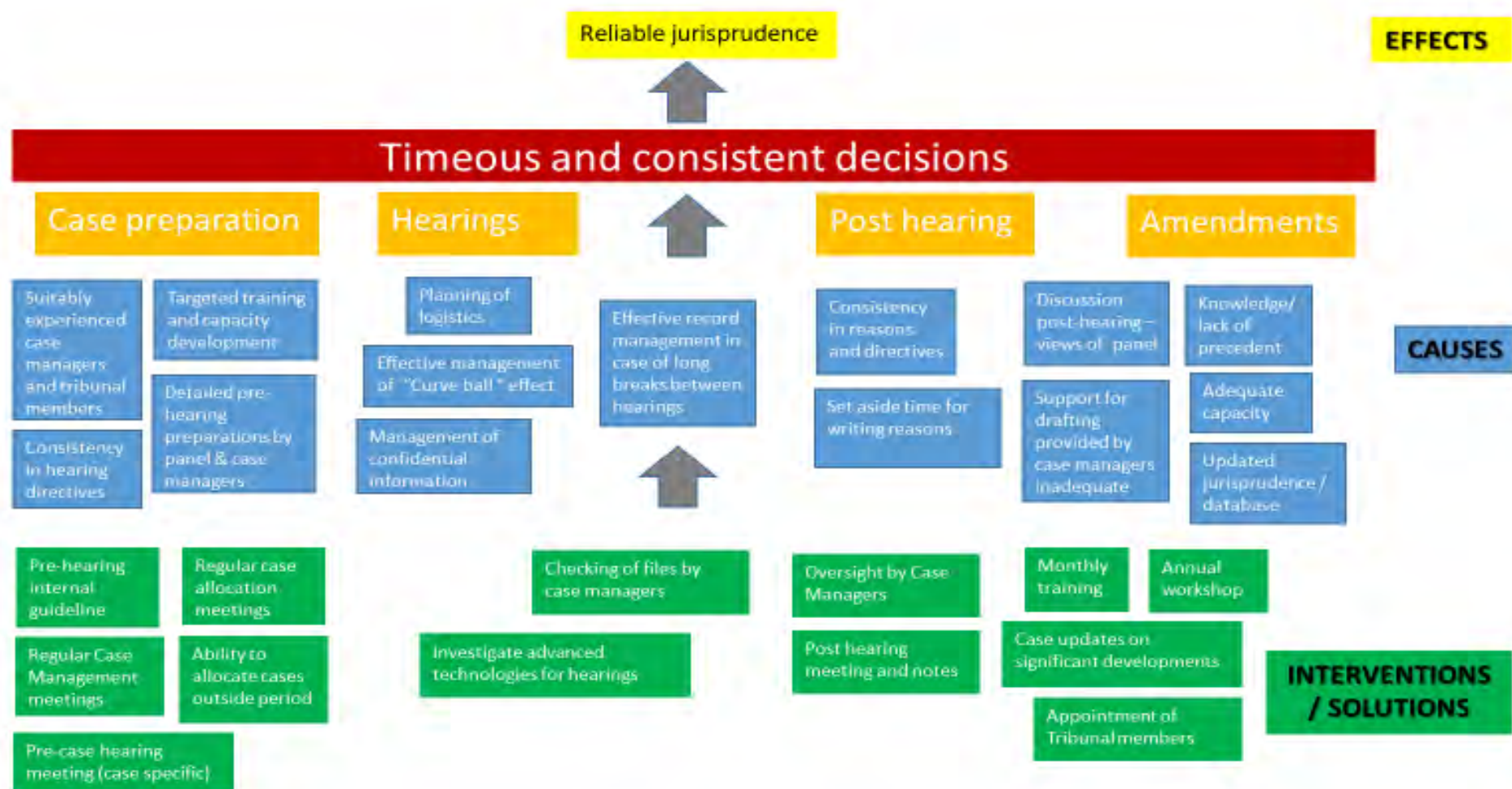
Outcome 2.		Transparent, Accountable and Sustainable Tribunal				
Means of Verification		Formal written assessment endorsed by management and governance structures that the Tribunal has the ability to continue as a going concern.				
Assumptions		<div>➤ The Tribunal is currently funded by grant allocations though the National Treasury and the EDD/DTIC.</div> <div>➤ We have no reason to believe that these funds will be removed and our ability to operate effectively reduced.</div> <div>➤ We assume that there is no intention on the part of the EDD/DTIC to liquidate or curtail the scale of the Tribunal.</div>				
Disaggregation of Beneficiaries (where applicable)		N/A				
Spatial Transformation (where applicable)		N/A				
Calculation Type		Not calculated – assessment based on pre-determined criteria.				
Reporting Cycle		Annual over the five-year period				
Desired performance		To meet the target				
Indicator Responsibility		Head of Finance, COO, Chairperson and governance structures				
Baseline		2016/17	2017/18	2018/19	2019/20*	
*Estimated performance		Going concern	Going concern	Going concern	Going concern	
Annual Targets		2020 / 21	2021 /22	2022 /23	2023 /24	2024 /25
		Annual formal written assessment by management and governance structures that confirms the Tribunal’s ability to provide services and deliver on its adjudicative mandate.				

## Annexure A: Problem Tree - Delayed or inconsistent decisions

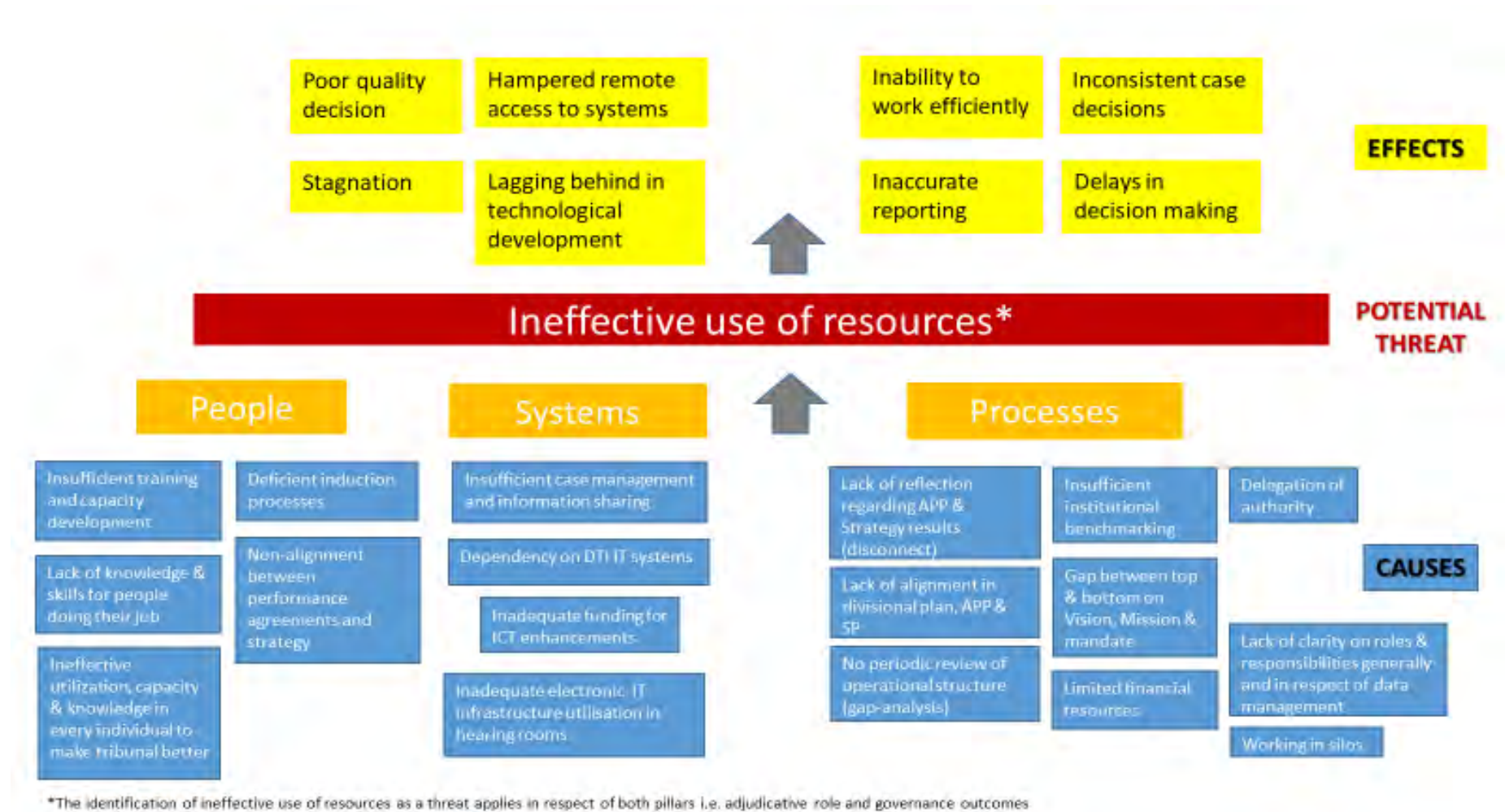




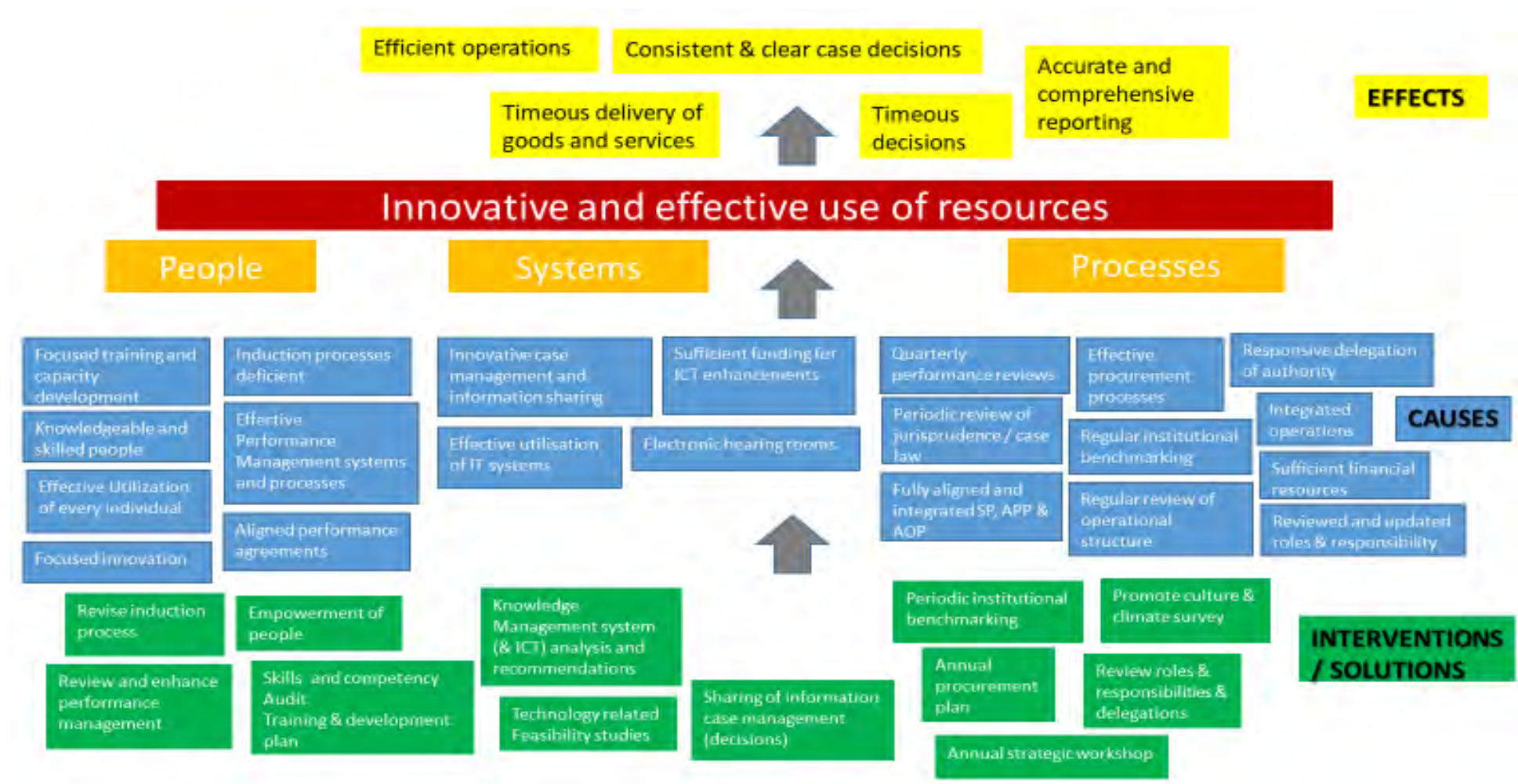
## Annexure B: Solution Tree - Timeous and consistent decisions



## Annexure C: Problem Tree - Ineffective use of resources



## Annexure D: Solution Tree - Innovative and effective use of resources



## **Annexure E: Members of the Competition Tribunal**

### ***Chairperson***

- Mondo Mazwai (BJuris, LLB), from 01 August 2019 (first term)

### ***Deputy Chairperson***

- Enver Daniels (BA(Law), BProc, LLM), from 01 January 2017 (first term)

### ***Full-time members***

- Yasmin Carrim (BSc, LLB, HDE(PG) Sec), from 01 August 2004 (fourth term)
- Andreas Wessels (BCom Hons, MCom.), from 01 August 2009 (third term)
- Two vacancies<sup>2</sup>

### ***Part-time members***

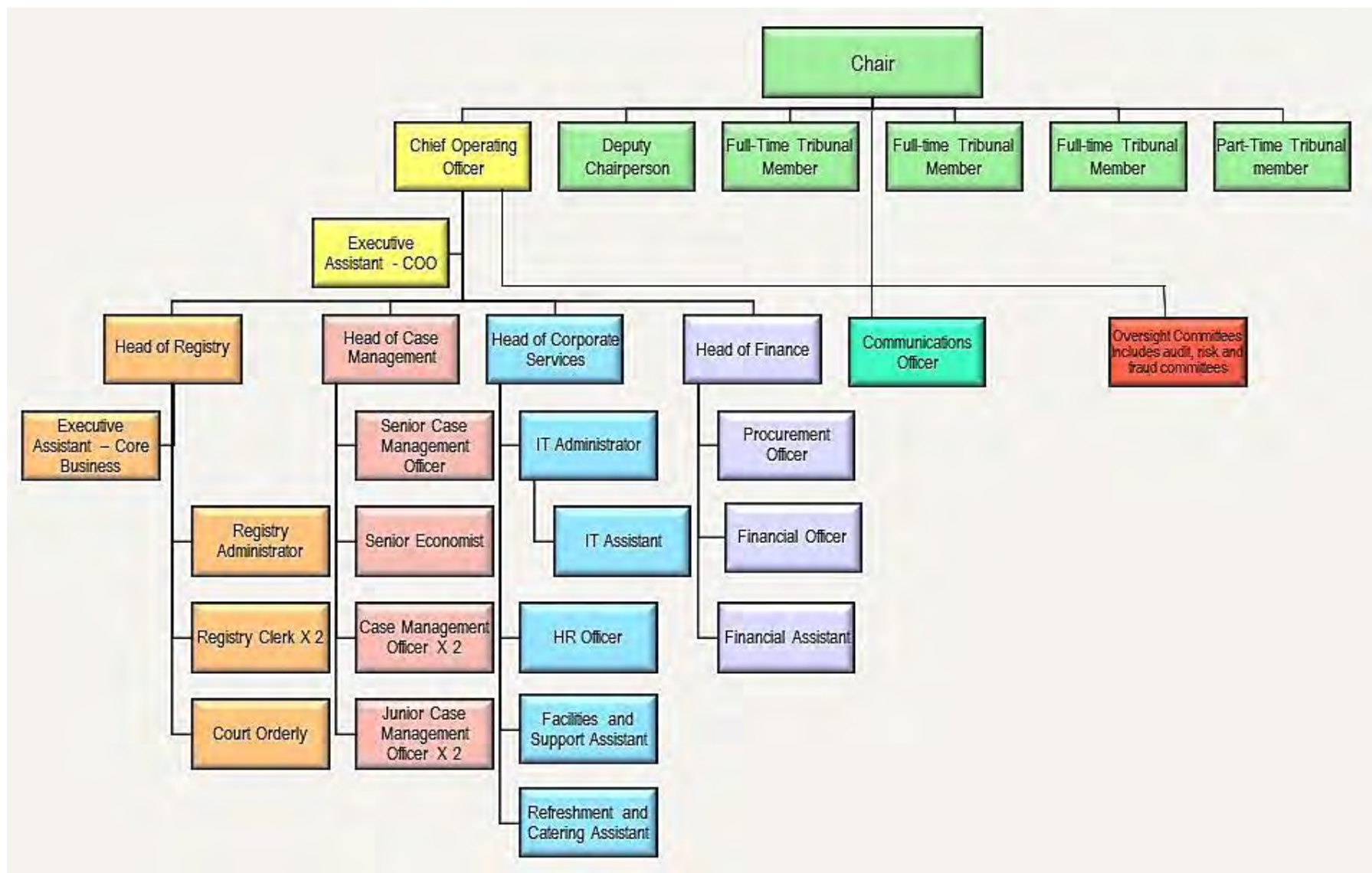
- Andiswa Ndoni (BProc, LLB, Post Graduate Diploma Business Management, Cert- Corporate Governance) from 01 August 2009 (third term)
- Anton Roskam (BA, LLB, HDip-Labour Law, MBA) from 01 January 2013 (second term)
- Imraan Valodia (BCom Hons, MSc (Lancaster), DEcon ) from 01 January 2013 (second term)
- Fiona Tregenna (BA Hons, MA(Economics) and PhD- Economics,) from 01 September 2013 (second term)
- Halton Cheadle (BA (Hons), B Proc, LLB) from 01 January 2017 (first term)
- Thando Vilakazi (BBusSc, MCom, PhD(UJ)) from 01 August 2019 (first term)

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<sup>2</sup> One as the result of the position vacated by the current Chair and one previously budgeted for by never filled.



## Annexure F: Structural Organogram



## **Annexure G: Competition Tribunal Secretariat**

### ***Office of the COO***

Janeen de Klerk – Chief Operating Officer  
Lufuno Ramaru, Executive Administrator – COO  
Gillian de Gouveia – Communications Officer

### ***Divisional heads***

Vacant (Corporate Services)  
Tebogo Mputle (Registry)  
Rietsie Badenhorst (Case Management)  
Devrani Moonsamy (Finance)

### ***Case managers***

Mpumelelo Tshabalala  
Karissa Moothoo-Padayachie  
Ndumiso Ndlovu  
Lumkisa Jordaan  
Busisiwe Masina (contract)  
Alistair Dey Van Heerden (contract)  
Kgothatso Kgobe (contract)  
Peter Kumbirai - intern

### ***Registry***

Sibongile Moshoeshe - Registry Administrator  
Themba Chauke – Registry Clerk  
David Tefu - Court Orderly  
Nkuli Mpepuka – Executive Assistant  
Cyriel Mpaketsane – Registry Assistant

### ***Corporate Services***

Bellah Kekana – HR Generalist  
Sabinah Monareng – Facilities and Support Services Assistant  
Maggie Mkhonto – Catering and Hospitality  
Rembuluwani Muelelwa - Intern

### ***Information Technology***

Colin Venter - IT support and network administrator  
Rendani Neswiswi – IT Assistant

### ***Finance***

Vacant since October 2019- Financial officer  
Ongezwa Dlulane – Financial assistant

Patricia Froude - Procurement officer  
Andile Ntlanga - Intern

**Gender and Race Composition – full-time staff**

<b>Gender</b>	<b>Black</b>	<b>White</b>	<b>Asian</b>	<b>Total</b>	<b>Percentage</b>
<b>Male</b>	8	2		10	<b>37%</b>
<b>Female</b>	11	4	2	17	<b>63%</b>
<b>Total</b>	19	6	2	27	<b>100%</b>
<b>Percentage</b>	<b>70.37%</b>	<b>22.22%</b>	<b>7.41%</b>	<b>100%</b>	

## Annexure H<sup>3</sup>: Three Year Budget

At present the Tribunal budget includes as a line item the allocation to the Competition Appeal Court (CAC), the third member of the triad of institutions set up by the Act. As in the case of the Commission and the Tribunal the CAC has exclusive jurisdiction over competition matters (that is, chapters 2 and 3 of the Act).

The Tribunal secretariat provides the registry function for the CAC and the registrar of the Tribunal acts as the Registrar of the CAC. The Tribunal is responsible for the financing of all aspects of the Appeal Court except for personnel expenses.

The budget as per the MTEF for the three - year period 2020/2021 to 2023/2024 is illustrated below.

We have included the 2019/2020 budget for comparative purposes

CATEGORY	2019-2020	2020-2021	2021-2022	2022-2023
<b>INCOME</b>				
EDD GRANT REQUIRED	0	-191,529	0	0
COMMITTED EDD GRANT	36,172,000	33,176,000	39,460,000	45,927,000
FEES RECEIVED	19,498,500	9,735,000	21,247,727	22,522,590
LEASE FUNDING	0	0	0	0
USE OF SURPLUSES	5,306,365	5,962,228	5,978,266	1,701,940
INTEREST RECEIVED	679,207	960,000	622,787	467,090
<b>TOTAL INCOME</b>	<b>61,656,072</b>	<b>49,641,699</b>	<b>67,308,779</b>	<b>70,618,620</b>
<b>EXPENDITURE</b>				
PERSONNEL	35,843,655	32,885,918	40,138,633	41,844,348
PT TRIBUNAL MEMBERS	4,504,947	2,463,453	4,565,904	5,022,494
TRAINING	1,373,798	165,088	1,162,367	1,218,161
CONFERENCES AND SEMINARS	350,496	0	368,399	386,082
SHARED SERVICE	903,792	774,114	1,050,307	1,100,722
FACILITY FEE	6,209,533	3,772,912	6,520,009	6,832,970
CONSULTING	339,134	193,150	380,960	399,246
LEGAL FEES	150,000	75,000	165,000	181,500
TRANSCRIPTION FEES	1,710,816	1,215,133	2,225,149	2,447,664
AUDIT EXPENSES	1,809,588	1,745,889	1,937,480	2,030,479
RECRUIT COSTS	178,268	175,418	196,132	205,546
ADMIN EXPENSES	1,915,792	1,204,460	2,005,546	2,101,812
AMORTISATION	416,972	396,951	513,598	695,491
DEPRECIATION	861,199	646,153	865,238	941,124
OTHER IT EXPENDITURE	3,375,100	2,701,006	2,958,333	3,390,573
REPAIRS/MAINTENANCE	3,000	1,800	3,780	3,961
<b>TOTAL EXPENDITURE</b>	<b>59,946,091</b>	<b>48,416,446</b>	<b>65,056,834</b>	<b>68,802,173</b>
<b>APPEALS COURT BUDGET</b>	<b>726,757</b>	<b>229,529</b>	<b>732,373</b>	<b>768,992</b>
<b>TOTAL AS PER MTEF</b>	<b>60,672,848</b>	<b>48,645,975</b>	<b>65,789,207</b>	<b>69,571,164</b>
<b>CAPITAL EXPENDITURE</b>	<b>983,224</b>	<b>995,724</b>	<b>1,519,572</b>	<b>1,047,457</b>
<b>GRAND TOTAL</b>	<b>61,656,072</b>	<b>49,641,699</b>	<b>67,308,779</b>	<b>70,618,621</b>
<b>ANTICIPATED SURPLUS/ (DEFICIT)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<sup>3</sup> While our plan reflects targets over five-year we have only included a three-year budget based on the allocations approved for the MTEF period.



## Annexure I: ENE Summary

Statement of financial performance	Audited Outcome		Audited Outcome		Audited Outcome		Approved budget		Outcome/ Budget Average %	Average growth rate (%)	Expenditure/ total: Average (%)	Medium-term estimate			Average growth rate (%)	Expenditure/ total: Average (%)
R thousand	2016/17		2017/18		2018/19		2019/20		2016/17-2019/20			2020/21	2021/22	2022/23	2019/20 - 2022/23	
Revenue																
Tax revenue	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Non-tax revenue	14 221	14 842	15 319	17 104	21 183	18 623	25 389	25 484	99.9%	19.7%	38.7%	26 837	27 849	24 692	-1.0%	39.9%
Sale of goods and services other than capital assets	13 441	13 860	14 441	16 295	18 570	17 579	19 499	19 499	101.9%	12.1%	34.6%	20 045	21 248	22 523	4.9%	31.6%
of which:																
Administrative fees	13 441	13 860	14 441	16 295	18 570	17 579	19 499	19 499	101.9%	12.1%	34.6%	20 045	21 248	22 523	4.9%	31.6%
Sales by market establishment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other sales	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other non-tax revenue	780	982	878	809	2 613	1 044	5 890	5 985	86.8%	82.7%	4.0%	6 792	6 601	2 169	-28.7%	8.3%
Transfers received	21 195	20 115	30 041	30 041	35 086	35 086	36 172	36 172	99.1%	21.6%	61.3%	37 403	39 460	45 927	8.3%	60.1%
Total revenue	35 416	34 957	45 360	47 145	56 269	53 709	61 561	61 656	99.4%	20.8%	100.0%	64 240	67 309	70 619	4.6%	100.0%
Expenses																
Current expenses	41 444	38 255	50 117	47 466	55 071	48 667	59 663	59 750	94.1%	16.0%	100.0%	62 180	65 746	69 540	5.2%	100.0%
Compensation of employees	23 853	23 794	30 255	27 573	32 185	29 507	35 844	35 844	95.6%	14.6%	60.2%	38 122	40 138	41 844	5.3%	60.6%
Goods and services	16 749	13 562	19 018	18 864	21 820	18 211	22 541	22 628	91.4%	18.6%	37.6%	22 828	24 229	26 059	4.8%	37.2%
Depreciation	842	899	844	1 029	1 066	949	1 278	1 278	103.1%	12.4%	2.2%	1 230	1 379	1 637	8.6%	2.1%
Interest, dividends and rent on land	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Transfers and subsidies	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total expenses	41 444	38 255	50 117	47 466	55 071	48 667	59 663	59 750	94.1%	16.0%	100.0%	62 180	65 746	69 540	5.2%	100.0%
Surplus/(Deficit)	(6 028)	(3 298)	(4 757)	(321)	1 198	5 042	1 898	1 906		-183.3%		2 060	1 563	1 079	-17.3%	

**Note:** The surplus reflected in the ENE summary is an operating surplus and does not take into account the budget for capital expenditure. When capital expenditure is included the surplus/ (deficit) is zero. Further it must be noted that this annexure does not reflect the revised 2020/2021 budget based on the reduction in revenue and the impact of COVID-19 on the Tribunal's operations. They will need to be revised when National Treasury submits the templates for completion.

## Annexure J: Strategic Planning Process

Date	Meeting	Participants	Outcome of meeting
18 <sup>th</sup> -20 <sup>th</sup> September 2019	National School of Government Workshop on New Strategic Plan and Annual Performance Framework	<ul style="list-style-type: none"> <li>• COO</li> <li>• Head of Registry</li> </ul>	<ul style="list-style-type: none"> <li>• Understanding of methodology required in developing the SP/APP</li> </ul>
18 <sup>th</sup> October 2019	Tribunal's Operation Committee Meeting	<ul style="list-style-type: none"> <li>• COO</li> <li>• Head of Registry</li> <li>• Head of Case Management</li> <li>• Head of Finance</li> </ul>	<ul style="list-style-type: none"> <li>• SWOT Analysis</li> <li>• PESTEL Analysis</li> <li>• Understanding of methodology required in developing the SP/APP</li> </ul>
31 <sup>st</sup> October 2019	Submission of draft SP/APP based on guidelines but exclusive of impact/outcome/output definitions and descriptions to EDD/DTIC		
9 <sup>th</sup> January 2020	Responses received from EDD/DTIC on initial drafts		
22 <sup>nd</sup> – 24 <sup>th</sup> January 2020	Strategic review and planning workshops	<ul style="list-style-type: none"> <li>• Institute of Performance Management as facilitators</li> <li>• Tribunal Chairperson</li> <li>• Three full-time Tribunal members</li> <li>• COO</li> <li>• Head of Case Management</li> <li>• Head of Registry</li> <li>• Head of Finance</li> <li>• Human Resources Officer</li> </ul>	<ul style="list-style-type: none"> <li>• Required processes and methodology applied to develop SP/APP that is compliant with National Treasury guidelines on planning</li> <li>• Finalised impact/outcome and outputs that are aligned to the NDP and DTIC outcomes and ensure the Tribunal delivers on its required mandate</li> </ul>
29 <sup>th</sup> -31 <sup>st</sup> January 2020	Workshops to finalise documents for submission	<ul style="list-style-type: none"> <li>• IPM facilitator</li> <li>• Tribunal Chairperson</li> <li>• COO</li> </ul>	<ul style="list-style-type: none"> <li>• Finalisation of SP and APP for submission</li> </ul>